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Becky Barlow

Auburn University, becky.barlow@auburn.edu

Conner Bailey

Auburn University

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THE POTENTIAL IMPACT OF HEIR PROPERTY ON TIMBER MANAGEMENT IN THE SOUTHEASTERN UNITED STATES

*Becky Barlow¹ and Conner Bailey¹

¹Auburn University, Auburn, AL

*Email of lead author: becky.barlow@auburn.edu

Abstract

Active timberland management maintains forest health and productivity, which in turn contributes to the sustainability of the resource and wealth of the landowner. However, when land is held as heir property, options for timberland management are often limited. Heir property is owned as an undivided interest among many heirs of an original owner, or multiple generations of owners, who died intestate. This is common among African American landowners in the South. As a result the title is considered “clouded,” limiting access to capital and resources that are beneficial to timberland management. In this paper, the authors hope to improve awareness of this issue by documenting potential obstacles that heir property owners may encounter including the inability to plan land management activities such as forest inventories, harvesting, and replanting. As a result, the health of the forest may suffer posing a threat to forest productivity and landowner wealth generation.

Keywords: Forestry, Timber Management, Heir Property

Introduction

Forests have long been part of southern livelihoods and culture. In the 1700s, high-quality timbers of longleaf pine were harvested and shipped to England for the construction of ships and the production of other naval stores (Williams, 1989). In the 1800s, lumber from southern forests contributed to the Reconstruction economy (Massey, 1960). Harvesting continued into the early 1900s as forests were cleared and the land settled. The 1950s issued in the modern southern industrial forestry era where industrial forest owners focused on shorter timber rotations and increased financial returns. Family forest landowners often followed suit planting “pines in lines”- loblolly pine (*Pinus taeda*) plantations which now make up almost one-quarter of contemporary southern forests. These non-industrial, privately owned forestlands play an important role in meeting the nation’s needs for both traditional forest products and associated amenities such as clean water, recreation, wildlife habitat, and fuel. But often, there are obstacles to management facing family forestland owners, and particularly, owners with clouded land titles associated with the phenomenon of heir property.

Forests are valuable for timber production, and as sources of other goods and services, such as aesthetics, wildlife habitat, preservation of biodiversity, water quality protection, and carbon sequestration. As important, timberland can be part of a non-industrial private landowner’s investment portfolio with the potential for a high rate of return and lower risk, offering a hedge against inflation, and providing asset diversification opportunities (Binkley et al., 1996; Conroy and Miles, 1989; Mills, 1988; Sun and Zhang, 2001). However, heir property owners are often unable to conduct management activities on their property and capitalize on these benefits.

Family forest landowners in the southeastern United States (the “South”), own land for a variety of reasons, with objectives for non-timber values often being more important than timber production (Haymond, 1988; Hodge and Southard, 1992). Most frequently cited reasons for timberland ownership are to pass land on to heirs, to enjoy beauty or scenery, and for hunting or

fishing (Butler et al., 2016). Regardless of the reasons for ownership, proactive management is important for the promotion of landowner legacies, as well as forest health and resiliency. Family forest landowners may not actively manage their forestland because they feel they do not have the needed knowledge, or are unaware of the potential benefits to better land management (Arano and Munn, 2006). But for others, the management of their family's forests is hindered not because of lack of knowledge, but because it is owned as heir property.

When land or other real property is passed down from generation to generation without a probated will, it becomes heir property, and property titles to homes, farm land, and forest land become clouded. Over time, a single parcel could have anywhere from dozens to hundreds of individuals who own a fractional but undivided share. With each passing generation that dies without a will, the number of co-owners increases (Baab, 2011; Dyer and Crayton, 2008). There have been cases where there are over 200 heirs, many of whom are scattered across the country and have limited connection, emotionally or otherwise, to the land. Title to heir property is considered "clouded" because all heirs must be found and agree in writing for the land to be sold, developed, used as collateral, or used for any other purpose.

In this paper, the authors examine how the clouded title to land associated with heir property limits timberland management opportunities and hinders achievement of management goals for those heirs who are interested in the long-term management of their family land. There are many reasons why an individual may choose not to write a will, but heir property is most common among those social groups who historically have had limited educational opportunities, or have been politically and economically oppressed, and who have consciously sought to minimize their interactions with governmental entities. Heir property is often associated with African Americans in the South who rarely wrote wills because they did not trust the white-dominated legal system (Dyer and Bailey, 2008). Over time, the tendency to not write wills came to be regarded as a family "tradition" and the clouded title of heir property became a widespread phenomenon.

Determining how much land is held as heir property is difficult. Some authors have estimated that between one-third to one-half of all land owned nationally by African Americans was in heir property (Gilbert and Sharp, 2001; Graber, 1978; Rivers, 2006). On a more local level, Tinubu and Hite (1978) estimated that 8.5% or nearly 263,000 acres of the land in South Carolina was heir property.

In 2009, Dyer et al. examined land records in Macon County, Alabama and determined that nearly 16,000 acres (4.1%) of property in the county was held as heir property. Because Macon County is 79% forested (Hartsell and Brown, 2002), this would suggest 12,640 acres of timberland was held as heir property in this one county alone. Macon County is a Black Belt county, and considering that there are 366 counties in the Black Belt South [defined as all counties where African Americans make up at least 25% of the population] (U.S. Census Bureau 2017), the potential scale and scope of heir property is a serious one. These Black Belt counties not only have a demographic profile, but also they have geographic and ecological profiles, located primarily in the coastal plains stretching from Virginia to northern Florida and then west to eastern Texas. The South as a whole is nearly two-thirds forested, and the coastal plains region of the South is heavily forested (Smith et al., 2009). Even if the average number of acres of timberland in heir property was 3,000 acres, less than a quarter of what was documented in

Macon County, there would still be over one million acres where the constraints to management discussed in this paper would apply. The focus of this paper, therefore, was to highlight how heir property can affect landowner access to capital, participation in government programs, management planning, and timberland value, health, and productivity.

Limited Access to Capital Limits Management Opportunities

One of the most common issues that heir property owners face is the inability to obtain loans from banks (Dyer et al., 2009). Whether a landowner wants to obtain funds to make improvements to the property, such as build fences or roads, or to cover the cost of other land management activities, such as forest inventories or surveys, without clear title the land has little to no value as collateral. Only a few banks are willing to put in the time and effort it takes to locate heirs. However, the possibility of those heirs not being willing to cooperate, or other heirs appearing after the fact makes the legal risk too great. Without access to capital, heir property owners may not be able to afford the cost of important activities necessary for good forest management.

Custodial management activities like boundary line maintenance and road construction can cost a landowner from two to 20 dollars per acre (Dooley and Barlow, 2013). Without the professional establishment of property lines these landowners are susceptible to future legal battles, including boundary line disputes and timber theft. A lack of forest roads limits access to the property, and without access, the likelihood that future land management activities will not be completed increases. Limited road access to forestland also poses a threat to forest health. For example, without roads, first responders may be unable to access more remote areas to limit the spread of wildfire. Also, without road access, insect and disease outbreaks may go undetected or treated for long periods of time, potentially resulting in devastating losses to valuable timber resources (Gucinski et al., 2001).

Without access to capital it is also unlikely that heir property owners will complete a thorough forest inventory on their property. A professionally executed forest inventory is imperative for making good land management decisions. By understanding the composition and distribution of forest trees, decisions can be made about future harvests, forest health, and the value of the resource. However, at an average cost of six to over 20 dollars per acre (Dooley and Barlow, 2013), individual heir property owners may be disinclined to pay for a professional consulting forester to conduct forest inventory as any benefit would be distributed among all heirs at some point in the future. The same problem of a distant benefit affects many family forestland owners (Arano and Munn, 2006), but is a serious constraint for heir property owners.

Limited access to capital can also limit the ability of a forestland owner to have access to forestry professionals, such as a consulting forester, to conduct activities on their behalf. A consulting forester represents the private landowner in the management and marketing of their forest products and provides management services such as a forest inventory for a fee. Based on results from the National Woodland Owner Survey (Butler et al., 2016), only 15% of African American landowners reported using a consulting forester. In contrast, approximately 35% of African American landowners who owned land in the southeastern United States reported using forest industry or loggers for land management advice. It is important to note that forest industry or loggers represent a company or other organization and not the landowner. However, 24% of

white-owned timberland acres in the Southeast were being influenced by management advice from private forestry consultants. For these landowners, state agencies influenced 22% of the acres and forest industry or loggers influenced 15% (Butler et al., 2016).

Inability to Participate in Government Assistance and Incentive Programs

With limited capital, many landowners turn to government assistance and incentive programs to help them meet their forest management goals. Programs such as the Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) are USDA Natural Resources Conservation Service (NRCS) programs designed to improve erodible or other environmentally sensitive lands by planting trees or other appropriate cover. Landowners enter into a 15-year agreement and can receive cost-shares of up to 50 % for eligible management activities including reforestation. The sums involved can be quite substantial for a private landowner. For example, the combined costs of mechanical site preparation and bareroot planting of loblolly pine on cutover land come to roughly \$200 (Dooley and Barlow, 2013). The CRP cost-share program could pay up to half this expense.

Other NRCS programs that can benefit landowners include the Agricultural Conservation Easement Program, which provides financial and technical assistance for the creation of easements to preserve agricultural lands and wetlands; Emergency Watershed Protection Program, which addresses storm damage; Healthy Forests Reserve Program, which protects endangered species and encourages species diversity. For all of these programs, there are certain requirements that must be met, including physical characteristics and location of the property. However, the key stumbling block for heir property owners is the question of clouded title.

Since payments from the federal government are involved, the USDA requires clear ownership. The USDA is not going to write a check with scores or hundreds of names on it. One way around this is for one family member to apply as the non-owning operator, but in this case all heirs would have to sign a long-term lease with the operator agreeing to terms. From the USDA perspective, this would be problematic because there is no way to guarantee that signatures were obtained from all heirs. In other words, it is hard to prove that there are no more owners beyond the list of names compiled based on memory when the land has passed down multiple generations.

Heir Property Impacts Land Management Planning

Forestry and forest management is generally a long-term commitment, and although it can be intimidating, landowners should develop a plan for their forestland management. A well thought-out plan will take into account current situations, what activities might occur in the future, and the potential benefits both to the land and landowner of those activities. However, in the case of heir property, all heirs have rights proportionate to their undivided share in the whole. Those who have invested little to no time, or financial support benefit the same proportionate to their share as those who have been involved in the active management of the land. Zabawa (1991) concluded that the free rider problem discouraged heir property owners interested in farming the land from making necessary improvements. Guffey et al. (2009) reported that one-third of the participants, in their study of heir property owners, had made no efforts to manage their timberland. One respondent was quoted (p. 47) as saying “It is not timberland and not farmland – just brush land. ... I do not do anything with it – I just own it.”

Managing timber requires the ability to establish objectives and the resources to achieve them. Plans should include alternative management regimes based on forest inventories and landowner objectives. Each forest stand should have a specific, but flexible management prescription and activities should be prioritized. A small group of siblings might be able to work through these issues but a larger group of heirs, many of whom live in different states, representing multiple generations with differing ties to the land, may be more difficult to organize. Coming to a clear decision on what forestland objectives to pursue can be challenging even in the best of circumstances. Timberland that does not have a well-thought out management plan is less likely to be harvested (Stordal et al., 2008) and as a result is more susceptible to forest health issues. Heir property ownership adds to that challenge.

Even if heirs can agree on goals and objectives, there can be costs associated with plan development and documentation. Landowners usually work with a state forestry agency, the NRCS or hiring a consulting forester to prepare the plan with costs varying depending on professional services used and plan detail. In general, services provided by state agencies such as state forestry commissions are less expensive; costs can range from free to about five dollars per acre (AFC, 2016; NCFS, 2016). If a consulting forester is used, a landowner can expect to pay more for these services. In general, cost varies based on tract size, forest condition, and region/state. Based on various rates and guidelines, the services of a consulting forester developing a management plan for a 100-acre parcel of loblolly pine would cost roughly \$1,800 to \$3,000.

The Impact on Timberland Value, Health, and Productivity

As mentioned earlier, active forest management maintains forest health and results in a more productive forest, which in turn contributes to the sustainability of the resource; balancing and improving both non-timber and timber values. In general, many family forest landowners, heir property owners or not, are often unaware of the potential financial benefits to better land management. They often do not actively manage their forestland because of lack of interest, low return from depressed timber markets, and lack of knowledge regarding opportunities and values of management (Arano and Munn, 2006).

In general, family forest landowners in the southeastern United States do not put timber management as a first priority. In a study of Alabama landowners, Zhou (2010) found that the primary land management objectives of forest landowners in the Alabama Black Belt counties of Green and Hale were passing land on to heirs, hunting/fishing, timber production, and aesthetic values. Further examination of responses found that these family forest owners appeared to have the misconception that forest managed for timber precluded other objectives. They did not make the connection between forest management and a sustainable forest ecosystem. For example, the practice of timber thinning not only improves overall forest health, it also creates wildlife habitat and recreation access, controls forest insects and disease, improves diversity, and the visual quality of the forest (Gagonon and Johnson, 2009). Alternative income opportunities from forests, like hunting, recreation, pine straw harvests, and the collection of non-timber forest products such as berries and pine cones, can be lucrative. Silvopasture and other agroforestry practices which mix timber and agricultural crops or livestock production are another way that revenue can be generated (Hamilton, 2008) and may be well suited to landowners with heir property.

In the case of heir property, the decision to conduct a timber harvest requires a great deal of trust by all family members. Dyer (2007) and Shelhas et al. (2016) reported examples where this trust has been breached when an heir decided to sell the timber and keep the money. Although the individual may have managed and invested in the land for years, they had no additional rights to proceeds of the sale. Alternatively, if all heirs do agree to terms of a timber sale, it may be difficult to find a buyer. Timber buyers or loggers may be reluctant or unable to purchase a tract of timber where title is clouded. There is also the potential for unscrupulous individuals to purchase the timber and add logs from heir property to a harvest from a tract with a clear title; passing the harvest off as one legitimate transaction. In cases like this, the heir property timber may be purchased for much less than full market price.

Another potential deterrent to harvesting timber is a perceived low timber price. Timber prices fell sharply as a result of the Great Recession but have since stabilized to early 1990s levels (TMS, 2016). Currently, southern pine timber stumpage prices average around \$9/ton for pulpwood, and \$24/ton for sawtimber (TMS, 2016). But the price an individual landowner may receive for their timber is directly related to past management and local markets, and so prices can vary from state averages dramatically. Regardless of whether title is clear or clouded, landowners who have not actively managed their land often do not have higher value timber products to harvest, and are then disappointed at the low prices offered when they decide to sell their timber. They may decide it is not worth the effort to sell since a timber harvest requires the owner have knowledge of markets, the ability to engage the services of a skilled and reputable logger, or the resources available to hire a consulting forester. They often do not realize that this is a vicious cycle. If a forest stand is not thinned it becomes too dense. The timber will not grow and trees will eventually begin to “self-thin” (Harms and Langdon, 1976). Density-related mortality will occur as competition for resources like light, water, and nutrients increase the risk of timber loss, insect attack, disease, and wildfire due to overcrowding.

Conclusion

As real property passes from one generation to the next without a probated will the title becomes “clouded” limiting opportunities for heir property forestland owners to responsibly manage their land and generate wealth. Heir property owners cannot use the land as collateral, and therefore, are unable to leverage its value to access financial capital. Because of the status of their title, heir property owners are also often limited in their ability to access technical and financial assistance from either the public or private sectors. All too often, these owners are likely to have limited resources and are the individuals or families who would benefit most from assistance by state and federal agencies as well as from non-profit organizations.

The time dimension and the large up-front investment make timberland a special and difficult case with regard to heir property. Natural resource technical service providers should make a concerted effort to assist forestland heir property owners with low-cost technical advice that can improve the quality of the land and life of the landowner. There is no quick and easy solution to the problem of heir property, which is a product of a particular history. Given the importance of timberland in the South, the constraints affecting timberland management associated with heir property deserve separate attention.

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