

Allegheny National Forest
External Communication Log

Who: Arthur Stewart, Duhring Resources
Date: 04/03/08 & 04/04/08
Subject: Timber Removal on Lot 8 and Warrant 3672

On April 3, 2008, Bradford District Ranger Anthony V. Scardina, Marienville District Ranger Rob Fallon, and Marienville Timber Sale Administrator Dave Cotterman, met with Arthur Stewart and Steve Tachior of Duhring Resources to discuss issues with the removal of timber on Lot 8 and Warrant 3672. This meeting was in response to an exchange of letters between the Forest Service and Mr. Stewart, which presented the option to cut, skid, and deck the timber on these units. Duhring had notified the Forest Service that it would not buy the timber at the appraised price because they did not believe it was worth the appraised value determined by the Forest Service.

At the start of the meeting, Mr. Stewart provided the Forest Service with a proposed agreement by which Duhring would cut and stack the marked timber adjacent to the sites they proposed to develop for roads and well pads. This proposed agreement cited "reasonable care" as the standard for protecting the value of the Forest Service timber. And it proposed to free Duhring from any responsibility for moving the trees to a particular location or for cutting trees to particular log lengths.

The Forest Service in turn provided Mr. Stewart with a copy of our proposed "Agreement to Fell, Skid and Deck Timber". Mr. Stewart reviewed this document, ostensibly reading each of its clauses as we waited, and suggested that he could agree to its content with two exceptions. The first would add the word "applicable" to the first clause, as in "all applicable ... laws, regulations, etc. The second would completely drop the second clause, specifically that part referring to the Forest Service not reimbursing Duhring for the cost of cutting, skidding, and decking of the designated timber. The Forest Service did not agree to these exceptions, but stated that these stipulations would be reviewed. We informed Mr. Stewart that it is not likely we would agree to these exceptions. Mr. Stewart responded that he would not sign the agreement if he was not compensated for skidding and decking. We did note to him that other companies in the industry had signed this same agreement.

The issue of access was also discussed. The primary concern was the Forest Service's possible need to use OGM roads constructed by Duhring in Lot 8 and Warrant 3672 if there was some agreement under which Mr. Stewart cut the timber and the Forest Service would then remove it from the site. Mr. Stewart informed us that he would expect compensation for use and maintenance of the roads during any operations conducted by the Forest Service. We indicated that it was unlikely the Forest Service would agree to such terms.

After we had reached an impasse on the option to cut, skid, and deck; Mr. Stewart proposed that the Forest Service let him advertise the timber for sale publicly. This was certainly a novel proposal, and we did not reject it out of hand. We did not think it a likely option, but indicated we would present it to our superiors. What ensued was a lively discussion about the worth of the timber, and how the Forest Service appraisal and bidding process operates. Mr. Cotterman noted that the Forest Service, when offering timber for sale, must establish a minimum bid price to provide a base amount of income in the event of a sale. Mr. Stewart initially countered that he was not interested in a minimum, he wanted to offer it as is and see what the industry thought it was worth. We told him that we would not offer timber without our normal contract requirements. Ranger Fallon noted that Mr. Stewart could advertise the timber for sale at any time, provided he bought it first from the Forest Service at the appraised price.

During this phase of the discussion, Mr. Stewart queried Mr. Cotterman on how value was determined. He asked Mr. Cotterman if skidding and decking the timber would add value, as opposed to just cutting and stacking the timber. Mr. Cotterman agreed that it would, but that this added value was included in the appraised cost as a necessary part of removing the timber from the site to the mill.

Mr. Duhring also took this opportunity to offer his perspective on NEPA and just what the Forest Service responsibility was to Duhring as the subsurface owner. He stated that he believed that the Minard Run decision requires the Forest Service to "remove" the timber in 60 days, and that it says nothing about the subsurface owner having to purchase it. He indicated that the timber is an encumbrance to him, stating, "I don't want to touch your logs." He further noted that NEPA is our problem, not Duhring's. And he noted with some irony, that, for Warrant 3672 – where access is across private surface ownership where the Forest Service has no right-of-way – the Forest Service could sell him the timber without NEPA, but could not access the timber without NEPA if he just cut it down. Nonetheless, we did agree that an option for solving the access issue, other than the Forest Service purchasing a temporary easement, would be to have Duhring construct their access on National Forest land, around the private landowner. This appealed to us since one of our concerns was that the access road came so close to the landowner's cabin; but we did indicate it would be dependent on any limiting environmental or safety factors.

It was also during this exchange that Ranger Fallon stated to Mr. Stewart that the removal of timber for access roads and well pads was for Duhring's convenience, since they proposed access to the subsurface, and not the Forest Service. Ranger Fallon stated that the Forest Service had already considered removing timber in this location, and had decided against it in the 2004 Spring Creek decision, primarily due to access concerns.

In addition to these exchanges, Mr. Stewart made several attempts to discuss legal issues related to the rights and authorities of the surface and subsurface owners. He reiterated a position he stated in his previous correspondence that the mineral estate was dominant, and that, under state law, he didn't even need Forest Service permission to access his ownership. We engaged in some general discussion regarding these issues but, when it appeared the discussion was steering towards items specific to the lawsuit, we promptly stated that we would not continue that aspect of the discussion. On some specific topics, after some initial exchange, we declined to discuss them any further when we realized we were being drawn too far into an issue related to the

lawsuit. These included the aforementioned discussion on his interpretation of the Minard Run decision, his statements regarding notification and right of access, and another statement that he does not need to pay road use permit fees to use National Forest System roads.

Towards the end of the discussion, Ranger Scardina made an attempt to resolve problems with the relationship with Mr. Stewart by letting him know that he can call us any time and we will meet with him any time to work in a cooperative manner. This was in response to Mr. Stewart's earlier comments that we are not willing to meet with him to discuss matters. (Mr. Stewart had stated that he had wanted to work with the Rangers for months, particularly with regard to his idea for putting the timber out for bids himself; but that the Rangers refused to meet with him. Ranger Fallon noted that he had spoken with Mr. Stewart only a few weeks prior regarding well plugging being conducted by Duhring, and Mr. Stewart had not taken the occasion to discuss anything related to warrant 3672.) Ranger Scardina also let Mr. Stewart know that we can still work cooperatively together in the field with respect for each other and each others ownerships, although there are other legal matters going on at the time. Mr. Stewart responded that he wished he could take Ranger Scardina's words to be true, but that our recent actions have not shown we want to work cooperatively. He then asked for an apology from Ranger Scardina for shutting his operations down for failing to pay the road use permit fee without calling him the day they were shut down to notify him of the actions. Ranger Scardina respectfully disagreed with the comments and informed Mr. Stewart that he felt his actions were reasonable and that he should not expect an apology. During this exchange, Mr. Stewart directed a personal statement to Ranger Fallon, leaning forward on his desk and looking directly at Ranger Fallon as he stated that the relationship between the industry and the Forest Service did not begin to deteriorate until Ranger Fallon took his position in Marienville.

Following the discussion on relationships, the meeting ended. We told Mr. Stewart that we would get back to him later that day to let him know if any of the options discussed would be considered further by the Forest Service. Note that Steve Tachior, though present for the entire meeting, did not participate in any of the discussion. It did not appear that either Mr. Stewart or Mr. Tachior took notes during the meeting. Ranger Fallon took a few notes.

Later the same day, Ranger Scardina left Mr. Stewart a voicemail message to inform him that we were going to work on the issues discussed and would attempt to get back to him the next day. At 5:00 pm on April 4, 2008, Ranger Scardina called Mr. Stewart on his cell phone to inform him that a decision had not been reached and that we would get back to him as quickly as possible. Mr. Stewart stated that he appreciated the call and then went on to other issues that we have been dealing with on Lot 8. One involves an oil spill that was reported by an employee on the Bradford Ranger District, which Mr. Stewart expressed anger towards at the meeting because the employee called the PA Department of Environmental Protection but did not call Mr. Stewart. Ranger Scardina told Mr. Stewart he would follow up on the matter and inform his staff that operators should be contacted in these situations. The second issue involved an unauthorized pipeline on Forest Road 148 in Lot 8 that Mr. Stewart constructed. In a letter dated, February 11, 2008, Mr. Stewart was informed that he could either reimburse the Forest Service for the damages or fix the damages in coordination with Forest Service staff under Forest Service standards. Mr. Stewart chose the latter and met in the field with two Bradford District employees on April 4, 2008. Mr. Stewart was rude to Ranger Scardina on the phone about the situation,

stating that there was nothing wrong and that the pipeline did not need to be authorized by the Forest Service in the first place because he does not need to notify us to develop his mineral rights. Ranger Scardina did not respond. It was also discovered that Mr. Stewart video-taped the field meeting on this matter.

After discussion with the Forest Supervisor after this telephone conversation, Ranger Scardina called Mr. Stewart again around 5:30 pm to inform him of the decision made on the options discussed at the meeting. Ranger Scardina told him that a letter was faxed to him explaining the decision, and Mr. Stewart demanded Ranger Scardina to explain the decision on the telephone. Ranger Scardina generally described that it was decided that neither option discussed would be acceptable to the Forest Service. His response was "Does anyone with the Forest Service have any idea of what they are doing." Ranger Scardina said that he could read the letter but did not want to have any more discussion on the matter, and ended the call.