

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0338

In re: Stimson Lumber Company

Stimson

Decision and Order

This is an administrative proceeding under the Forest Resources Conservation and Shortage Relief Act of 1990, as amended, 16 U.S.C. §620, *et seq.* (Act) in which the Stimson Lumber Company (Stimson) is applying for approval of a sourcing area under section 490(c) of the Act. A Sourcing Area Application dated December 30, 2011 was originally submitted by the Stimson to the Hearing Clerk's Office. As the Application failed to disclose whether there had been an informal review by the Forest Service, no action was taken on it at that time. By letter dated April 4, 2012 received by the Hearing Clerk on April 5, 2012, the Department's Office of General Counsel subsequently requested that the matter be docketed as a request for formal review.

On May 9, 2012, an Order was entered directing the Regional Forester to provide additional information concerning the Application, including whether there had been an informal review; dates of any meetings with the Stimson's representatives; whether any "submissions had been received; a statement of any issues, both resolved and unresolved; and a description of all actions taken by the Regional Forester since the case had been docketed. The Regional Forester's Response to the Order was filed on May 18, 2012 along with a copy of the Notice of the Sourcing Area Application with a list of the

newspapers of general circulation in which the Notice was published and an indication that additional information concerning the Application was available to the public on Region 1's website.

On June 15, 2012, The Regional Forester filed her Comments and Analysis of the Stimson's Sourcing Area Application. Additional comments on the application were received from the public during the comment period from Stolze Land & Lumber Company, The Lands Council, Idaho Forest Group LLC, and Friends of the Clearwater, each of which have been filed as part of the record.

By letter dated June 28, 2012, the Regional Forester filed her review of the Comments received during the Comment period and recommended approval of the Sourcing Application as filed, subject to the requirement that the Stimson amend their application to include the certification language as published in the Interim Rule at 36 C.F.R. §223.190(c)(4)(1995).

On July 2, 2012, the Hearing Clerk's Office received a letter from the Stimson dated June 29, 2012 supplementing its application. In the letter, Stimson, while questioning the technical deficiency in the Application's certification language, advised that it was "ready, willing and able" to provide any certification required by law. Additionally, Stimson expressed their willingness to address the concern raised in several of the comments that land in eastern Washington had not been included as part of its proposed sourcing area by agreeing to include additional relevant lands identified on a revised description and map.

Discussion

The Forest Resources Conservation and Shortage Relief Act was enacted because of the recognized need to conserve timber resources in short supply, including the need to limit the export of unprocessed timber. To this end, 16 U.S.C. §620(a)(2), (6)-(8) provides:

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

....

(6) There is evidence of a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken.

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

The objectives of the Act are to preserve work for domestic sawmills and to preclude the export of federal timber and the substitution of federal timber for exported private timber. These objectives are accomplished when a person's approved sourcing area is economically and geographically separate from any geographic area from which that person harvests for export timber originating from private lands. These objectives are not advanced by restricting sourcing areas to only those who exported lumber in 1990. *In re Springdale Lumber*, 53 Agric. Dec. 1185, 1193 (1994).

In its current Application, Stimson's President and CEO certified that Stimson had "not exported unprocessed timber originating from private lands within the boundaries of the sourcing area which is the subject of this application in the previous 24 months."¹ The Application seeks to acquire federal timber to source Stimson's St.

¹ Administrative decisions concerning two prior applications by Stimson for approval of sourcing areas appear of record. *In re Stimson Lumber Company*, 54 Agric. Dec. 155 (1955) and *In re Stimson Lumber Company*, 56 Agric. Dec. 480 (1997).

Maries, Priest River, and Plummer Idaho sawmills. In attempting to determine whether the proposed sourcing area was geographically and economically separate from any geographic areas from which Stimson harvests for export any unprocessed timber originating from private lands, the Regional Forester reviewed historical timber sale records, log transfer agreements from Forest Service timber sales, and obtained personal knowledge from local Contracting Officers in Regions 1, 4 and 6 to determine Stimson's purchasing patterns on both federal and private lands over an extended period of time.² Based upon the available information, it was also concluded that the size and location of the sourcing area proposed by Stimson does not differ significantly from other mills located in the same general vicinity.

The Regional Forester also carefully evaluated the comments received during the comment period and concluded that nothing within the comments altered her recommendation that the application be approved.

Based upon the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The Applicant is a corporate entity with Executive Offices in Portland, Oregon.
2. A map of the proposed sourcing area was included with the Application which is of sufficient scale and detail to show the following items:
 - a. The Applicant's desired sourcing area boundary.

² The period of time indicated was since the early 1990s although most of the information related to the past decade.

b. The location of the three timber manufacturing facilities owned or operated by Stimson within the proposed sourcing area where Stimson intends to process timber originating from federal land.

c. Private lands within and outside the desired sourcing area.

3. The boundaries of the proposed sourcing area follow appropriate features such as the Continental Divide; Interstate 15, 84, and 90; U.S. Highways 20 and 26; the Snake River; and State and International borders, including the borders between Idaho and Oregon, Idaho and Washington; and the border between the United States and Canada.

The specific Area Description is as follows:

Beginning at a point on the Continental Divide that adjoins the border between the United States of America and Canada, proceeding south on the crest of the Continental Divide to the point where it is crossed by Interstate 90 east of Butte, Montana. From this point, south and west on Interstate 90 to its junction with Interstate 15, west of Butte, Montana. From this point, south on Interstate 15 to its juncture with State highway 26 near Blackfoot, Idaho. From this point, west on State highway 26 to Arco, Idaho where State highway 26 joins with State highway 20. From this point, west on State highway 20 to its intersection with Interstate 84 at Mountain Home, Idaho. From this point, west and north on Interstate 84 to where this roadway hits the border between the states of Idaho and Oregon. From this point, north on the border between Idaho and Oregon to where Idaho, Oregon and Washington meet. From this point, continuing north on the border between Idaho and Washington to the border between the United States of America and Canada. From this point, east to the point of beginning.

4. The boundaries of the proposed sourcing area include both private and federal lands from which Stimson intends to acquire unprocessed timber for its mills.

5. The Application identified 13 other lumber manufacturing facilities in Idaho and 6 facilities in Montana that are in the same general vicinity of its mills and proposed sourcing area.

6. The Application contains a signed certification statement.

7. The Application is on Stimson Lumber Company letterhead, is signed by Andrew W. Miller, President and CEO, and was notarized on February 6, 2012 by a commissioned Notary Public for Oregon.
8. Appropriate notice to the public has been given by publication of notice of Stimson's Sourcing Area application in newspapers of general circulation in the proposed sourcing area and further notice has been given on Region I's website.
9. The Regional Forester has provided comment and an analysis of the Application and the comments received during the prescribed comment period.
10. No request for a hearing was received from any interested party.

Conclusions of Law

1. The Secretary has jurisdiction of this matter.
2. Stimson has satisfied all of the procedural and with one remediable minor deficiency all technical requirements of the Act.
3. The sourcing area that is the subject of the Application is geographically and economically separate from any geographic area from which Stimson harvests for export any unprocessed timber originating from private lands.
3. The Application's certification is technically deficient in that it fails to repeat the language of the Interim Rule published at 36 C.F.R. §223.190(c)(4)(1995); however, such deficiency may be remedied by amendment of the certification by Stimson.

4. The Regional Forester's recommendation that the Sourcing Application be approved only as originally submitted subject to the amendment of the certification is supported by the record before me.³

Order

1. Subject to Stimson's amendment of the certification of its Application, its Sourcing Area Application is **APPROVED**, and the sourcing area is established pursuant to the Act and its regulations.

2. Amendment of the certification shall be effected no later than 10 days after service of the Decision and Order upon the Applicant.

3. This Decision and Order shall become final, unless appealed to the Department's Judicial Officer as provide in the Rules of Practice.

Copies of this Order will be served upon the parties by the Hearing Clerk.

July 3, 2012

Peter M. Davenport
Chief Administrative Law Judge

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³ As Stimson's willingness to include land in eastern Washington as reflected on the proposed revised description and map would appear to require republication and additional opportunity to comment by any affected parties, only the original proposed boundaries will be considered in this Decision.