

Kentucky River Properties LLC

Timber Trespass / Theft Issues and Potential Solutions

Kentucky River Properties LLC (KRP) owns over 140,000 acres of surface property in Kentucky. Of that, nearly 98,000 acres are forested. The vast majority of these acres is located in the remote hills of eastern Kentucky. Timber trespass and/or theft are not new issues to Kentucky River Properties (KRP) and are not unique to their lands. Timber trespass/theft incidents on KRP have varied in size from a single tree to over 100 acres. Because this issue has been prevalent for years, KRP's in-house forester is interested in taking active steps to enact changes to timber trespass laws to better protect landowner's forest resources. As both a member of the Kentucky Forest Industries Association as well as the Kentucky Woodland Owner's Association, as well as having an in-house forester, KRP is in a unique position to appreciate both industry and landowner interests. As a woodland owner, KRP has an interest in protecting the forest resource from theft/trespass, however, in doing so, would want to ensure that undue hardships would not be placed on the industry upon which KRP depends for timber revenue.

Since March 2018, Kentucky River Properties (KRP) has worked 12 separate incidents of timber trespass or theft. There have been countless other incidents of roadside or pick-up truck & trailer logging which are apparent on the property but for which no evidence exists to build a case. As KRP now has in house expertise and is actively working on a forest inventory and harvesting schedule, it is vital to long term management planning to be able to curtail timber trespass/theft as best possible to ensure planned management activities can occur as scheduled. This information is provided to raise awareness of the issue that landowners such as KRP face and some proposed solutions to those issues which we hope could not only reduce the number of instances but do so without harming forest industry.

As we discuss these issues, it is important to realize the majority of the issues and solutions are related to timber trespass. While timber theft is a present, the ability to prove intent is incredibly difficult. It is our belief that quite a bit of timber theft is occurring under the guise of timber trespass and we will discuss this further.

Theft

The number of incidents involving "traditional" logging operations which build a landing on and knowingly harvest and steal timber from KRP is relatively minimal. The majority of the "provable" theft which occurs on KRP is in the form of road-side or pickup truck-trailer logging. The issue with this form of theft is difficulty catching someone in the act and the limited evidence available thereafter (thieves can cut, load, and haul a small number of logs without being seen). Unlike a traditional timber harvest, there is no heavy equipment involved, landings, or regular employees on site, merely a thief on the side of the road cutting a tree and hauling it to the mill. To rectify this issue, we need mill support to limit or regulate these trailer logs. So long as mills

continue to buy trailer logs and there is no requirement for those selling the logs to provide any proof of legitimate logging practices (Kentucky Master Logger Certification for example), any thief with a truck and chainsaw can continue to steal from landowners such as KRP which own property in remote areas where a thief is unlikely to encounter any witness. The stump is found after the fact with no knowledge of when it was cut, where it was taken, or who stole the tree and this happens often.

Trespass

Timber trespass on KRP and other landowners is and will continue to be a much larger and threatening issue for long term management planning than trailer logging.

While KRS 364.130 addresses a requirement to notify adjoining landowners of intent to log, this is merely a requirement to avoid treble damages. The notification requirement to adjoining landowners should become mandatory for all logging operations. In the instance of KRP, having an opportunity to meet with loggers before they begin harvesting would allow us the opportunity to discuss boundaries and avoid costly trespasses. Despite owning nearly 100,000 acres of timber in eastern Kentucky, to-date, only one logging operator has ever provided appropriate notice to KRP when they intend to log an adjacent tract. We are never notified by anyone other than this single mill of their intent. One possible solution could be in the event the Kentucky Division of Forestry (KDF) opens a new logging site, the Kentucky Master Logger should be able to provide proof of notification or attempted notification. It would be unreasonable to mandate KDF to ensure the appropriate individuals were notified, but merely ascertain that a reasonable attempt was made. The Kentucky Forest Conversation Act could be a conduit in which to give KDF the authority to request proof of the notification and to implement a process of corrective action for the logger to provide notice in order to avoid further consequences (emergency order, bad actor, fines, etc).

While PVA records may be less than perfect, they provide relatively simple and easily obtainable information to identify adjoining landowners. This is why a “reasonable attempt” is important. This is important as it should have no bearing on KRS 364.130. KRS 364.130 should still function independently of this requirement to notify. In the event that notification is not provided as required in 364.130, then treble damages could still apply. Other alternatives for consideration could be notifications posted in newspapers to ensure landowners who may have been incorrectly identified by the PVA receive notification.

Another issue with trespass is that it can often be theft under the guise of trespass. Over the past year, nearly every incident of trespass which we have worked has resulted from logging for which no written contract between logger and adjacent landowner existed. On multiple occasions, we have found contradicting stories between logger and landowner, classic cases of “he said-she said”. As the party whose trees were cut and sold, it is sometimes difficult for us to determine who had the intent to steal. With no evidence to prove intent, we are forced to proceed with timber trespass. KRS 371.100 addresses enforceable action only by written contract but there

is no requirement in Kentucky for a written contract to exist to harvest timber. This statute indicates essentially that a logger or landowner cannot be held to a timber contract that is not written. With no written contract and no notification, this further pushes the innocent adjoining landowner into a civil case for trespass as there is no proof of what was agreed upon.

We are concerned that the penalty associated with the failure to notify is associated with the stumpage value of those trees as they stand today. Treble present-day stumpage value does not adequately compensate the landowner for their future growth and volume. Should the landowner have the ability and training to harvest the trees themselves and transport them to the mill for sale, stumpage is an unfair measure of the tree's worth. Stumpage value of the tree is the value before the logger's harvesting costs are added. A logger that trespasses and does not fulfill the notification requirements of KRS 364.130, should be penalized greater than stumpage value. Mill delivered value would prove more costly and provide more incentive to provide those notifications. Should the notification requirements of KRS 364.130 be met, and a trespass still occur, the law should only allow for single stumpage compensation for the adjoining landowner.

The issue with pursuing civil charges is the time, effort, and cost to build a successful case. There is great difficulty in recouping the value for the trees lost, let alone three (3) times the stumpage and land damage value. In our experience, once the trespass occurs, the damage is done, and the majority of the value is lost. As with any landowner the value of our timber is important to us, especially as we plan for the future and invest in forest management. We need to ensure the stands we want to harvest decades from now are still standing when the time comes for harvest.

While KRS 364.130 exists to offer some protection for adjoining landowners affected by timber trespass, we feel there can be improvements to prevent the trespass which will be far more valuable to our company than ever pursuing and hopefully receiving some portion of treble damages. Increasing damages from stumpage to mill will incentivize loggers or landowners to make the notification and making adjoining landowner notifications mandatory will help protect landowner's forest resources while not adding any additional work to those operators already providing notice and making the conscious effort to avoid trespass.