

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

DEPARTMENT OF NATURAL RESOURCES,)	
Claimant,)	Administrative Cause
)	No. 07-234F
vs.)	
)	(Wrongful Removal of Timber)
RILEY SHIELDS,)	
Respondent.)	

AGREED ORDER

Come now the parties to the above-entitled Causes and being desirous of settling and compromising these actions without a hearing or adjudication of any issue of fact or law, hereby agree to the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Natural Resources Commission ("Commission") is the ultimate authority of the Department of Natural Resources ("Department"), an agency of the State of Indiana which, pursuant to IC 14-23-1-1(1), has the care, custody, and control of the forest land owned by the State of Indiana and managed by the Department's Division of Forestry, exclusive of state parks. Pursuant to IC 14-23-4-1(a) it is the public policy of the State of Indiana to protect and conserve the timber in the forests owned and operated by the Division of Forestry of the Department of Natural Resources for the equal enjoyment and guaranteed use of future generations. By the employment of good husbandry, timber in state owned forests that has a substantial commercial value may be removed in a manner that benefits the growth of saplings and other trees by thinning, improvement cuttings, and harvest processes that provide a source of revenue to the state

and counties plus local markets with a further supply of building materials. The Division of Forestry ("Division") may issue permits, execute leases, or contract for the removal of merchantable timber from state forests pursuant to IC 14-23-4-3(a).

2. IC 25-36.5-1 provides for the regulation of timber buyers in the State of Indiana, and pursuant to IC 25-36.5-1-2(a) on and after July 28, 1972, no person shall engage in the business of timber buying in the State of Indiana without a registration certificate issued by the Department. Likewise, the Department may commence a proceeding under IC 4-21.5-3.8 (the Administrative Orders and Procedures Act "AOPA") against a timber buyer or a timber cutter if there is reason to believe that (1) the timber buyer or timber cutter has acquired timber from a timber grower under a written contract for sale of the timber without payment having been made to the timber grower as specified in the contract; or (2) if: (A) there is no written contract for the sale of timber; or (B) there is a written contract for the sale of timber but the contract does not set forth the purchase price for the timber; the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as determined under IC 26-1-2. A "timber cutter" is defined in IC 25-36.5-1-3.2(a)(2) as "a person who cuts timber but is not a timber buyer."

3. The Department's Division of Forestry is a "timber grower" as defined in IC 25-36.5-1-1.

4. The Commission has jurisdiction over both the subject-matter and the parties to this Cause.

5. In late 2002, the Respondent, Riley Shields, entered upon the premises of Jackson-Washington State Forest located in Washington County, Indiana, a state forest owned by and under the care, custody and control of the Department's Division of Forestry, and cut, acquired, and removed timber, consisting of 166 trees, there from without any contract, lease, or permit from the Department or its Division of Forestry, said timber being owned by and under the care, custody, and control of the Division. The Respondent acquired possession of the timber without making any payment therefore to the Division or Department.

6. As a result of the cutting and removal of the timber from the premises of Jackson-Washington State Forest by the Respondent, the Claimant Department suffered damages consisting of the loss of stumpage value of that timber and is entitled to three (3) times the stumpage value pursuant to IC 25-36-5-1-3.2 and 312 IAC 14-6-2.

7. On December 27, 2007, the Department filed its Complaint For Wrongful Removal Of Timber On State Forest Property And Issuance Of A Notice against the Respondent Riley Shields with the Division of Hearings of the Natural Resources Commission ("Commission") alleging the wrongful cutting, acquisition, and removal of trees from the premises of Jackson-Washington State Forest, and seeking damages, the loss of stumpage value of the timber wrongfully cut and removed, plus three (3) times the value of that timber.

8. On December 28, 2007, the Commission appointed Administrative Law Judge Sandra Jensen to preside over this proceeding, and Judge Jensen issued a Notice of Prehearing Conference pursuant to the Administrative Orders and Procedures Act.

9. On January 31, 2008, a prehearing conference was conducted with Eric Wyndham participating as counsel for the Department and attorney John W. Mead participating as counsel for Respondent Riley Shields.

10. On or about February 21, 2008, the Respondent filed with the Administrative Law Judge his Answer and Affirmative Defenses to the Department's Complaint alleging as affirmative defenses the doctrine of laches and statute of limitations as bars to the Complaint.

11. On February 28, 2008, the Department filed its Claimant's Brief In Opposition To Respondent's Affirmative Defenses Of Laches And Statute Of Limitations.

12. On or about April 14, 2008, the Respondent filed his Respondent's Memorandum In Support Of Affirmative Defense Of Statute Of Limitations.

13. On April 24, 2009, the Claimant Department filed its Claimant's Response In Opposition To Respondent's Memorandum In Support Of Affirmative Defense Of Statute Of Limitations.

14. On or about May 9, 2008, the Respondent filed his Respondent's Reply Memorandum In Support Of Affirmative Defenses Statute Of Limitations.

15. On August 11, 2008, Administrative Law Judge Jensen entered her Findings Of Fact And Conclusions Of Law With Partial Non-final Order with the following findings in part:

a. Determining the statute of limitations applicable to actions arising out of the Timber Buyers Statute is a matter of first impression for the Commission.

b. Neither the Timber Buyers Statute, nor associated administrative rules, Provides a specific statute of limitations for actions brought there under.

c. That growing trees are a part of the real estate on which they stand until they are severed; and upon severance of the tree from the real estate, the resulting timber is merely personal property.

d. The Timber Buyers Statute expressly provides for a timber cutter or timber buyer to compensate a timber grower for wrongfully cut or acquired timber in an amount equal to the value of the timber as determined under IC 26-1-2, or the Uniform Commercial Code, Sales.

e. Indiana Code § 26-1-2-102 specifies that unless the context otherwise requires, IC 26-1-2 applies to transactions in goods, and "Goods" means growing crops and other identified things attached to realty as described in the section on goods to be severed from realty, or IC 26-1-2-7. (IC 26-1-2-5)

f. That a two (2) year statute of limitations is applicable to the damages relating to the trees allegedly cut and acquired by Shields without compensation to the DNR.

15. On August 27, 2008, The Department filed its Claimant Department of Natural Resources Objections To Findings Of Fact And Conclusions Of Law With Partial Non-final Order.

16. On October 8, 2008, the Administrative Law Judge issued her Notice Of Oral Argument On Objections and scheduled oral argument on the Department's objections before the Natural Resources Commission's AOPA Committee for November 18, 2008.

17. On November 18, 2008 following the presentation of oral argument by the parties' respective counsel, the AOPA Committee found that the matter be remanded back to the administrative law judge for an order consistent with a determination that a ten (10) year statute of limitation applies with regard to actions brought under the Timber Buyers Statute, and that notwithstanding the applicability of provisions of the UCC (Uniform Commercial Code) concerning value, the issue for determining the proper statute of limitations is not about value but about the character of the proceeding. The

AOPA Committee ordered that references to IC 26-1-2 should be excluded from any statute of limitations issue.

18. After telephone status conferences conducted on January 15, 2009 and March 31, 2009, the parties have reached an agreement on all matters at issue.

ORDER

IT IS HEREBY AGREED AND ORDERED THAT:

1. The Respondent Riley Shields, and his former wife, Rhonda M. Shields, shall, in lieu of the payment by the Respondent to the Department for damages for any damage actually caused by his removal of 166 trees from the premises of the Jackson-Washington State Forest and any damages equal to three (3) times the stumpage value of that timber removed, convey by warranty deed to the State of Indiana, Indiana Department of Natural Resources, the following described real estate currently owned by Respondent and Rhonda M. Shields, located in Monroe Township, Washington County, State of Indiana, and more particularly described as follows:

A revised description of the real estate owned by Riley O. Shields and Rhonda M. Shields, formerly husband and wife, lying in the South Half of the Southwest Quarter of Section 13, Township 3 North, Range 4 East, 2nd Principal Meridian, Monroe Township, Washington County, Indiana. A revised description of said real estate owned by Riley O. Shields and Rhonda M. Shields in the South Half of the Southwest Quarter of said Section, based upon the Deed in DB T-7, page 489, the Suvak legal survey by Travis Norman LS #20500020, recorded in the office of the Washington County Recorder, #I20101179, the Tatlock private survey by Mark Gardner LS #870008, recorded in the office of the Recorder of Washington County, Indiana #I 20054854, the State survey by Vic McCauley LS #S0336, recorded in the office of the Recorder of Washington County, Indiana, I 2004306, the Sam Shine Foundation deed to the State of Indiana, Department of Natural Resources, recorded in the office of the Recorder of Washington County, Indiana, # I20075323, and the attached sketch. All that land owned by Riley O. Shields and Rhonda M. Shields located in the South Half of the Southwest Quarter of said section, more particularly described as follows: Beginning at the Northeast corner of the South Half of the Southwest Quarter, monumented by a "stone found Washington County Survey Reference" per said Gardner's survey; thence

along/with the quarter section line southerly to the South Quarter corner of said Section 13 (also the North Quarter corner, Section 24, Township 3 North, Range 4 East) a #5 rebar and cap set per said Norman survey, approximately 1324 feet (calculated); thence along/with the South section line of said Section 13, westerly for 1820 feet to a #5 rebar and cap set per said Norman's survey, passing a #5 rebar and cap at 1388.04 feet set per said Norman's survey, bounded by said Sam Shine Foundation land; thence North 58 degrees 00 minutes 11 seconds East, for approximately 213.54 feet (calculated) (to follow original description writer, Mr. Nicholson's intent, this line was slightly altered so the remaining 5 deed calls per said DB T-7, page 489 could be fully represented). These last 6 calls are bounded by the said Sam Shine Foundation land to the north and west. "Thence north 83 degrees East 6.60 chains; thence 63 degrees East 7.58 chains; thence north 65 degrees 15 minutes East 6.06 chains; thence north 36 degrees East 6.67 chains; thence north 21 degrees East 5.77 chains to the northeast corner of the said South Half of the Southwest of Section 13" also the Point of Beginning, containing in all 17.378 calculated acres, per the attached sketch. The theoretical acreage per Mr. Nicholson's description was 22 acres.

The intent of this description is to follow the intent of Mr. Nicholson, per said Norman's survey, "Theory of Location, note number 7" and make it fit as best as possible to the above mentioned surveys, without the benefit of a field survey.

2. The marriage of the Respondent, Riley O. Shields, and his former wife, Rhonda M. Shields, was dissolved by the Washington County, Indiana Superior Court on March 10, 2011 in Cause No. 88D01-1006-DR-00122.

3. The Respondent Riley Shields shall obtain and secure the signature on the deed of conveyance of any joint owner and/or any person having any kind of ownership interest in the above-described real estate either prior to or at the time of conveyance or closing of the conveyance. The Respondent and such other persons who hold any ownership interest in said real estate shall execute any and all documents required by the State of Indiana in order to effect this conveyance at a time and place prescribed by the Department. All deeds must be approved and signed by the Attorney General of Indiana, or his designee.

4. In addition, as a part of this agreed resolution and Agreed Order, the Respondent, Riley Shields (and any other title holder by the entirety, joint tenancy, tenancy in common, or life estate), agrees to sell and convey to the State of Indiana, Department of Natural Resources, and the State of Indiana, Department of Natural Resources agrees to purchase two ten (10)-acre tracts of real estate located in Washington County, State of Indiana, which abuts property of the Jackson-Washington State Forest, for the sum of Thirty-thousand Dollars (\$30,000.00), said real estate being more particularly described as follows:

The northerly ten (10) acres of the Southeast Quarter of the Southeast Quarter of Section 13, Township 3 North, Range 4 East, 2nd Principal Meridian, in Monroe Township, Washington County, Indiana currently owned by Russell Shields and Rose Marie Shields, husband and wife, as recorded in Deed Book S-6, page 790 in the office of the Recorder of Washington County, Indiana.

The northerly ten (10) acres of the Southwest Quarter of the Southeast Quarter of Section 13, Township 3 North, Range 4 East, 2nd Principal Meridian, in Monroe Township, Washington County, Indiana, currently owned by Riley O. Shields and Rhonda M. Shields, formerly husband and wife, as recorded in Deed Book T-7, pages 488 and 489 in the office of the Recorder of Washington County, Indiana.

5. The conveyance of the above-described tracts of real estate from the Respondent, Riley Shields and Rhonda Shields, and from Russell Shields and Rose Marie Shields, to the State of Indiana, Department of Natural Resources, shall be consummated within sixty (60) days following the date of approval of this Agreed Order by the Natural Resources Commission.

6. The Respondent Riley Shields shall provide, at his expense, to the Department immediately upon execution of this Agreed Order a Title Commitment for an ATLA title insurance policy showing free and clear marketable title to the above-described real estate

7. The Respondent Riley Shields hereby acknowledges and stipulates that there are no liens, encumbrances, or judgments that are attached to the tenancy by the entireties property to be conveyed pursuant to this Agreed Order held either by any governmental taxing authority, judgment holder, mortgage or commercial lender, or any other person, other than personal property tax liens due and owing to the Washington Township, Indiana Assessor in the amount of \$1,780.32, \$3,099.38, and not more than \$6,839.46, all exclusive of any interest and costs of collection, said liens, interest, and costs to be paid in full and released either prior to or at the closing of the conveyance.

8. The real estate to be conveyed pursuant to this order is free and clear of any easements or other rights-of-way owned by any other person or entity.

9. All real estate taxes assessed on said real estate, plus any and all other liens on said tracts of real estate to be conveyed pursuant to this Agreed Order will be paid in full at closing of the conveyance of the above-described parcels of real estate.

11. Neither the Respondent Riley Shields, Rhonda M. Shields, Russell Shields and Rose Marie Shields, nor anyone on their behalf, shall in the future enter upon any land or grounds owned by the State of Indiana or the Division of Forestry of the Indiana Department of Natural Resources and cut and remove, or have cut and removed by another person or entity under his/her authority, any trees or other timber existing on the above-described real estate or any other land or grounds owned by the State of Indiana without a properly executed written contract with the State of Indiana or the Division of Forestry pursuant to the Timber Buyers Statute (IC 25-36.5), without an effective surety bond issued by a corporate surety authorized to engage in the business of executing

surety bonds in Indiana pursuant to IC 25-36.5-1-3, and without first being properly licensed as a timber buyer under IC 25-36.5.

10. Riley O. Shields and Rhonda M. Shields, and Russell Shields and Rose Marie Shields, shall cooperate fully to effectuate the transfer of title and conveyance of the above-described real estate to the State of Indiana, Department of Natural Resources

12. This Order must not be construed as a waiver of any local ordinance or other state or federal law.

13. This Order may be revoked by the Department of Natural Resources for violation of any conditions hereof or for the Respondent's failure or inability to convey to the State free and clear marketable title of the above-described real estate.

14. This Order, and the conveyance as so agreed upon herein, shall not be assignable or transferable without the prior written approval of the Department of Natural Resources. To initiate a transfer contact:

Mr. John Seifert, Director
Division of Forestry
Room W296
402 West Washington Street
Indianapolis, IN 46204

Telephone: (317) 232-4116

15. The receipt and acceptance of this Agreed Order by the Respondent, Riley Shields, his former wife, Rhonda M. Shields, and any other person having an ownership or other interest in the above-described real estate to be conveyed as a result of this agreement and Order, by the placing of the authorized signatures thereof hereon shall be considered as acceptance of the conditions of this Agreed Order.

16. Administrative Law Judge Sandra Jensen shall enter an order as an Order of the Natural Resources Commission incorporating the decision of the Natural Resources AOPA Committee of November 18, 2008 that the applicable statute of limitations with regard to actions brought under the Timber Buyers Statute (IC 25-36.5-1 et seq.), is ten (10) years pursuant to IC 34-11-1-2(a), and, notwithstanding the applicability of the provisions of the Uniform Commercial Code (IC 26-1-2) in IC 25-36.5-1-3.2(b) for purposes of determining the value of timber in an administrative action filed under that section and IC 4-21.5-3-8, reference to the Uniform Commercial Code in the Timber Buyers Statute does not determine the character of the action and should not be used to determine the statute of limitations for that statute, subject to future amendments by the Indiana General Assembly.

17. The Commission shall retain jurisdiction over this matter until after the terms of this Agreed Order have been fully performed by the parties.

18. If any further dispute or disagreement arises between the parties concerning the issues resolved by this Agreed Order, the matter shall first be determined within the Department of Natural Resources, with the parties having all rights under IC 4-21.5 to obtain administrative review of that determination.

19. The terms contained in this document are the entire and complete agreement among the parties in resolution of these actions.

20. This Agreed Order shall have no force or effect until approved by the Commission.

AGREED ORDER APPROVAL

CLAIMANT:

**DEPARTMENT OF
NATURAL RESOURCES**

BY: Ron McAlhoun
for JOHN DAVIS,
Deputy Director

DATE: June 30, 2011

RESPONDENT:

RILEY O. SHIELDS

BY: Riley Shields
RILEY O. SHIELDS,
Respondent

DATE: 6/24/11

BY: Rhonda M. Shields
RHONDA M. SHIELDS,
Co-Owner of Real Estate and
Wife of Respondent

DATE: 6/27/11

BY: Russell O. Shields
RUSSELL SHIELDS, Owner
Real Estate and Father of
Respondent

DATE: 6/27/11

BY: Rose Marie Shields
ROSE MARIE SHIELDS,
Owner of Real Estate and
Mother of Respondent

DATE: 6/27/11

BY: John W. Mead
JOHN W. MEAD, #9111-88
Attorney for Respondent
Riley O. Shields

DATE: 6/27/11

PREPARED BY:

Eric L. Wyndham
ERIC L. WYNDHAM, #1393-11
Legal Counsel
Department of Natural Resources

DATE: 6/30/2011

APPROVED FOR LEGALITY AND FORM:

BY: Sandra Jensen
SANDRA JENSEN,
Administrative Law Judge

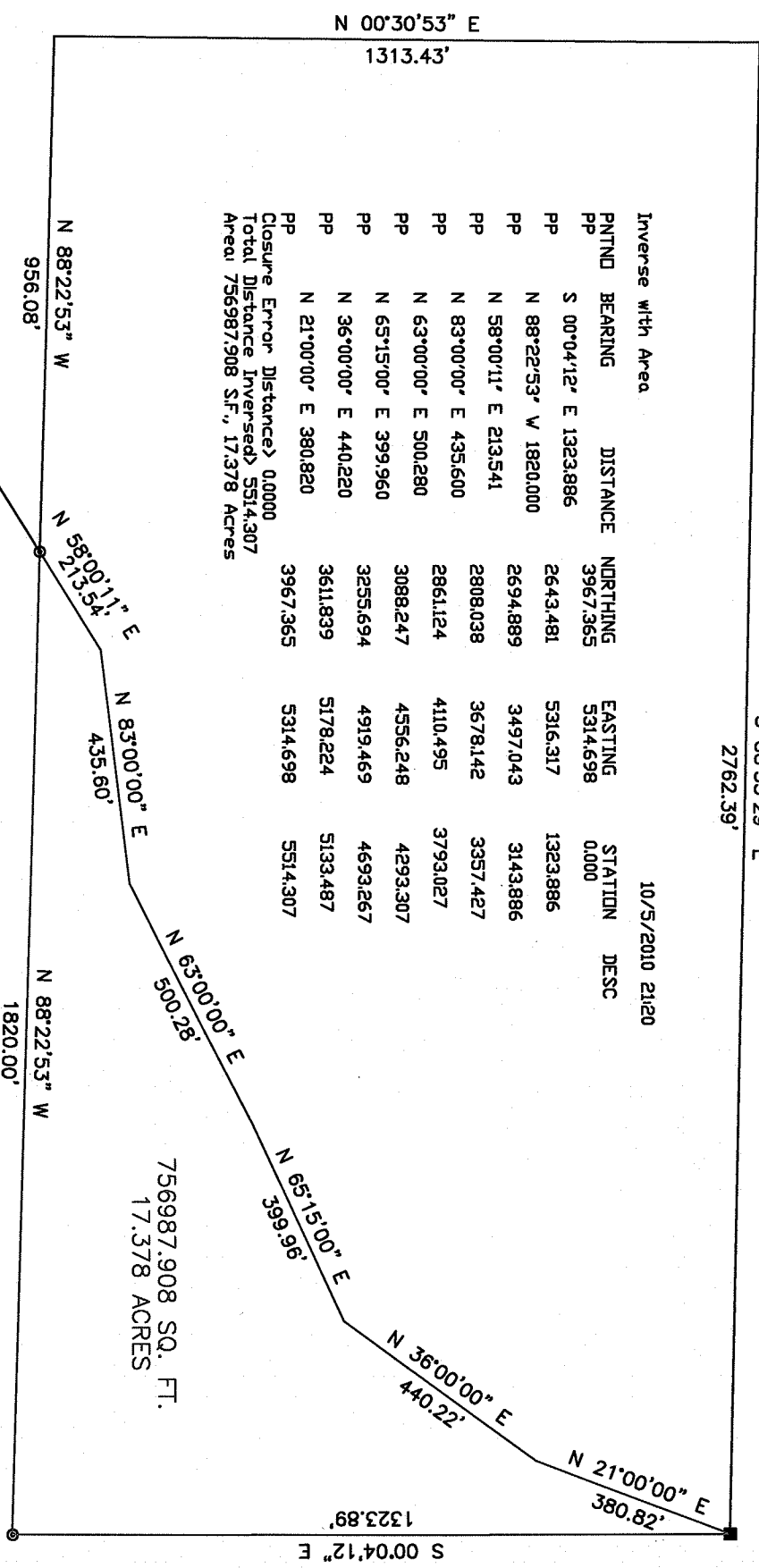
DATE: 7/8/11

ADOPTED BY THE NATURAL RESOURCES COMMISSION

Robert E. Carter, Jr.
ROBERT E. CARTER, JR.
Secretary

DATE: 7/7/2011

SHIELDS THEORETICAL 22 ACRES IN S 1/2 OF THE SW 1/4 OF SEC. 13, T3N, R4E



PNTNO	BEARING	DISTANCE	NORTHING	EASTING	STATION	DESC
PP	S 00°04'12\" E	1323.886	3967.365	5314.698	0.000	
PP	N 88°22'53\" W	1820.000	2643.481	5316.317	1323.886	
PP	N 58°00'11\" E	213.541	2694.889	3497.043	3143.886	
PP	N 83°00'00\" E	435.600	2808.038	3678.142	3357.427	
PP	N 63°00'00\" E	500.280	2861.124	4110.495	3793.027	
PP	N 65°15'00\" E	399.960	3088.247	4556.248	4293.307	
PP	N 36°00'00\" E	440.220	3255.694	4919.469	4693.267	
PP	N 21°00'00\" E	380.820	3611.839	5178.224	5133.487	
PP			3967.365	5314.698	5514.307	

756987.908 SQ. FT.
17.378 ACRES

Inverse with Area

10/5/2010 21:20

Closure Error Distance > 0.0000
Total Distance Inversed > 5514.307
Area: 756987.908 S.F., 17.378 Acres

S 88°35'29\" E
2762.39'

S 00°04'12\" E
1323.89'

N 88°22'53\" W
956.08'

N 88°22'53\" W
1820.00'

N 58°00'11\" E
213.54'

N 83°00'00\" E
435.60'

N 63°00'00\" E
500.28'

N 65°15'00\" E
399.96'

N 36°00'00\" E
440.22'

N 21°00'00\" E
380.82'

N 00°30'53\" E
1313.43'