



Board of Forestry Special Meeting

May 02, 2017
Roanoke, VA

Call to Order

The Board of Forestry special meeting was called to order at 11 a.m. by Chairman Smith at the Hotel Roanoke and Conference Center in Roanoke, VA. Chairman Smith reminded the Board of the Anti-trust acknowledgement and policy.

Recognition of Guests and Visitors

Virginia Department of Forestry Present:

Bettina Ring, State Forester; Rob Farrell, Deputy State Forester; Ed Stoots, Western Regional Forester; Brad Carico, Water Quality Engineer; Dean Cumbia, Director of Resource Management, Mary Weaver, Executive Assistant

Recognition of Guests and Visitors:

Andrew Smith, Virginia Farm Bureau Federation; Martha Moore, Virginia Farm Bureau Federation; Katie Frazier, Virginia Agribusiness Council; Jonathan Harding, Virginia Agribusiness Council; Ron Jenkins, Virginia Loggers Association; Matt Wells, Westrock; John Hancock, Westrock; Paul Howe, Virginia Forestry Association

Roll Call

Board of Forestry Members Present:

Don Bright, Joel Cathey, Beth Flippo Hutchins, Franklin Myers, Dr. David Smith, Greg Scheerer, Glen Worrell, Ken Morgan Jr., James Harder, and William Snyder

Members Absent:

Anne Beals, John Burke III and Keith Drohan

Special Meeting Discussion

Proposed Timber Theft Strategies:

Chairman Smith explained that this special meeting was called to discuss proposed Timber Theft Strategies. Chairman Smith asked the Board members that if they have significant concerns in regards to the proposal to please submit your thoughts by email to Bettina by May 12. At the May 24 meeting, the next steps will be discussed. At the meeting in August, the proposal should be a pretty solid draft if we decide to introduce any legislation.

Bettina Ring thanked everyone for attending. Timber theft is one of the top issues that are continuing to increase. Have been having discussions with stakeholders to ensure we are looking at the whole package of timber theft and trespassing.

Rob Farrell reviewed with the Board the process he has been doing over the last couple of years gathering information on issues that VDOF was having in regards to timber theft all across the state. Met with stakeholders last fall, and everyone

agreed to come up with a proposal for the 2018 legislative session. Secretary Gooden reviewed these strategies in March, and then VDOF met with Paul Howe, Virginia Forestry Association (VFA); Ron Jenkins, Frank Meyers and Vance Wright with Virginia Loggers Association (VLA) to review it with an in-depth discussion. Would like to get Board's input at this meeting; next step will be to set up a meeting with the stakeholders to discuss what will work, what will not and how to make it happen. This proposal has not yet been reviewed by legal counsel.

Timber theft is very small relative to forestry industry in Virginia, but for the affected landowner it is huge. We need to ensure we don't paint the industry in a bad light

The Board discussed several issues:

- ◆ Cutting that wasn't sold and a cutting that was sold but didn't get paid should be addressed separately.
- ◆ Many different elements to trespass, one issue may require several solutions.
- ◆ Be very specific on the terminology and wording that is used.

Rob reviewed the Timber Theft elements that we are trying to address with proposed strategy changes:

- ◆ **Incidental Trespass/Accidental Trespass** - In most cases, the logger/timber buyer and landowner are able to work out solution. We are not intending the proposed efforts to apply to this type of trespass. Need to keep a distinction between accidental and intentional.
- ◆ **Theft through Malicious or Intentional Trespass** – This is what we are trying to address with these strategies.
- ◆ **Theft from failure to pay the landowner for all of the timber removed** – Timber buyer makes an agreement with the landowner and landowner is not paid for all that was removed. This is more of a fraud issue.
- ◆ **Challenges in prosecution and recovery** – Landowners are rarely satisfied with the outcome after a significant timber theft case. Law enforcement is unwilling to pursue. VDOF has policy that we don't get involved in the money side. Hope to help the landowner be made whole again or as close as possible.
- ◆ **Lack of reporting by victims** – No one knows how much of this is really going on.

Ed Stoots (Western Region Regional Forester) briefed the Board on what some of the other states are dealing with in regards to timber theft. South Carolina is looking at \$2 million to \$3 million a year in timber theft; they have law enforcement assisting them. In Virginia, the burden is all on the landowner. Most of the proposals suggested have been adopted in other states.

Rob reviewed the Top 10 proposed code changes in order of priority:

1. **Add a code section to specifically grant the State Forester authority to assist law enforcement agencies in investigation of timber theft** – We see this as being pursued the same way we pursue arson investigations. We have knowledgeable people who would gather and pursue the evidence and would turn over to law enforcement to make the arrest and VDOF would assist with prosecution.
2. **Add a code section to require payment to the landowner within 30 (20 to 60) days of removal of timber from the property unless a written agreement indicates otherwise** – Pay landowner in a reasonable amount of time.
3. **Add a code section to require load tickets be provided to landowner within 30 days and specify what information is required on the load ticket.**
4. **Change the current code reference for properly marking property lines to be more flexible** – Revisit language so more normal ways of marking a line can be counted as acceptable.
5. **Change the current code section to increase the time that a landowner has to determine damages from 30 days to 90 days after discovery.**
- 6A. **Change the current code section to allow damages to be valued at three times the value of the timber on the stump OR the value of the timber delivered to a mill, wood yard or other secondary purchaser, whichever is greater.**
- 6B. **Add a code section for specifying the "value" of timber theft based on the stump diameter of each tree removed. This alternative method would allow landowners to more easily determine a starting value for**

claims, relieving the burden of having to hire a forester as their first step – This code came from Vermont; easy way to come up with initial value.

7. **Move the current timber theft codes from §55.331 and consolidate all timber theft codes to fall under Chapter 11: Forest Resources and the Department of Forestry starting with add-ins Article 14 a Timber Theft section starting with §10.1-1181.14 Damages recoverable for Timber Theft.**
8. **Update the current code to define various punishable limits based upon the value of timber stolen, and be more in line with other code sections defining larceny as found in §18.1-95 and §18.1-96.**
9. **Add a code section to describe business practices that if followed would allow timber buyers to be held harmless from timber theft damages. Practices could include properly marking property lines or having property lines surveyed and marked, or getting a signed agreement from adjoining landowners; as long as they don't cut over the lines.**
10. **Add a code section to require all timber purchases to include a Landowner Acknowledgement form requiring the landowner to acknowledge that she/he is aware of accepted best practices for selling timber, such as getting multiple bids, having a written contract, checking references, etc.** – Attempt to provide education to all landowners right before they sell timber.

Rob discussed other methods suggested:

- ◆ #6 – Help the landowner to determine the value of trees without hiring a consulting forester could be to have the VDOF forester perform a stump count as a service to the landowner. Trying to stay away from the VDOF putting a value on trees or woods. If foresters measure the stumps, then establish statewide values for different size stumps; bring consulting foresters in to establish an estimated value.
- ◆ #10 – Take some of the acknowledgement form elements and require them to be part of timber sale contracts. All timber sales would require a contract.

Bettina expressed that this will need a lot of discussion and would like to make sure everything gets out on the table to move this forward.

Board discussed the proposal.

Don Bright – Be careful about when this gets out to the public. Consider getting some mills involved with discussion. Stakeholders could come together and buy into a fund that helps assist landowners. Need to have somebody in the know to fight for the landowners.

Ken Morgan – Very important to be proactive and positive; education is a key element. Mr. Morgan believes that most incidents are by landowners selling timber for the first time.

Joel Cathey – Need to concentrate on making the hammer big and bad for those doing intentional harm, but need to be careful not to squish the ones who unintentionally did something wrong. Think really hard about these provisions. Mr. Cathey feels this all falls back to the loggers.

Beth Hutchins – There needs to be really good definitions. Look at ways to provide ability to say you can trust us (industry) because the State Forester is looking after us and the landowners.

Glen Worrell – How can we make sure loads that are getting delivered are actually legitimate, non-stolen loads. How can you do that without some type of documentation? We need to find a balance between landowner and loggers; right now, entire burden of stolen timber is on the landowner.

Frank Myers – Laws need to be enforced. Landowners need to be responsible for marking property lines. Paying landowners in 30 days would be tough to do.

Greg Scheerer – Resources are very limited for everyone. Providing sale tickets would be a great burden. Very important to get loggers and mill owners involved with the stakeholder's group.

William Snyder – Want to go back to the South Carolina model and understand it a little more. Learn how others are handling this.

David Smith – If we require the State Forester to oversee, it would require more resources for VDOF.

Chairman Smith asked the board to write down their concerns and recommendations to improve these proposals and send to Bettina by Friday, May 12.

Bettina thanked the board for being a very active and engaged board; this is just the beginning. Let's be very thoughtful of how we communicate these ideas.

Adjournment

Chairman Smith called for a motion to adjourn; motion was made to adjourn the May 2, 2017 meeting at 1:07 p.m. and seconded. All present were in favor.

Minutes recorded by Mary Weaver, Executive Assistant