

RELATIVE TO THE "BIG BLACKFOOT" CONTROVERSY

ON THE MISSOULA NATIONAL FOREST

1908

November 30, 1908.

The Forester,
Washington, D. C.



Dear Sir:

Relative to the claim of the Big Blackfoot Milling Company that an injustice was done them in their operations of 1907-08 in the "scaling" by the Forest officials, I have to report that, after having made a careful examination, assisted by Supervisor David Kinney, of such timber as could be examined in the mass of loose logs in the "jam" at Bonner and along the shores of the Blackfoot River near Bonner, upon which the "U. S." mark was plainly discernable; and also after sometime spent in the mill of the Big Blackfoot Company at Bonner, where these logs were being sawed into lumber; and in addition making a very careful examination of the logs that were scaled by the Forest Service officials, that were left in the woods by the orders of the Superintendent of the Big Blackfoot Milling Company, I am satisfied that the contention of the Company that they have been charged up with and required to pay for a certain amount of timber that was unmerchantable, is true. The amount of unmerchantable timber so scaled, however, is, in my judgment, not nearly so great as claimed by the Big Blackfoot Company.

The cause which brought about this improper scale and apparent injustice can be readily recognized and is easy to understand, as follows: In the rush and hurry incidental to the beginning of logging operations, which were started late in the fall of 1907, Lumberman Norton, the Forest officer who was placed in charge of this sale, was obliged to "pick up" and use as "scalers"

men who had no previous experience, and who were not at all versed in "scaling", and break them in and train and instruct them in the methods of scaling, since there was at that time no Civil Service eligible list of "scalers" to be drawn upon, and a sufficient number of men could not be spared from the regular force of rangers to take care of this additional work, and it was imperative that in order that the Company might be able to get in their winter stock of logs, that they should not be hampered in their logging operations.

After giving the men thorough instructions in the proper methods of scaling, and what should and what should not be considered as merchantable timber, Mr. Norton could only visit their work occasionally and advise them and make check scales, since in addition to the scaling he had to select and mark trees for removal and look after the cutting, piling of brush, etc. Either one of these lines of work on a sale where 15 million are removed and cut in one short season furnishes plenty for one man to do if he does it thoroughly. As a result, the inexperienced scalers, in their anxiety to be sure that the Government did not lose anything by reason of their inexperience, went to the other extreme, and, not having any practical knowledge of what should or should not be considered as merchantable, gave the Government the benefit of the doubt in every instance, and consequently did scale some timber that could not reasonably be considered as containing even 10 per cent of merchantable timber. See plates 78000, 78003, 78006. There are several other features, however, which should be considered in connection with the settlement of this claim, and I believe that all these matters should be considered together, since there are several points upon which the Forest Service has a justifiable cause of dissatisfaction; as, for instance, the amount of merchantable timber that has been left in the woods by the Big Blackfoot Company in "larch butts", which should certainly be

considered as, in a measure, offsetting the Company's claim to damages for the "culls" that they have been required to pay for. See plates 77941 and 77942. In considering the question of injury to the Company from the Government's side of the case, the following are some of the salient points that should be taken into consideration:

The amount of unmerchantable timber (culls) that has been scaled up and charged against the Company, should be considered as a credit to the Company, and together with this should also be included the cost of cutting, skidding, hauling, driving, and sawing of such worthless timber. For all this the Company should be reimbursed, but this should not be construed to include any of the defective timber which will scale 25 per cent of sound, merchantable lumber, as they should be required to take that class of timber for the amount that is actually in the log.

The Big Blackfoot Company's protest against the reservation of the strip of timber 150 feet along each side of the wagon road running north through the sale, in addition to the reserved strip of 150 feet along the shores of Seely Lake, is a just one; and their contention that they should be allowed to cut and remove so much of the timber alongside this road, as is considered proper and advisable, should be allowed since no mention of the reservation of such a strip along the road was made by any of the Forest officials at the time of negotiations for the sale of this timber. So far as I have been able to learn, no mention is made in Mr. Sherrard's report of the proposed sale, and I am certain that at the time I was over this same territory with Mr. Ross, Superintendent of the Company, there was no mention of the reservation of a strip along the road. I do not think it wise to leave this strip of old and mature timber along the wagon road simply for the purpose of appearances, when it does not in any sense of the word beautify this road, over which there is very little travel except with saddle and pack outfits. But whether it

does or not, the fact remains that if there was any intention of reserving such a strip (which I do not believe necessary nor wise) it should have been mentioned at the time the negotiations of sale were going on, and the Company should not have been allowed to purchase the timber on this area fully expecting that they were going to get this timber on the "flat", which is of the best quality of any included in the sale, which can be logged the most cheaply and is, therefore, the most valuable to them, and which was an important factor in determining the stumpage price. The reserving of the timber on so much of this area on the flat land near the Lake after the Company justly supposed they had purchased it, savors strongly of sharp practice, and their protest against the withdrawal of this strip along the road should be allowed, and the timber ordered properly marked for cutting and removal.

The settlement of the location of the boundary line of the Seely claim or homestead, is another matter that should also be thoroughly investigated, and the line definitely and finally located. The Big Blackfoot Company claims that the boundary line of the Seely homestead (purchased by them) was surveyed by a former Forest officer, and that it was not correctly located. The timber outside that boundary line has been marked, cut, and scaled by direction of the Forest officials. The Company claims that this line was not correctly located, and that consequently they have been charged up and required to pay for timber that was cut on their own land, and which in reality belonged to them. This matter should be definitely and finally settled before the final adjudication of their claim for unmerchantable timber scaled, since the whole matter can as well be settled at one time. I called Supervisor Kinney's attention to this matter, and advised him to have the boundary line run out by the official County Surveyor, and if it was found that this contention was correct, advised him to have the amount of timber cut on their land carefully estimated in order to be ready for a final settlement of all claims at one time.

The amount of timber that has been left in the woods that is actually merchantable should be deducted from the total amount of "cull" or unmerchantable timber with which the Company has been charged, and the amount of timber scaled and charged to them that was cut on their own land, if the correct location of the boundary line shows there is any timber of this class.*

The attitude of the employees of the Big Blackfoot Company toward the Forest Service officials in charge of the sale in the past has very apparently not been such as would be conducive to harmonious work, since there has been very little or no discussion on the part of the agents of the Company with the Forest Service officials relative to the work. Mr. Harrison who was in charge of the Company's scalers in the beginning of the operations in 1907 very plainly told Mr. Norton, the Forest Service official in charge, that he did not want him to talk to any of the men about the work, and as he himself (Harrison) would not talk about the work, the result was there was very little discussion, since after several futile attempts to discuss with the foreman and head scaler matters pertaining to the logging on the ground, Norton decided to let them go ahead and to exercise his prerogative of scaling up what timber was left and of requiring them to pay for any violations of the contract. This, of course, was not a pleasant state of affairs, nor conducive of the best results; however, this point should be taken into consideration. This Company has been absolute on this stream for years; the Superintendent and his subordinates have been autocrats of their logging operations, cutting what they pleased and leaving what they pleased, without let or hindrance; and it was inevitable that the first party attempting to regulate or bring such an outfit to do their work according to contract or under any system of Forestry, would have plenty of trouble.

N. B. * I have just been informed there is.

As an instance, the logging foreman in the woods in 1907-08, (Mr. Bryan) acting under orders from General Superintendent Ross, threw off many defective logs from skidways and rollways that had been scaled and stamped by the Forest officers, and left them in the woods. See plate 79006. And while many of these logs were not merchantable, there were also some that contained a sufficient amount of merchantable lumber to entirely justify the Government scalers in measuring them, and many were thus thrown off that are this season being picked up and again skidded ready for hauling by the Blackfoot Company of their own volition, and without any further request from the Forest Service officials. Such high-handed action on the part of the Woods foreman, who acted under orders from Superintendent Ross, is not productive of a good state of feeling nor conducive to having the rules and regulations properly carried out, and has a decided tendency to belittle the respect of the men employed in the logging operations for the authority of the Forest officials in charge; and it is a well-established fact that the attitude of the Woods foreman or Superintendent is quickly reflected by the workmen, and the result is plainly apparent in the manner in which their work is performed.

Often times in all logging operations matters come up which by a little discussion between the men in charge of the timber purchaser's work and the Forest Service officials could be definitely settled on the ground. In this case, however, there has been a very apparent attempt to ignore the local official, Mr. Norton, and to belittle both his authority and ability. The only thing, however, in connection with this work that can be held up against Norton, is the fact that a small percentage of "culls" were scaled and stamped, and for this I do not think he should be held fully responsible, since the amount of unmerchantable timber so scaled is, in my judgment, as small as could reasonably be expected, when it is taken into consideration that Norton was compelled by circumstances to use men of no experience, and to perform a certain amount of work in a certain

amount of work in a certain length of time, and, in addition, to do two men's work himself.

According to General Superintendent Ross and Woods Superintendent Bryan the logging operations of this season, 1908-09, are thus far going on in a manner entirely satisfactory to the Big Blackfoot Company, although there has been no change in either the Forest Service officials or in policy. This changed state of feeling is, in my judgment, due almost wholly to the fact that they are now consulting with and paying some attention to the advice of the local Forest officers. In connection with this and in order to emphasize the necessity of consultation and mutual understanding, I desire to state that while I was there on this visit of inspection the Woods Superintendent, Mr. Bryan, reported to the General Superintendent, Mr. Ross, that the Forest officer in charge (Mr. Norton) was claiming that the logs were being cut too long, but that after a careful examination he had found only one log that was cut one inch longer than it should have been, and said that Norton had made a big roar about that one log. Mr. Ross, rather incensed, called my attention to this, and I thereupon investigated the matter carefully, took the Big Blackfoot Company's Woods Superintendent, Mr. Bryan, their head scaler, Mr. Horton, Mr. Kinney, the Forest Supervisor who accompanied me on all my work of investigation, and Mr. Norton, the Forest officer, along with me and measured the lengths of the logs on about 25 or 30 skidways. I found many logs cut 16' 6"-8"-10" and even 17 feet long, although the contract plainly specifies that no logs, not even the larger ones, shall be cut with an additional length of over 3 inches, which would have been 16' 3"; and also in the 18-foot lengths I found many logs cut 18' 6"-8"-10" and even 19 feet and over; and again in the afternoon of the same day I went to another portion of the job down near the Lake, and found similar conditions--logs cut 16' 6"-8"-10" and even 17 feet for 16-foot logs, the Woods Superintendent and head scaler, Horton,

Mr. Kinney, and Mr. Norton accompanying me as before. This result was very apparently a great surprise to both Mr. Bryan and Mr. Horton, (the Company's men) who said they could hardly believe it possible, as they thought they had watched the cutting very closely; but the logs were there, nevertheless, to show for themselves, and only serve to emphasize the necessity of consultation and a thorough understanding between the men charged with the conduct of such work.

In this contract in each instance where a log exceeds 3 inches in length for logs over 24 inches in diameter, and 2 inches in length for logs under 24 inches in diameter, the Government is entitled, according to its rules and regulations governing scaling, to scale the log at the next even 2-foot length above, or to scale a 16' 10" as an 18-foot log. This feature of the contract had evidently not been taken into full consideration by the Lumber Company, and will account for a considerable percentage of the difference in the total scale, about which the Company has protested.

Several other features which contributed to the general difference in scale are clearly set forth in the report made by Inspector Reddington on this subject May 8, 1908, which explains in detail the different causes that led up to this controversy and produced the apparent discrepancy in scale, which I do not consider necessary to repeat here. A feature, however, which Inspector Reddington failed to touch upon is most important, and that is relative to the use of inexperienced, untrained, and, therefore, incompetent men to scale the timber who, in the beginning, through their anxiety that nothing should be thrown out that had merchantable timber in it, and, further, through their inability to correctly determine from practical experience what should or should not be scaled as merchantable, were led to scale the clearly unmerchantable timber "culls" that brought about this controversy. And right here I want to say that, in my judgment, hereafter only experienced and capable scalers should ever be allowed to measure timber upon a sale

of the magnitude of this one to the Big Blackfoot Milling Company
if the Forest Service is to retain the respect and confidence of
lumbermen who purchase timber from the National Forest.

The scale of a few of the defective and "cull" logs which were thrown off from the skidways and left in the woods by the Big Blackfoot Company is appended*. Note those logs marked with **. All these specimens were taken from the territory where the scaling was first commenced, as the letters of the scale book B and D show, and indicate clearly that there was a decided lack of system, accuracy, and ability at the beginning of the scaling work. It should be clearly understood that Norton could not possibly be with the scalers all of the time, since he had plenty of other duties to perform in connection with the sale, and that in his absence the men had to be trusted to go ahead and do the scaling work properly themselves, which, as is just as clearly apparent, they were not able to do.

Relative to the amount of unmerchantable timber (actual culls) that was thus scaled and charged up to the Big Blackfoot Company, this must now, of necessity, be largely a question of judgment, since it is evident that a considerable portion of this class of timber was hauled to the Lake and driven down the stream, as a large number of "specimens" are in evidence in the "jam" in the river and on the shore at Bonner, where they have been, so to speak, close-herded by the Company for the purpose of maintaining their contention. At the time of my visit they had some of these logs (which had been held in a small pocket boom) sawed in the mill for the benefit of Supervisor Kinney and myself. I pointed out to them at the time that not all of these logs were "culls", and that some of these sawed in our presence contained enough merchantable timber to justify their having been scaled for the actual amount of merchantable timber that was in them under the contract; however, it is undoubtedly true that a large number of this class of worthless logs have been run through the mill, and there are many others

*Exhibit A.

scattered throughout the remaining timber in the drive, but in such positions or with the ends of the logs so badly battered up from driving, that the "U. S." stamp does not show, and it is impossible to determine for certain, unless the "U. S." stamp is in evidence, whether they came from the National Forest or from the Company's own lands, as I saw some very poor specimens of logs that had been cut in their own work on their own land.

I got opinions from different parties who were familiar with the subject as to approximately how much actual "cull" timber was, in their judgment, scaled stamped "U. S.", and presumably charged up as merchantable. The opinions varied largely. The Company's contention is for approximately one million feet discrepancy in the scale, they claiming that the greater percentage of this is rank "cull". Much of this difference has been accounted for in Inspector Reddington's report, but there is still some to be accounted for. Lumberman Norton estimates that there was possibly from 100 to 200 thousand feet B. M. of this class of timber included in the sale. That he fully realized some injustice was being done at the time in the scaling is shown in his report which is appended. Exhibit C.

Woods Superintendent Bryan did not want to give an opinion on the subject, but said that he thought the Company's claim was "plenty". Mr. F. J. Miller, who is at present an employee of the Company in charge of their camp stores and supplies, and who was head scaler for the Blackfoot Company during the winter of 1907-08 after the Mr. Harrison, spoken of in Reddington's report was let out, said that in his judgment not to exceed 100 thousand feet of actual "culls" were scaled and charged up to the Company. I interviewed several others whose opinions I will not quote, but none of them exceeded 250 thousand feet in their estimates; and it is my judgment that an allowance of 200 thousand feet for actual "cull" scale would be no injustice and would closely approximate the amount of "cull" timber which the Company has been required to pay for, to which in fairness

and justice to the Company should be added the cost of cutting, skidding, hauling, driving, and sawing this worthless timber, and from this total amount should be deducted a sufficient amount to cover the merchantable timber which the Company refused to take and left in the woods, and the merchantable portions of the "larch butts", with a sufficient amount added to cover the cost of unnecessary supervision and work caused by their negligence and high-handed methods. This feature will require more investigation than I was able, with the limited time at my command, to make, and the examination of the timber should, in my judgment, be done by men representing both sides, namely: The Big Blackfoot Company and the Forest Service.

I was informed by Mr. W. M. Markell, the mill Superintendent at Bonner where the timber was sawed, that the monthly sawed lumber scale the past season has overrun the mill log scale from 8 to 14 per cent. This included not only the logs that were taken from the National Forest but also the logs that were put in by the Company from their own lands. Mr. Toole, the President of the Company, also told me that the overrun was about 9-1/2 per cent, which would indicate that the general scale as a whole was not too high, with the exception of the "cull" timber.

According to a scale made by Lumberman Norton and kept in a separate scale book (no part of which has yet been reported) there was somewhere in the neighborhood of 400,000 feet B. M. in "larch butts" and tops of trees left in the woods this last season. Not all of this was merchantable timber and a large portion of that which is merchantable will undoubtedly be picked up by the Company this season. They were, in fact, engaged in picking some of it up and skidding it preparatory to hauling while I was there, and it is probable that the greater portion of the merchantable timber which was left from last winters logging operations will be picked up and taken this coming winter, with perhaps the exception of the "larch butts". In the Company's operations of this season they are cutting the timber more carefully and are taking much more of the "larch

butts" than they did the past season. Mr. Ross, the General Superintendent, after our examination told the Woods Superintendent in my presence that he had not been using satisfactory judgment in the "butting" of larch in the past, and with this statement I fully agree.

In order to determine just what proportion of the "larch butts" left in the woods last season the Company should be required to pay for, it will be necessary for someone to visit, carefully inspect, and measure and compute the value of merchantable timber in each one of these butts, and I recommend that this be done jointly by a representative of the Forest Service and of the Big Blackfoot Company. The present head scaler of the Big Blackfoot Company, Mr. E. M. Horton, is a former Minnesota scaler whom I have known favorably in connection with the "Chippewa" work for a number of years, and I consider him a fair man and of good judgment. He successfully passed the recent Civil Service Lumbermen's examination, and I believe that if Mr. Horton and Mr. Norton were set to work together to jointly arrive at the amount of timber that should be charged up for, that no injustice would be done either side. I believe that when they have consulted together on the amount of timber left in the "larch butts" in the tops of trees or on matters pertaining to the amount of deduction in scale that should be made for defects, there will be no serious difference of opinions; and that when they have made a joint recommendation for settlement, that it will closely approximate a fair and correct solution of this feature of the controversy, and suggest that if this plan would be satisfactory to the Big Blackfoot Company that it be carried out.

While I was at the Big Blackfoot Company's camps I got the total scale figures from both Mr. Norton, the Forest officer, and from Mr. Horton, the head scaler for the Company, of the timber scaled up to and including the work of October 17, 1908, and compared them. Mr. Norton's scale for the Government showed 31,100 pieces scaled,

yielding 3,134,410 feet B. M. Mr. Horton for the Company figures 31,102 logs scaled, yielding 3,013,930 feet B. M. A difference of only 120,480 feet which, in my judgment, is largely accounted for by the carelessness shown by the Company in cutting their logs longer than the specified lengths, as afore mentioned in this report. This difference I do not consider anything serious, since as much or more might easily be shown on the other side of the ledger before the winters operations are completed, without any attempt to bring about such result being made on the part of either party.

I was accompanied on this trip of investigation by Arthur F. Lubkin, joint photographer of the Forest Service and the U. S. Reclamation Service, and selected a number of subjects which he photographed. They should be examined with this report as they serve to show the general character of this work, and to emphasize and bring out certain features that have a distinct bearing on this controversy. Exhibit B. They show the general good results accomplished by Lumberman Norton in spite of the serious handicaps under which he was laboring, and they also show that in the main the Big Blackfoot Company did unusually good work.

The brush piling (as will be seen by examining the photos) is the very best I have ever seen on any National Forest. The brush was piled compactly in properly sized piles in the openings and with careful reference to damage being caused to standing timber when it was burned. A large number of these brush piles were burned during my visit, and they burned clean without any necessity for repiling. See plates 79011, 78004, and 79012.

A good specimen of the swell-butted larch as it looks when standing is shown in plate 77938, and the "butt" of the largest "larch" cut in the operations of 1907-08 which shows very clearly the defects of which the Company complains is shown in plate 77939.

The "butting" off of such an affected portion of the tree is entirely justifiable on the part of the Company, and no claim that timber of this class is merchantable should be made. In plate 79008, however, is shown another feature of the "butting". This log was "butted" off at 18 feet and left by the Company in the woods, although as shown by the photograph it is right near the Lake. In this log there was 12 feet in length from the point where the axe is stuck into the log at 6 feet from the "butt" to the top which should have been scaled full, a sufficient deduction being made therefrom to cover the defect shown at the top end. The volume of a stick 12 inches square and 12 feet long would cover the total amount of defect in the center of this log. The "sidings" on the "rim" or outside of this log would furnish the very best and highest grade of lumber of this species. It would cost practically nothing to have put the log into the water, and, in my judgment, it was a very shortsighted policy on the part of the Company to leave timber of this class, which could be logged so cheaply, in the woods. I called the attention of the Blackfoot Company's men to this particular log, and after discussing the matter they agreed with me that such timber should never be allowed to remain in the woods.

I found much to admire in the general way in which the work was being done, and but little to criticise; gave my opinions on all subjects brought to my attention freely to both parties on the ground; and from the fact that the men who had been and are going to be in charge of the work were all with me, I believe that I was instrumental in bringing about a certain degree of harmony, which I hope will have a lasting effect, and cause the work of the present season to go more smoothly.

Very respectfully,

Ed Bruce

Expert Lumberman.