

# Personal Use of Logs and Timber in Idaho State



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After crossing the continental divide at Lemhi Pass, and then passing through the Weippe Prairie, the Lewis and Clark expedition descended down a south facing slope to the North Fork of the Clearwater near present day Orofino. On September 26, 1805 they arrived at what is now called “Canoe Camp” where the North Fork of the Clearwater River meets the main body of the Clearwater River. There they spent the next 11 days carving 5 canoes out of large Ponderosa Pine logs. All my friends are wondering, did Meriwether Lewis and William Clark need a permit from the state of Idaho before they cut down these 5 large Ponderosa Pine trees? Let’s examine the law.

The first question to determine was whether the use of logs was a commercial use, or a personal use? One would think that it would have been a commercial use, as Lewis and Clark were hired to make this expedition and the purported purpose of discovering a route of commerce between the mouth of the Missouri River and the Pacific Northwest. However, any benefit from commerce would be decades away, and the unofficial purpose of the expedition was to claim the land for the USA. So was it really commercial? We will probably never be able to figure out whether the use of the log canoes was a commercial use, or a personal use.

However, if today, a few Idahoans wanted to re-enact the Lewis and Clark expedition, we can examine the law in light of their circumstances. Most likely these Idahoans would reenact the Lewis and Clark Expedition strictly for fun, as they probably had better paying day jobs.

Our starting point is the Forest Practices Act found at Idaho Code Title 38, Chapter 13. We find the purpose of the Act at paragraph (2) "To encourage uniform forest practices implementing the policy of this chapter, and to provide a mechanism for the harmonizing and... implement and enforce the laws and rules relating to federal, state and private forest land..."

To harmonize means "agreement or accord; conformity, to make the same." Black's Law Dictionary, 8th edition. Since Idaho's Forest Practices Act was implemented in 1974, let's see what the prior Federal law was that Idaho's law was trying to "harmonize" with regarding the personal use of timber.

In the Federal law we see at Title 16, section 477 Use of Timber and Stone by Settlers "The [Secretary](#) of Agriculture may permit ... the use of timber and stone found upon national forests, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes..." This statute was enacted by Congress in 1897, and is still in effect today.

Going back to the Idaho Forest Practices Act we see at I.C. 38-1303 (1) "Forest Practice" means (a) the harvesting of forest tree species...

(2) "Forest land" means federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products.

(4) "Harvesting" means a commercial activity related to the

cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use.

(5) "Rules" means rules adopted by the board pursuant to section 38-1304.

The take away from these definitions is that the personal use of forest tree species is not a commercial use and is not "harvesting", but at the same time it is recognized as an ongoing activity. Now let's take a look at the rules, know as Idaho Administrative Procedures Act (IDAPA).

At IDAPA 20.02.01.010 DEFINITIONS, we have at (28) "Harvesting. A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting and removal of forest tree species by a person for his own personal use." (7-1-21)T

Going a few pages deeper into the regulations we find at IDAPA 20.02.01.07 "Types of Operation for which Notice will not be Required. (b.) Non-commercial cutting and removal of forest tree species by a person for his own personal use." (10-14-75) and at .06 "Notification Exception... (b.) Non-commercial cutting and removal of forest tree species by a person for his own personal use. (7-1-21)T

If you are not sure what that means, you can refer to Sutherland on Statutory Construction, the premiere authority on interpreting statutes and regulation. Sutherland has a section called "The Plain Meaning Rule" which says when the meaning of a statute is plain, you go with the obvious meaning. In other words, when the language says you can cut and remove trees for your own personal use without notice to the state, that is what it means.

"Where the language is plain and admits of no more than one

meaning the duty of interpretation does not arise" §45:2 Sutherland Statutory Construction.

On my day job, I work as a structural engineer and have been doing that work for 45 years. Since I started in the field, I have engineered over 700 log and timber framed structures, mostly homes. I've also functioned as an architect on over 50 log and timber structures. I am aware of at least 35 log homes that were built using free timber from state or federal lands. In 1996 I did the same, and built a log home using timber from state land. My local sheriff disagreed that the timber could be used for free and turned a report into the prosecutor's office to pursue the issue. A week later the prosecutor told my attorney "I think Hart is right, and I am not touching this case with a ten foot pole."

Well, the bureaucrats must have thought "We can't let him do that." and demanded that I pay triple for logs because I didn't "enter into a contract nor get a permit from them." My attorney responded "Show us a sample of the contract or permit and Mr. Hart will pay your demand." If we examined the regulations further, we would discover that there was no contract or permit that covered the non-commercial taking of forest tree species by a person for his own personal use.

Instead of producing such a contract or permit, the response was more bullying and I ended up losing a civil case in court. When I reached out to the state's attorney set up a payment plan to pay the judgment, the bullying stopped and all I heard was crickets.

So my conclusion is that neither Lewis and Clark, nor those who might re-enact their trek through Idaho today need get a permit nor enter into a contract with the state of Idaho if they want to cut down a large and marketable Ponderosa Pine on state land and carve it into a canoe for their own personal use. But let me end with this caveat, in my 1996 case the prosecutor dropped his investigation because the law was on my side. But by then the culture had changed and the arguments

used in the civil case were not based on the black and white letter of the law, but were emotional in nature. I lost that cultural war, and you might too.

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