



THE REGISTERED FORESTER

Summer 2012

Governor Bentley Appoints New Board Member



Raiford C. Johnson

On January 20, 2012, Governor Robert Bentley appointed Raiford C. (Rick) Johnson to the State Board of Registration for Foresters.

Rick is President of Tuskaloosa Forestry Services, Inc. in Tuscaloosa, Alabama.

He is a native of Tuscaloosa. He and his wife, Ellen, have a daughter, Rebekah.

Rick is a graduate of Tuscaloosa High School. He attended the University of Alabama and graduated from Auburn University in 1980 with a bachelor's degree in Forest Management. Upon graduating, he worked with Resource Management Service as a timber cruiser. He held wood procurement positions with Georgia-Pacific Corp., Hammermill Paper Co. and International Paper Co. until 1986. He was then Forester for the University of Alabama. He formed Tuskaloosa Forestry Services, Inc. in 1987. His company manages private landowners' timberland in west Alabama and east Mississippi and markets their forest products to area mills. He also was a partner in Compania Maderera Gofito from 1996 to 1999 harvesting gmelina arborea plantations and producing wood chips in southern Costa Rica for Stone Container Corp. He was a partner in Northport Wood Products from 1995 to 2000 producing lumber for local steel mills.

Rick serves on the Auburn University School of Forestry and Wildlife Sciences Development Committee. He attends Christ Episcopal Church in Tuscaloosa.

Rick considers it an honor to serve on the Board and hopes to maintain the integrity of our profession.

No Change in Board Fees for 2013

Application Fee	\$50.00
Reinstatement Application Fee	\$150.00
<small>(Paid in addition to the applicable renewal fee)</small>	
Reciprocity Application Fees <small>(Initial Application)</small>	Same as charged for Alabama Applicants in the reciprocal state
Re-Examination Fee	\$100.00
Renewal Fees	
All Licensees	\$100.00
Inactive/Unlicensed	\$30.00
Late Penalty	\$100.00
<small>(Paid in addition to the applicable renewal fee)</small>	
License Replacement Fee <small>(Certificate)</small>	\$50.00
Printed Roster	\$10.00
Registered Forester Window Decal (Auto)	\$1.00
Returned Check Fee	\$30.00

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STATE BOARD OF REGISTRATION FOR FORESTERS

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Member

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Renewal Reminder

All registered forester licenses are due to expire on September 30, 2012, unless renewed by that time. Renewal notices for the 2013 renewal period will be mailed by the Board's office on or before July 1, 2012. **Beginning this year, full Social Security numbers and documentation of U.S. citizenship/legal presence must be provided for all renewals.** The current renewal fee is \$100.00 for all licensees and \$30.00 for inactive/unlicensed persons. Those who renew their licenses between October 1 and December 31 must pay \$200.00 (renewal fee + \$100.00 late fee). The online renewal application and printable

form will be made available at <http://asbrf.alabama.gov/renewalform.htm> beginning July 1. If you do not have access to the Internet, please call the Board's office at (334) 240-9301 to request a copy of the renewal form. (Please do not attempt to renew any license prior to July 1.) **Important: Those whose licenses have expired for non-renewal are prohibited from identifying themselves as registered foresters and practicing professional forestry. The Board will revoke the license of any licensee who fails to renew annually by December 31.**

New Design Values for Southern Pine Lumber

As I write this article, I know only a small portion of what I really need to know about this subject. What I do know is that this change in design values for lumber will not only change what the mills have to do, but more importantly, it will change what the land owners might have to do in their management program of growing timber. In managing my retirement plan, I bought some bank stocks in 2007. As I looked at the dividend yield (7-8 %), I thought I would just sit on these stocks and I would be in good shape. But the great financial housing bubble busted and all of my plans went south for the winter. At least I could sell my shares, change my direction and continue to plow forward. However, timberland owners are not that fortunate. Timber is really a 30 to 40 year plan that is almost impossible to change in midstream.

Most pine plantations north of Greenville, AL are planted with loblolly pine which is fast growing and makes for good southern pine lumber. If the new design values continue to change - and I believe that they do need to change - then loblolly could be the forgotten species. You might ask the question, what in the heck are design values??? They provide guidance for the designer to calculate the performance of a structural system and are assigned to six basic lumber properties; these include bending, tension, compression, modulus of elasticity, shear and compression perpendicular. Southern Pine Inspection Bureau (SPIB) reduced tension by 20 %, compression by 35% and modulus of elasticity by 200,000

psi. Testing performed to date has resulted only in the reduction of 2x4 values for visually graded lumber. Testing of 2x6 and wider lumber is underway. We should have those results prior to the end of the year.

If you have a machine graded lumber, then nothing will change. Machine graded lumber actually tests each individual board as it goes through the planer. Not all mills have these machines, especially the smaller ones, so the manufacturing facilities that use lumber to build trusses may quit buying visual graded lumber and switch to mechanical graded lumber, or buy a mix of both depending on their needs. Or truss plants may simply redesign their trusses to accommodate the design value reductions. SPIB is in the process of testing ALL lumber now so this whole process will keep changing; then it will affect all lumber sizes and will affect the various pine species. You could say that is not fair, but as timber managers, we have to look to the future and try to see the good in this.

What do we do? As always, we will have to change. We might have to start planting long leaf and slash trees, even if we think they are a little off site. We may even have to slow down our growth rates. It may be that we might not be able to intensively manage timber, like releases and fertilizing, because we make it grow too fast. I don't have the answers to all these issues, but we need to be looking at the future and try to anticipate what direction we need to take.

– Gerald Schwarzauer

Being Licensed Pays Off

In the late 90's, when I worked in Baldwin County, Alabama, I received one of those letters that some of us dread. It was notification that I had been selected for jury duty. Sure enough, on court date, I was selected to serve. The case we were given involved the repossession of a vehicle by a major bank. The bank repossessed the vehicle and sued the individual for the balance of his debt. The individual, in turn, sued the bank for wrongfully repossessing his car. During the trial, the young man, who supervised the repossession department for all branches of the bank (statewide), was put on the witness stand. Turns out, he was in his mid-twenties and the nephew of one of the bank officers. The defense attorney immediately

launched an aggressive line of questions, all centered on the young man's qualification as head of the repossession department for the bank. "Have you been to school and are you licensed to repossess vehicles?" The young man, intimidated, replied in a soft voice, "No." "Have you evidence or documentation of any training (continuing education) that would verify your qualification as head of the repossession department for this major bank?" Once again, the young intimidated man replied, "No." In our (the jury's) review of the case (I will spare you all of the details), we decided that since the young man heading the repossession department had no documented training or official certificates or license indicating that he was,

indeed, qualified to properly repossess vehicles, we did not grant the banks requests.

Now, I know you are asking yourself what does this have to do with forestry. Given the current state of our business (low timber prices, declining returns on our timber investments, etc.), we could easily have our credibility as land and timber managers challenged. Those of us (foresters and timber managers), who manage timber and make investment decisions for landowners, could, indeed, find ourselves in a similar position as the young man in the case above. Let's say that farmer Jones has trusted you to give him good advice in managing and making investments in his timberland. Now, let's assume that it is time for him to cash in on his timber investment for retirement or to put kids through school, etc. Instead of those huge sums of money you assured him he would make if he followed your advice and made the investments you asked him to make, he only gets a small fraction of that amount (as products' prices in many cases are half of what they once were). In this case, an extremely disappointed and

upset landowner could blame you and your advice for his poor returns on his investments. You could even find yourself in the same position as the young man above (on the witness stand being pounded by an aggressive attorney.) Are you licensed to practice forestry in the state of Alabama? Do you have documentation of any continuing education to show that you are knowledgeable of changing forestry practices and markets? Are you in compliance with Section 34-12-12 of the ALABAMA STATE BOARD OF REGISTRATION FOR FORESTERS registration law? (This law allows the board to fine you up to \$2000 per occurrence). If you find yourself on the witness stand facing this line of questions and your answers are NO, then you will perhaps discover that, indeed it pays to be licensed. Perhaps, it would be more appropriate to say, that you could pay for not being licensed.

– Michael McCorvey
Chairman, Violations Committee

Foresters Practicing Law Without A License?

The captivating title is meant to get your attention, but has serious implications for registered foresters everywhere. In summary, the issue is that sometime in the past, a Consulting Forester in Georgia hired, and paid, an attorney to prepare a timber sales contract for a landowner client for which he was managing a timber sale. Then, the same Consulting Forester wanted to use the same contract form to handle a timber sale for another landowner, by revising the form to fit the new landowner (name change, legal description change, etc.). The same attorney filed a complaint with the Georgia Attorney General's Office asking for an advisory opinion as to whether that certain activity constitutes the unlicensed practicing of law, claiming that the Consulting Forester was attempting to practice law without a license. SO, according to law, a public hearing has been scheduled to decide on the matter. According to the public notice for the hearing, all of the above business was to be done to sell the timber without hiring an attorney to close the sale. All of us know that this practice has been occurring historically, both with and without an attorney closing sales for landowner clients.

As a result, Steve May and I were asked to participate in a conference call with the Southeastern Society of

American Foresters (SESAP) Executive Committee held on May 16, 2012 to discuss a response to the Georgia State Bar, Standing Committee on the Unlicensed Practicing of law, prior to a public hearing to be held in Savannah, Georgia on June 1, 2012. Basically, the SESAP Executive Committee asked for unified support from other Southeastern State Forestry Associations, Forester's Licensing Boards, Forestry Agencies, Forest Landowners Groups, Association of Consulting Foresters and others that may be affected by this issue. A committee was formed to prepare a response on behalf of the SESAP. This article presents the issue to the Registered Foresters Newsletter for informational purposes, along with a response prepared by the Georgia Forestry Association (GFA).

Their response covers the subject very thoroughly and comes to the proper conclusion, in my opinion. Based on my work experience buying timber and preparing timber sales contracts of all kinds, an attorney was not needed nor requested to close the sale for the overwhelming majority of cases. GFA's response is as follows:

"For more than 100 years, the Georgia Forestry Association (the "Association") has served the interests of the State of Georgia and our more than 2,000 members to ensure the continued success and viability of Georgia's

second largest industry, the forest products industry.

In this capacity, it is our privilege to represent the interests of private landowners, forest products manufacturers and outdoor recreationists who have a commitment to the economic and environmental sustainability of our State's working forests.

This letter is submitted on behalf of our members in response to solicitation for public comments by the Standing Committee on the Unlicensed Practice of Law concerning a standard practice of the forest products industry wherein registered forestry consultants, acting as agents on the behalf and at the direction of their clients, prepare form contracts for clients selling timber to third parties.

The Association strongly believes that a consulting forester, as an agent of the landowner, does not violate the statutory provisions relating to the unlicensed practice of law in the State of Georgia by providing the landowner client with a form contract for the sale of timber.

It is standard industry practice for forestry consultants to provide their clients with contracts for the sale of timber. Timber sales contracts are largely standardized across the industry and form timber sales contracts are readily available to timberland owners without the necessity of engaging a lawyer for their production. An example of the ready availability of these standardized contracts is evident from the fact that the Georgia Forestry Commission, a state agency, provides a form timber sales contract on its website free of charge for public use.

Because of the ready availability of these contracts, landowners desiring to sell timber are in a position to do so without the involvement of an attorney, or for that matter, a forestry consultant.

This fact is well recognized in the marketplace. Consultants are not compensated for the preparation of timber sales contracts. Their compensation for the services they provide to the landowner are in the nature of a commission cast as a percentage of the gross proceeds derived from the timber sale.

This is evidenced by the fact that consultants' sale commissions are not reduced in instances where the landowner client has elected to have an attorney prepare the timber sales contract on his or her behalf.

The Georgia legislature enacted laws governing the unlicensed practice of law to protect the consumer from unscrupulous behavior but not for the purpose of limiting consumer choice or imposing unwarranted expense.

In the case presented, it does not appear that there is an allegation of any harm done to the consumer. The case presented appears to revolve around a desire to create a

requirement that the consumer obtain legal services in a transaction where the consumer clearly elected to have a function performed on its behalf by its agent. We do not believe that the legislative intent is to deny the consumer choice in the manner in which the consumer conducts its affairs or to fundamentally undermine and override the relationship of a principal to its agent.

The legislature specifically addressed this point in O.C.G.A Section 15-19-52, which provides, in relevant part, "nor shall any person, firm, or corporation be prohibited from drawing any legal instrument for another person, firm or corporation, provided it is done without fee and solely at the solicitation and the request and under the direction of the person, firm or corporation desiring to execute the instrument".

Given that (i) timber sales contracts are readily available to the consumer in the marketplace without the need of engaging an attorney for their production, (ii) the legislature clearly desired to protect the agency relationship through direct statutory language, (iii) the consumer had legal services available to it and chose of its own volition not to engage an attorney, and (iv) consultants are not paid a fee for the preparation of sales contracts on behalf of their clients but are compensated through commissions on gross sales proceeds, it is our opinion that denying the consumer the right to have its agent, the consultant, perform a function that the consumer can readily accomplish at minimal effort on its own behalf does not serve the legislative intent or public policy generally.

If the standing committee rules that the use of an agent to perform a function that the principal can readily perform on its own behalf results in the unlicensed practice of law, the practical effect will not result in greater protection of the consumer, but rather a limitation of the market choices available to the consumer and an increase in the transaction costs incurred by the consumer. It will decrease the efficiency of the timber transaction market by requiring the involvement of a third party.

Legal services are readily available to a party entering into a timber sale transaction if the party desires to engage an attorney. However, it would be a strained reading of the statute to remove that choice from the hands of the consumer and mandate the involvement of an attorney, particularly when the statute specifically contemplates the agency relationship at issue in the instant case.

The legislature recognized that it would be counterproductive and actually harmful to the consumer to require the services of an attorney in all circumstances. In the current inquiry, it seems illogical that the legislature would require that a party hire an attorney to prepare a document that is readily available in the public domain or to deny

the consumer the right to have an agent perform that function on its behalf.

The Association respectfully requests that the Standing Committee rule that engaging a registered forestry consultant to act as an agent in the preparation of a timber sale contract does not represent an unlicensed practice of law within the meaning of O.C.G.A. Section 15-19-50.

The Georgia Forestry Association appreciates your consideration of its position in this important matter."

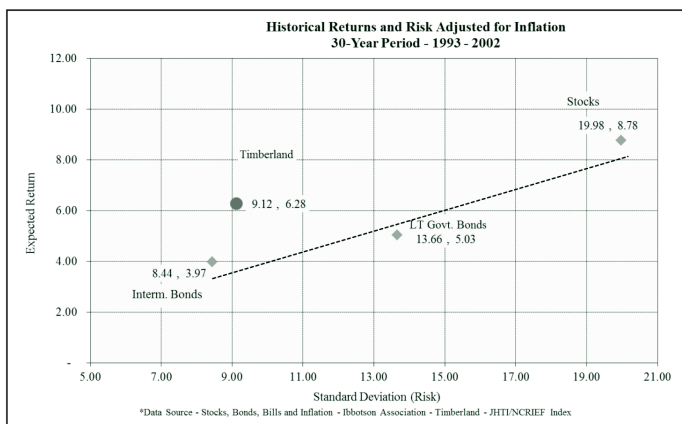
What we all need to realize is that this is an issue in Georgia now, but could become an issue in Alabama and other States. The forest roads issue and pesticide application issue are two recent and ongoing examples. We must step up and support positions that would protect the profession of Forestry, sustainable working forests, and the landowners we are and serve.

- Walter E. Cartwright, RF

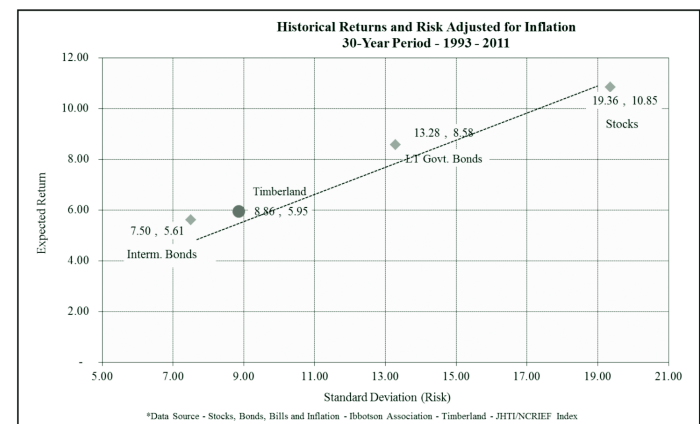
Some Busy Work for Idle Foresters

As we wait for timber markets to recover (?) here are some interesting historical observations to ponder. Remember the famous investment return graph that helped pump-up Wall Street and investors on the potential portfolio diversification benefits of timberland acquisitions (Graph 1). That green dot in the left quadrant told a great story; timberland offered competitive returns, low volatility and premium risk-adjusted returns, and was negatively correlated to more traditional investments. Let the timberland buying frenzy begin! Check out today's graph (Graph 2). Uh oh, timberland is right on the slope with all the other conventional investment instruments, no longer hanging out in the left quadrant. What gives?

Graph 1



Graph 2



Could this movement to the "line" be from the recent economic recession when stumpage prices started plunging? Not really, because all returns, stocks, bonds, etc., suffered didn't they? Could it be there is just a lag effect associated with timber prices and housing recovery? Maybe, but that doesn't really explain the movement of the standard deviation; i.e., risk factor.

There is another historical graph we should probably bring out of the dusty powerpoints as well: the one showing tree growth as the primary driver of timberland returns. Remember all the hype of "trees keep growing", "mother nature" and "the magical biological change from low value pulpwood to high value sawtimber"? Well, we didn't lie: trees kept growing and timber is abundant now, as annual growth exceeds harvest. And while it might seem like sawtimber markets disappeared, we do still produce lumber from wood that was previously pulpwood.

So what gives? If timberland has still been generating positive annual cash returns, albeit lower than in previous years (+2.24% average 2009-11 compared to +3.25% average 2006-08 -NCREIF index), why do we still have not only lower but negative total returns? Well, the answer is simple. Appreciation returns have plummeted: -3.3 average 2009-11

compared to +10.38% average 2006-08! Aha! Blame the market, the investor, the appraiser, but not the industry or the managing forester! The low discount rates, high growth rates and ever-increasing timber prices used in some of those 2006-2008 transactions and appraisals are finally coming back to bite us. But wait - we don't want to blame those guys because we need the market, the investor and the appraiser, don't we? And also remember mother nature: those trees are still growing.

The good news is that it appears that these guys are becoming wiser and more prudent with their transactions and using localized expertise and disciplined diligence in the pursuit of new timberland investments. This is evidenced by the high number of bidders on land sales, but the low number of completed transactions. The problem is we just don't have enough completed transactions to "mark" the market yet. So what is a forester to do... wait until the markets firm or help firm the market? Maybe we can continue to do a little homework and foresters can equip themselves with knowledge of timberland appraisal techniques, alternative timberland investment strategies, and the real long-term growth potential of the assets they manage. Despite all the turmoil in recent years, timberland has held its own among most investment classes. The positive long-term characteristics of the timberland investment (i.e., inflation hedge [patient on the stump] and wealth preservation) that investors have recognized for decades haven't changed. When housing starts return to a more normal level, the asset class must have a positive future.

– Ruth Seawell and Alexander McCall, Larson and
McGowin Forestry Consultants

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service 50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0006: 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Eastern Diamondback Rattlesnake as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the eastern diamondback rattlesnake (*Crotalus adamanteus*) as threatened under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the eastern diamondback rattlesnake may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the eastern diamondback rattlesnake is warranted. To ensure that this status review is comprehensive, we are requesting scientific

and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before July 9, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After July 9, 2012, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods: (1) Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Enter Keyword or ID box, enter Docket No. FWS–R4–ES– 2012–0006 which is the docket number for this action. Then click on the

Search button. You may submit a comment by clicking on "Send a Comment or Submission." (2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012– 0006; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. We request that you send comments only by the methods described above. We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, Panama City, FL, Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

UPDATE YOUR ROSTER INFORMATION

Please take a moment to review your current roster information online at <http://asbrf.alabama.gov/vs2k5/rosterofforesters.aspx>. To submit changes, fax the form below to 334-240-9387 or submit the online Change of Address form at <http://asbrf.alabama.gov/vs2k5/changeofaddress.aspx>.

CHANGE OF ADDRESS FORM

Full Name: _____ License Number: _____

Title: _____

Company: _____

Business Address: _____

Business City: _____ State: _____ Zip: _____ County _____

Business Phone: _____ Business Fax: _____

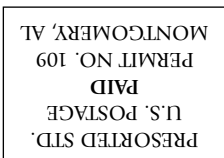
Business E-mail: _____

Home Address: _____

Home City: _____ State: _____ Zip: _____ County _____

Home Phone: _____ Home Fax: _____

Home E-mail: _____



Alabama Board of Registration for Foresters
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