

# Tribe, feds in court over questionable logging on McQuinn

It has been more than seven years since torrential winds blew across the Reservation and downed valuable trees on the McQuinn Strip. Those winds not only brought bad news for tribal natural resources, but for the Bureau of Indian Affairs as well.

The BIA forestry department initially estimated the Blowdown sale at three million to five million board feet. By the time the sawdust settled, an excess of 23 million board feet of blowdown and green trees had been removed from the McQuinn Strip area.

The Tribe and BIA were at loggerheads; the Tribe contended questionable logging practices; the BIA maintained they were protecting the resource for the Tribe.

Now, the Tribe and the Federal government are in US Court of Federal Claims, parties in a suit which charges the BIA with mismanagement of the timber sale that shorted the Tribe \$17 million. Judge Robert H. Hodges, Jr. will decide the matter following the trial

that began December 8 in Portland.

According to an article in The Oregonian, the Tribe's attorney, Martin E. Hansen, stated the BIA "made substantial errors in the planning and execution of the Blowdown sale...This sale...it got away from the government."

The trial marks the latest step in the Tribe's five-plus year effort to recover damages from the sale. A year ago, the Tribe won a ruling in US District Court in Portland that the federal government turn over certain documents it said were exempt under the Freedom of Information Act.

The following is a reprint of articles that

appeared in the October 19, 1990 edition of Spilyay Tymoo.

The Warm Springs Tribal Council became aware, in mid-1990, of questionable logging and forest management practices on the McQuinn Strip. Further timber sales during 1990 and 1991 on McQuinn were prohibited in 1989 by the BIA because the 20-year allowable cut had been met. No logging was to take place on McQuinn during 1990 and 1991, but when a substantial blowdown occurred in January 1990, the BIA and Tribe agreed to the removal of all blowdown material.

The BIA originally estimated that three million to five million board feet had been blown down, but after examining the area, foresters readjusted that estimate, and when the McQuinn "emergency salvage" sale was advertised in July 1990, the BIA stated that 18.5 Mbf were available for removal. "The amount of green timber was increased over what should have happened in the sale," said then-Warm Springs BIA forest manager Bill Donaghu.

Logging began in early August. When tribal forestry consultant Jim Spitz drove through parts of McQuinn, he found that some areas that should have been partially cut had, in fact, been clearcut. Further investigation proved disturbing to Spitz and he alerted tribal Chief Executive Officer Ken Smith. Smith asked that a tour of the affected areas be conducted. On the tour was, among others, BIA Portland Area Office Forestry director George Smith, who, upon seeing the clearcuts, ordered that logging on some units be shut down and the units be "redesignated to exclude undamaged green timber," according to Portland Area Office timber sales officer Ken Lathrop.

Donaghu also ordered that there be no more cutting of unmarked trees and that no timber be taken now that could be harvested later. The shutdown came only after the areas were mostly cut.

At this point, Tribal officials felt that the "problem" had been taken care of. But subsequent tours showed that improper logging was continuing and that healthy, highly valuable, standing, unmarked trees were being harvested for no obvious reason. All blowdown occurred in previously-logged areas, and, in Spitz' opinion, the cutting of standing timber was unnecessary. "Only very rarely is it necessary to cut green timber to get the blowdown out," he said.

Donaghu said that crews did not return to "selection" areas after the sale had been advertised and sold. Crews were to check the marking that had been done previously. "There were green trees that should have been designated as 'leave trees'. Forestry did not mark them," Donaghu said.

Identified as a serious problem is the difficulty BIA forestry personnel had supervising the area. The logged areas were spread over 35,000 acres. The logging contractors had up to five separate work sites going, with more than 30 cutters falling and bucking and nearly 40 trucks making up to three trips per day. Monitoring the logging was "inadequate," said tribal special projects coordinator Doug McClelland.

Another aspect to consider is the fact that the logging contractor had such a short period of time in which to remove the material. It was "too much, too fast," said Spitz at the time. "Never, in my career, have I heard of this amount of wood being removed in such a short period of time."

Beyond that, contract provisions set "unreasonable limitations in terms of good forest management," added McClelland.

Forestry crews, too, had a short period of time in which to work. Forestry personnel were still marking trees after the contractor had been working a month, said Donaghu.

Three issues needed to be addressed. The first was the salvage status of the sale. The Code of Federal Regulations clearly defines a salvage sale. If a tree is down, the top is broken or severe damage to the remaining stand will occur, then the tree is to be removed. Also, if, in the opinion of the forester, the tree will fall or blow down during the winter, the tree is to be removed.

A salvage sale usually includes very little healthy, standing timber. "A substantial portion of this harvest was standing green timber, which appears to be beyond the salvage sale authority," said McClelland.

The second issue to be addressed was if the Tribe was receiving fair market value for the timber. As trustee, the BIA is "obligated" to obtain the best possible price for the material.

The third aspect to consider was administration of the sale. It is the responsibility of the BIA to ensure that proper logging techniques are used and that loggers don't remove any unnecessary timber.

The McQuinn Strip Act of 1972 mandated that timber taken off McQuinn between 1972 and 1992 be sold at public auction, not be exported in the foreign market nor be cut, purchased or removed by the Tribe. Even though this was an "emergency" sale consisting of blowdown material, tribal attorneys determined that none of the McQuinn timber could be brought to Warm Springs for resale or manufacturing. Donaghu maintained that the McQuinn sale was put together with the idea that the timber was going to WSFPI. A high percentage of the sale was green and not damaged by wind. This percentage (estimated by the BIA to be 25%) didn't have to be that high, says Donaghu, but because "we originally thought the sale was going to WSFPI, we conducted sanitation harvest and cleaned up the area. We wouldn't have done that if we knew it was going off-reservation." Sanitation harvest is where "high risk" trees are identified and marked for removal.

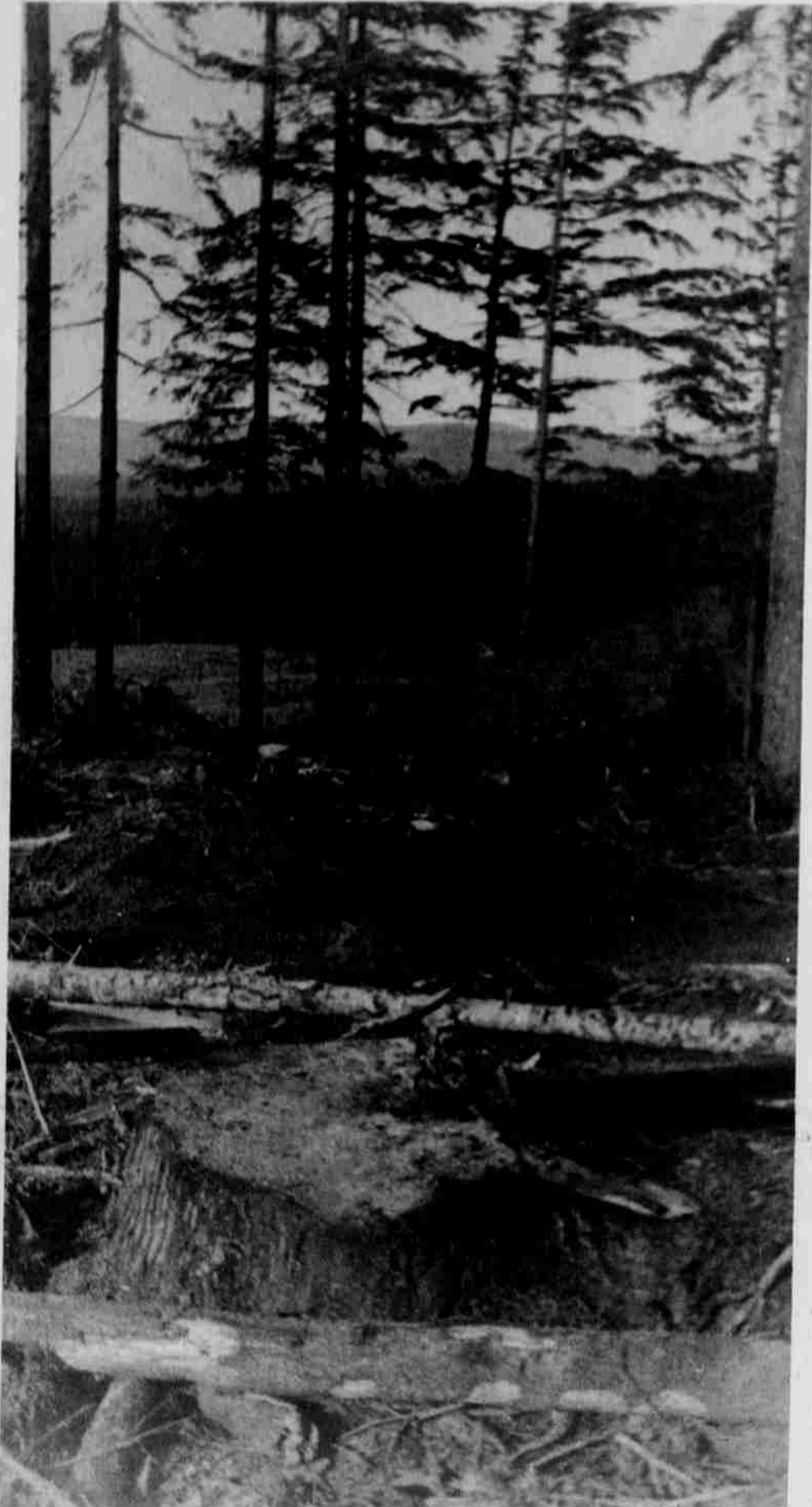
High quality Douglas and noble fir and other species are found on the McQuinn Strip. It is extremely valuable on the domestic market and even more so on the foreign market. Once McQuinn management was turned over to the Tribe in 1992, the timber taken could be exported, if the Tribe so chose, or processed at WSFPI mill.

A high percent (60 percent to 65 percent) of the timber taken in this sale was green, standing timber, said Spitz. The Tribal could have realized as much as \$2 million to \$4 million more for the timber had it been left for harvest in 1992, Spitz believed.

Tribal Council Chairman Zane Jackson expressed concern over the annual allowable cut. "We lost the greater part of the 1992 annual allowable cut for WSFPI" by having this removed now. "The allowable cut off the main Warm Springs block was trimmed to minimize the loss of material that would be available for manufacturing at the mill."

Spitz questioned, too, the silviculture philosophy of the BIA. "It is not well thought out." The "patchwork" clearcut design endangers remaining stands as there will most certainly be windthrow in the future. Also threatened is wildlife. With the understory removed, very little shelter exists for large or small animals.

"We'll have to take time to assess our situation," said Jackson. "Only then will we be able to decide what to do. We will be careful to do what's in the best interest of the Tribe and, of course, our timber resource. We have an obligation to our people to ensure that our trustee is managing our forests for the greatest benefit and value of our people, including not only the economic value, but other important resource and cultural values as well," Jackson concluded.



Logging practices on McQuinn Strip included clearcutting and the harvesting of large, healthy, undamaged, unmarked trees.

## Blowdown journal

**1988**—Tribe becomes concerned about large amount of McQuinn timber planned for sale during 1989-1991. It is determined that the 20-year allowable cut has been met. Tribe requests that there be no more cutting in the McQuinn until 1992.

**January 1990**—Major windstorm causes substantial blowdown on both McQuinn and Warm Springs blocks.

**April 1 to June 1, 1990**—Snowmelt in some areas of McQuinn make portions accessible; by April 20, all areas are accessible. May 4, forestry conducts helicopter survey of blowdown. May 14, forestry presale begins ground reconnaissance of blowdown. By May 25, initial reconnaissance and mapping of blowdown is completed. On May 29, BIA forest manager informs WSFPI his intent to sell McQuinn timber to them under emergency authority. Initial estimate is 3 million to 5 million board feet. On May 30 and 31, forestry begins cruising and marking sale.

**June 28**—Tribal attorney Dennis Karnopp determines that WSFPI cannot process McQuinn timber due to stipulations to McQuinn Act of 1972.

**July 11**—Forestry finishes sale layout and begins computing timber volumes and mapping. It is determined that the value of this timber will probably double in 1992 when McQuinn Act restrictions expire.

**July 16**—Agency superintendent signs waiver to shorten the required advertisement period from 30 days to seven; gains approval from tribal Timber committee.

**July 19**—Prospectus sent to prospective buyers.

**July 26**—Discover that terms of sale are very different from those previously agreed to by tribal and Portland Area Office representatives. Volume is now estimated to be 18.5 Mbf.

**July 27**—Forestry staff conducts field trip for prospective buyers. Area Office informs local forestry officials that only damaged trees were to be included in the sale and that there would be no clearcuts, shelterwood final removals or selection cuts (also clearcuts). Forestry maintains that a maximum of 25 percent of green standing timber had been included in the sale and that a change in prescription was impractical. Tribal forestry consultant Jim Spitz maintains that over 60 percent of the timber included in the sale is green and not seriously damaged.

**August 2**—Forestry amends sale and removes approximately one million board feet.

**August 3**—Vanport, of Boring, Oregon, awarded sale in bidding.

**August 13**—Cutting begins on sale.

**August 14**—Spitz and tribal biologist Terry Luther check cutting on parts of McQuinn. Notice cutting of snags and unmarked, undamaged trees.

**August 23**—Tour consisting of Donaghu, Spitz, Doug McClelland, Cal Mukamoto, Ken Smith, George Smith and Ken Lathrop tour a small portion of sale. Approximated 1.4 Mbf removed by changes following tour.

**September 7**—Tribal Council Chairman requests superintendent Bernard Topash to stop logging on the sale; Topash agrees.

**September 10**—Tribal Council meets to discuss McQuinn salvage. Forestry maintains that very few unmarked trees have been cut. Council directs forestry to work more closely with Spitz. Council allows logging to continue with the understanding that all possible standing green trees would be removed from the sale.

**September 11**—Forestry marking "take" trees in unmarked salvages and blacking out some trees that had been marked for cutting.

**September 25**—CEO Ken Smith and Chairman Zane Jackson, on behalf of Tribal Council, write letter to superintendent asking to stop the cutting of green timber.

**October 2**—Spitz observes fresh cutting of unmarked trees.

**October 8**—A Chairman's request, Area Director Stan Speaks directs forestry to stop cutting of green timber.

**October 12**—Forestry now doing an "excellent" job of blacking out paint designating undamaged trees for cutting, but less than one million board feet remains to be cut.

**August 13, 1992**—Tribe files a federal tort claim for damages against BIA in the amount of \$5 million. Lost revenue amount adjusted at later date to \$17 million.