



## Sales of Timber Harvested from Public Lands: February 2018 Diversion of Spruce and Fir Deliveries

# OPEGA

## Information Brief

### Purpose

On March 23, 2018, the Government Oversight Committee (GOC) directed OPEGA to determine the facts associated with a February 2018 decision to divert deliveries of public timber from one Maine sawmill to another. The review was requested by the Governor who maintained that legislator and public allegations that he diverted the deliveries to retaliate against certain mill owners were false.

OPEGA discussed the diversion with the Governor and Governor's Office staff; interviewed relevant Bureau of Parks and Lands (BPL) staff; interviewed mill owners and contracted harvesters; and reviewed relevant documents, including email correspondence internal to the Governor's Office, between the Governor's Office and the Department of Agriculture, Conservation, and Forestry or other State agencies, and any emails to or from selected BPL staff.

This Information Brief includes limited background on the BPL and current practices for the sale of timber from Public Lands. It also includes a timeline of relevant events associated with two recent decisions to divert spruce and fir deliveries to Stratton Lumber, as well as the explanations of the bases for those diversions.

OPEGA appreciates the considerable and timely cooperation we received from all parties. A special thanks also to the Office of Information Technology IT Consultant responsible for e-discovery for FOAA/litigation who assisted in preparing emails for our review.

## August 2018

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### Summary

The Bureau of Parks and Lands (BPL), within the Department of Agriculture, Conservation and Forestry (DACF), is responsible for managing the forests on Public Lands to include the harvesting and sale of timber from those lands. According to BPL, achieving forest management goals means cutting a variety of species and grades of timber, the markets for which are varied and dynamic.

Historically, most timber was sold under stumpage permits where contractors bid a price to harvest the timber, thus also generally determining where to sell it unless BPL had specified delivery destinations in the Request For Proposals. In 2012 – 2013, BPL began shifting to Contracts for Logging Services (CLS) where BPL pays contractors to harvest and transport the timber while BPL markets and sells the wood directly to mills and other buyers. BPL finds this approach more beneficial for the State in meeting BPL's overall goal of maximizing value to the State from the harvests. Achieving the overall goal involves balancing the potentially competing objectives of:

- maximizing revenues from timber sales;
- supporting Maine mills and related employment; and
- protecting the ability to sell harvested wood under all market

conditions.

BPL typically discusses the types of wood, estimated volumes and prices for the upcoming harvest seasons with each buyer twice each year. These agreements with buyers are mostly informal and undocumented. A number of variables can impact agreed upon volumes, prices and actual deliveries, from either parties' perspective, as the harvest season progresses.

In early February 2018, the State directed its CLS contractors to divert all deliveries of spruce and fir harvested from Public Lands in the Western and Eastern regions of the State to one mill—Stratton Lumber. This included spruce and fir previously being delivered to Moose River Lumber (MRL) and Pleasant River Lumber (PRL). In September 2017, the owners of MRL and PRL had publicly criticized the Governor's position opposing federal tariffs on softwood lumber from Canada. The diversion raised allegations that the Governor and/or BPL were retaliating against these mill owners for their well-documented positions on softwood tariffs.

OPEGA sought to determine the facts associated with the February 2018 diversion and the allegations made. Unfortunately, very little documentation relevant to the decision to divert deliveries exists. The lack

of documentation is not particularly unusual. A consistent theme among all those we spoke with is that communication and agreements made in the forestry industry are primarily by telephone or in person. It has, however, made it difficult for OPEGA to corroborate with documentary evidence much of what we were told in interviews.

Nonetheless, we found consistent agreement among those we interviewed that the decision to divert deliveries was made by the Director of the Maine Forest Service (the Director) and we have no evidence or indication that the Governor had any role in that decision. We also have no evidence or indication that the decision was in any way related to mill owners' positions on softwood tariffs. In fact, we find it unlikely that the decision was related to tariffs given that:

- the public dispute between the Governor and the MRL/PRL owners on softwood tariffs occurred four months before the February 2018 diversion and the State continued doing business as usual with MRL and PRL in those four months;
- another spruce and fir buyer that was not part of the tariff debate was also impacted by the diversion; and
- the Governor and Director deny that the diversion was related to the mill owner's position on softwood tariffs and the wood buyer for MRL and PRL also does not believe it was a factor.

OPEGA observed that deliveries of spruce and fir had been similarly diverted from the MRL and PRL mills to Stratton Lumber in November 2017, though on a smaller scale, to address a low inventory situation at Stratton Lumber. Stratton's situation at that time is described in an email from BPL's Western Region Regional Manager to the MRL/PRL wood buyer explaining the Director had indicated BPL should help Stratton out and that Stratton was also offering a higher price to get more wood. The MRL/PRL wood buyer confirmed that he and the Regional Manager discussed the situation in November and he agreed the volume from a particular parcel should be shifted to Stratton.

The Director explained that he made the decision to divert all spruce and fir to Stratton Lumber in February 2018 after hearing again that the mill was critically low on inventory for that point in the season. He also explained that BPL's Western Region Regional Manager was going on vacation and there was a need to move quickly on this in order to be of enough help to Stratton given the time of year. The wood buyer for Stratton that OPEGA spoke with described details of Stratton Lumber's inventory situation at that juncture that align with the Director's perspective of the situation. Beyond this, however, OPEGA was unable to corroborate the Director's verbal account of the basis for his decision.

Unlike the diversion that occurred in November 2017, we have no emails or other documentation describing the impetus or basis for the February 2018 decision. Neither the wood buyer for Stratton nor the Director or staff described a specific communication between Stratton and BPL about Stratton being critically low on inventory in January/February, although the Stratton wood buyer did describe generally seeking more volume from landowners. Consequently, we cannot state with any certainty what information the Director's decision was based on, who provided it or to what extent the Director considered impacts to affected parties and State revenues. It also remains unclear to OPEGA whether the situation was so critical that Stratton Lumber would have closed if the Public Lands timber had not been diverted.

OPEGA observes that it would seem prudent and expected for such decisions to be well considered, communicated to affected parties and supported by sufficient documentation. We suggest BPL improve its practices by establishing a more formalized process and procedure for decision-making relevant to sales of timber from Public Lands.

## **Background**

The Bureau of Parks and Lands (BPL) is within the Department of Agriculture, Conservation and Forestry (DACF). Among BPL's responsibilities is the management and administration of Maine's Public Reserved and Nonreserved Lands (Public Lands). Statute permits BPL to sell timber and other products from Public Lands.<sup>1</sup> BPL submits an annual report to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF Committee) by March 1<sup>st</sup> each year. The report includes an account of income and expenditures and a summary of management activities related to timber and other matters.<sup>2</sup> According to the FY2017 annual report, a total of 124,800 cords of timber was harvested from BPL-managed lands in that period and a similar estimate was projected for FY2018 harvests.

Prior to 2012, most timber was sold under stumpage permits. Contractors agreed to pay BPL a bid price to harvest timber from Public Lands, in accordance with permit conditions, and were responsible for marketing and selling the wood directly to mills or other buyers of the contractors' choosing. Under stumpage permits, the State is not generally able to direct where the wood is sold, but BPL told OPEGA that it has occasionally specified in the bid package where some of the wood should be delivered.

Beginning in 2012-2013, BPL has gradually shifted to implementing Contracts for Logging Services (CLS). Under these contracts, contractors bid to harvest and transport wood to specific mills or log yards as directed by BPL. The mills agree to pay BPL a per ton rate for the wood harvested and delivered to an agreed destination. Although BPL has been using CLS contracts for five years, staff described them as fairly new given that BPL had done business under stumpage permits for decades. According to the BPL FY2017 annual report, 81% of the FY2017 harvested volume was under CLS contracts. The report states that BPL's objectives in moving to CLS contracts are to:

1. improve stability in achieving harvest goals;
2. enhance BPL timber revenue; and
3. add to the professional development of forestry staff.

Public Lands are divided into three regions for administration purposes – Northern, Eastern and Western. Each region has a Regional Manager. Regional Managers, with the assistance of their Foresters, are responsible for marketing the sale of wood harvested under CLS contracts from Public Lands. Regional Managers and Foresters are in regular contact with mills in and around their region, usually through individuals responsible for procurement at those mills (wood buyers). In the Northern Region, this includes a number of mills located on the Maine-Canada border. BPL explained that some Canadian border mills are owned by Maine residents and some mills located in Maine are owned by Canadian residents.

Attachment B is a map prepared by BPL that shows the locations of Maine and select Canadian spruce/fir sawmills. The mills relevant to OPEGA's review are Stratton Lumber (Stratton), owned by the Fontaine family, and Moose River Lumber and Pleasant River Lumber (MRL/PRL), both owned by Jason and Chris Brochu. All three of the mills are located in the Western Region, although PRL is located in Dover-Foxcroft near the border of the Eastern Region. The mills also have connections with log yards in other locations, where timber can be delivered and then reloaded for later delivery to a mill. Stratton has log yards in Newport and Passadumkeag, Maine, among other locations. Another wood buyer relevant to our review is HC Haynes, which owns a log yard in Chester and acts as a wood broker. HC Haynes has both a stumpage permit and a CLS contract to harvest wood from Public Lands. HC Haynes also purchases wood harvested

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<sup>1</sup> 12 M.R.S. § 1834 and § 1848.

<sup>2</sup> As required by 12 M.R.S. § 1839 and § 1849.

under his CLS contract and sells it on to other markets. The majority of spruce and fir harvested from Public Lands in the Eastern and Western Regions are sold to these three parties.

BPL informed OPEGA that historically some timber harvested from Public Lands has been exported to Canada. BPL provided OPEGA with records of exports from 1999 - 2017, which showed that exports largely consisted of timber harvested from the Northern Region. In 2016, 15% of the harvested volume from all regions was exported to Canada and 7% of the harvested volume was exported in 2017. The annual average for 1999 - 2017 is 9.86%. BPL staff informed OPEGA that Canadian border mills will often bid a substantially higher price for spruce and fir harvested from Public Lands in the Northern Region. BPL staff explained that they offer Maine mills the opportunity to meet the bid from a Canadian border mill, but the higher price might make this unattractive for a Maine mill.

BPL discusses with mills and any other wood buyers estimated volumes and prices for the summer/fall harvest in about April each year and again in November/December for the winter harvest. The length of each harvest season is uncertain and impacted by weather and road conditions, particularly in early spring when mud season makes logging roads impassable.

Although there are written documents for stumpage permits and CLS contracts, agreements between BPL and mills about types and volume of wood to be delivered are largely informal and undocumented. BPL staff and private parties in the industry described the timber market as fluid and both buyers and sellers expressed a preference for not being locked into contracts. A number of variables can impact agreed upon volumes and prices, from either a seller's or buyer's perspective, including but not limited to: weather, road conditions, contractor availability, equipment malfunctions, volume changes and agreements with other landowners, mill capacity and inventory, and market conditions.

During our discussions with BPL staff, OPEGA was informed that wood is often shifted from mill to mill as mills may refuse to take additional volumes or particular species as the market changes. BPL also informed OPEGA of instances when BPL shifted timber deliveries from one mill to another to assist a mill with a low inventory. BPL staff described receiving a request for additional volume, in about 2014, from the owners of MRL (who were different from the current owners). After a negotiation, some timber was shifted to MRL to assist with low inventory. In November 2017 and February 2018, some spruce/fir was shifted from MRL/PRL to Stratton to assist with Stratton's low inventory. These two more recent situations are relevant to OPEGA's review and are described further in the following chronology.

## **Timeline of Relevant Events**

### **July – December 2017**

- July 20<sup>th</sup> – The Director of Maine Forest Service (the Director) writes to the US Department of Commerce Secretary in support of a request to exempt Quebec's border mills and New Brunswick from the softwood tariff.
- August 3<sup>rd</sup> – The Governor writes to the US Department of Commerce Secretary to renew previous request (by letter dated June 9<sup>th</sup>) that New Brunswick, Quebec and the other Maritime provinces be exempted from the softwood tariff.
- September 13<sup>th</sup> – Governor's radio address expresses opposition to softwood tariffs.
- September 25<sup>th</sup> – Bangor Daily News publishes opinion editorial (Op-Ed) by MRL/PRL mill owners that is critical of the Governor's position as expressed in his radio address.

- October 5<sup>th</sup> – Facebook post on behalf of the Governor that is critical of the MRL/PRL mill owners’ Op-Ed.
- Late October – In a letter dated March 14, 2018 to the Director, Stratton’s wood buyer describes Stratton as being critically short on logs in late October 2017. The letter also describes Stratton approaching the Regional Manager for the Western Region with an increased price in attempt to get all the volume from a job in Dead River at that time.<sup>3</sup>
- November 16<sup>th</sup> – The Regional Manager for the Western Region emails the MRL/PRL wood buyer to inform that Stratton was low on inventory and had asked to receive all deliveries from Dead River. The email explained that Stratton was also offering a higher price and that this situation was discussed with the Director who indicated that BPL should “help them [Stratton] out”. The MRL/PRL wood buyer told OPEGA that he and the Regional Manager also discussed this situation and that the MRL/PRL wood buyer agreed to the Dead River volume being shifted to Stratton.
- November 20<sup>th</sup> – The Northern Region Forester emails the MRL/PRL wood buyer to ask if he wishes to submit a bid on wood harvested from Telos. Telos is a BPL managed land in the Northern Region located to the West of the North-Western corner of Baxter State Park. According to BPL, no bids or responses were received.
- December 6<sup>th</sup> – The Northern Region Forester emails PRL/MRL buyer to again ask if they are interested in the Telos harvest.
- December 22<sup>nd</sup> – The MRL/PRL wood buyer describes having discussions with the Regional Managers of the Eastern and Western Regions about the winter operations and reaching agreement on volumes and prices.
- During December, the Timber Resource Group, the wood procurement company for Stratton Lumber, opened a log yard in Passadumkaeg. The March 14<sup>th</sup> letter from the Stratton wood buyer describes that he reached agreement with BPL for some deliveries from the Eastern Region harvests to go to the Passadumkaeg log yard.<sup>4</sup> Previously, Stratton had received only deliveries from Western Region harvests.

## January – February 2018

- January – MRL/PRL and BPL staff describe deliveries taking place to MRL/PRL in accordance with December agreements.
- January 29<sup>th</sup> to February 1<sup>st</sup> (participants provided different dates for this event) – The Director describes receiving a telephone call from someone suggesting that a rumor of a personal nature about him was being spread by the MRL/PRL wood buyer and/or owners. The Director described having heard the rumor since fall 2017, but this was the first time he was informed of the alleged source. The Director explained to OPEGA that he was driving after having visiting the Telos harvest and visited PRL in Dover-Foxcroft that same day to discuss and dispel the rumor. All those involved recall there was a discussion between the Director and the MRL/PRL wood buyer and owners about the rumor, followed by more general discussion about wood markets. All participants

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<sup>3</sup> It appears the March 14<sup>th</sup> letter from the Stratton wood buyer to the Director was solicited by BPL when BPL was preparing a package of materials in response to the ACF Committee’s March 7<sup>th</sup> request for information.

<sup>4</sup> BPL explained to OPEGA that when the agency and a mill agree on delivery to a log yard, the trucking cost to the yard is incorporated into the cost. The mill then arranges for transportation of logs to their final destination and bears the associated cost.

in the meeting described feeling as though the initial concern about the rumor was resolved at that time. The Director also recalls telling the MRL/PRL wood buyer and owners that there was high quality spruce being harvested in Telos. According to the Director, the wood buyer said the price was too high and there was no further discussion about the price of the Telos wood.<sup>5</sup> The MRL/PRL wood buyer does not recall discussing Telos wood at this meeting. He describes the MRL/PRL owners expressing general frustration to the Director about BPL timber going to Canada, followed by more general discussions about wood supply and markets.

- February 5<sup>th</sup> – In an email that appears to be an informal time card record for himself, the Director notes “LD 1809 and State House with Gov. – 8 hrs” for the date of February 5th. OPEGA asked the Director about this notation on August 1<sup>st</sup> but the Director did not recall the specifics about a meeting on February 5th. He did not specifically recall whether there was a meeting and, if so, whether it was with the Governor or his staff or both. The Director also did not specifically recall the subject matter, though he considered it likely that it related to a high profile labor issue in the Northern part of the state. The Director denied that the Governor instructed or suggested that he divert wood from one mill to another at this or any other meeting. OPEGA asked the Governor’s Chief of Staff and Senior Policy Advisor about any meetings on February 5<sup>th</sup>. The Chief of Staff said she saw no scheduled meetings on her calendar or the Governor’s with the Director for that day, and although impromptu meetings sometimes occur, she did not recall meeting with the Director that day. The Senior Policy Advisor also did not recall anything specific about the meeting and considered it likely that it may have been about LD 1809, which related to burn permits. The Senior Policy Advisor denied that he was aware of any instruction or suggestion by the Governor that the Director divert wood from one mill to another. No notes or further information about the meeting are available.
- February 6<sup>th</sup> – Mill delivery records provided by BPL show two deliveries to PRL and one delivery to MRL.
- February 7<sup>th</sup> –
  - The Governor meets with Secretary of the US Department of Commerce and other Commerce staff, Premier of New Brunswick and other New Brunswick government staff to discuss the impact that the softwood lumber orders were having on Maine. The note of this meeting is a public document available on the US Department of Commerce online document repository.
  - The MRL/PRL wood buyer told OPEGA he was contacted by loggers who said they were instructed not to send logs to MRL/PRL. He described this as “unusual” as he was not given any notice and was not contacted in advance by BPL to discuss or agree to a diversion, which he contrasted with the November diversion. He told OPEGA he spoke to the Eastern and Western Regional Managers, who described that the instruction for the change had come from the Director.
  - The Director emails the Governor’s Senior Policy Advisor to say that “after two days of deliveries” to Stratton, the Director received a call from the MRL/PRL mill owners to ask where the wood was and that the Director told them he had diverted it to Stratton as Stratton needed it.

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<sup>5</sup> BPL explained that it is the agency’s policy to provide a Maine mill an opportunity to match the price offered by a Canadian mill.

- A March 9, 2018 email from a BPL staff member to other internal staff as part of BPL's preparation of a response to the ACF Committee questions notes February 7<sup>th</sup> as the date the staff received the directive to divert deliveries to Stratton.
- It appears there was some initial confusion about whether the diversion to Stratton was just for timber harvested under CLS contracts or whether it also included timber harvested under stumpage permits. At least one stumpage harvester was given the impression that spruce/fir should be directed to Stratton Lumber. OPEGA noted emails between BPL staff questioning whether stumpage was included in the mill change. OPEGA observes from emails and interviews with impacted parties that it appears it was clarified within a week or two that stumpage harvesters could continue to sell and deliver timber to the markets of their choosing.
- February 26<sup>th</sup> – A MRL/PRL mill owner emails the Director to say that they are becoming very concerned about running out of wood and that they do not have sufficient inventories at MRL/PRL mills. In a subsequent email exchange, the Director states that the Telos operation had finished and noted that the Telos wood could have previously been purchased by MRL/PRL. The MRL/PRL mill owner asks whether the volume from the operations near Bangor and Seboomook that had previously gone to MRL/PRL could be returned to them.
- February 28<sup>th</sup> – The Director responds to the MRL/PRL mill owner to say that BPL plans to continue assisting Stratton as long as trucking/production can continue.

### March 2018

- March 7<sup>th</sup> – The Legislature's Joint Standing Committee on Agriculture, Conservation and Forestry (ACF Committee) sends a letter to the DACF Commissioner with a list of questions about the diversion and other timber sales matters.
- March 15<sup>th</sup> – The ACF Committee sends a letter to the Governor requesting answers to questions posed to DACF on March 7<sup>th</sup>.
- March 20<sup>th</sup> – The ACF Committee holds a public hearing. The Governor attends and speaks to Committee in response to the questions the Committee had posed.
- March 23<sup>rd</sup> –
  - Timber deliveries for the winter season appear to conclude.
  - The Governor writes to the GOC requesting an OPEGA investigation of facts surrounding the February 2018 diversion.

### **Questions Related to the February 2018 Diversion of Deliveries of Spruce and Fir to Stratton Lumber**

In early February 2018, the State directed its CLS contractors to send all spruce and fir harvested from Public Lands in the Eastern and Western Regions to Stratton Lumber. This action raised public allegations that the Governor and/or BPL were directing timber deliveries away from MRL and PRL in retaliation for the mill owners' public opposition to the Governor's position on softwood tariffs.

OPEGA explored several questions related to the February 2018 diversion through interviews with relevant parties and review of relevant documents and records as described in Attachment A. The review of records included any relevant email correspondence for the period August 1, 2017 to May 10, 2018 that was:

- internal to the Governor’s Office;
- between the Governor’s Office and DACF;
- between the Governor’s Office and any other State agency or external parties related to the harvesting, sale or transportation of timber from Public Lands; and
- between the Governor’s Office and any other State agency or external parties related to softwood tariffs.

**Was the Governor involved in the decision to divert deliveries of spruce and fir harvested from Public Lands to Stratton Lumber? If not, who did make the decision?**

OPEGA found no indication that the Governor was involved in the decision to divert deliveries of spruce and fir to Stratton Lumber. By all accounts, the decision was made by the Director of the Maine Forest Service and OPEGA identified no documentary evidence to the contrary.

Both the Governor and the Director denied that the Governor was involved in the decision, and the Director stated that he alone made the decision to divert the spruce and fir to Stratton Lumber. In interviews, the Deputy Director of Public Lands, the Regional Manager of the Western Region at the time of the diversion, and the Forester from the Eastern Region, who marketed and sold wood harvested in that region, all said the decision was made by the Director.

The Director explained that he informed the Governor’s Senior Policy Advisor of the diverted deliveries after his decision had been made as a “heads up.” The Senior Policy Advisor also stated the Director made him aware of the diversion and that the Governor had never instructed him to divert the deliveries. The February 7<sup>th</sup> email from the Director to the Senior Policy Advisor confirms that the Senior Policy Advisor had an awareness of the situation by at least this date, which appears to be shortly after the Director made the decision.

**Were deliveries of spruce and fir harvested from Public Lands diverted away from the Moose River Lumber and Pleasant River Lumber mills because of the mill owners’ opposition to the Governor’s position on softwood tariffs?**

There are few conclusions OPEGA can state with any certainty given the general lack of documentary evidence. However, we consider it unlikely that the February 2018 diversion of spruce and fir to Stratton Lumber was a result of the MRL/PRL mill owners’ positions on softwood tariffs based on the following observations.

- **Time elapsed between the public dispute on tariffs and the diversion.** As shown in the timeline summary, the public dispute between the MRL/PRL mill owners and the Governor about softwood tariffs took place in September and early October 2017. The decision to divert spruce and fir deliveries to Stratton Lumber occurred approximately four months later.
- **The State continued to market and sell wood to MRL/PRL.** The MRL/PRL wood buyer reported the State continued to market and sell wood to those mills throughout November and December of 2017 and negotiations with both the Eastern and Western Regions for the upcoming harvest season were finalized by the end of the year. All participants that OPEGA spoke to reported



that deliveries took place in accordance with these agreements throughout January 2018 and up until the diversion of deliveries in early February.

- **Buyer other than MRL/PRL was impacted.** Prior to the diversion of wood to Stratton Lumber, spruce and fir harvested under CLS contracts in the Eastern Region was sold and delivered to three entities: MRL/PRL, Stratton, and HC Haynes. A representative of HC Haynes told OPEGA that all of the spruce and fir being hauled under his company’s CLS contract, including the wood HC Haynes was purchasing and delivering to its own log yard, was also diverted to Stratton in February 2018. This is consistent with accounts from the Director that all spruce and fir from the Eastern and Western regions was diverted to Stratton, not just the wood intended for the MRL/PRL mills. It appears that the impact of the Director’s decision was not borne by MRL/PRL alone.
- **Multiple denials.** In discussions and interviews with OPEGA, the Governor and the Director denied that the decision to divert deliveries of spruce and fir to Stratton had any connection to the MRL/PRL owners’ position on softwood tariffs. The MRL/PRL wood buyer also told OPEGA that he did not believe the diversion was related to the mill owners’ opposition to the Governor’s position on softwood tariffs.

### **What was the decision to divert deliveries of spruce and fir harvested from Public Lands to Stratton Lumber based on?**

The Director described basing his February 2018 decision on reports that Stratton’s inventory was “critically low” for that point in the season. Unfortunately, there is no documentary evidence from the relevant time period that records, or indicates, the basis for the Director’s decision. Consequently, we are unable to determine specifically what information the Director had or considered in making his decision.

It appears the Director’s assessment of Stratton’s “critically low” inventory in early February was based on anecdotal evidence and sources, rather than any verified information or documented request from Stratton Lumber. The Stratton wood buyer did describe generally seeking more volume from all landowners, including BPL. BPL staff also noted that Stratton opened a log yard in December 2017 in Passadumkeag near the Eastern Region where logs from that region could be delivered and then transported to the mill by Stratton. They saw this major action as indicative of the mill’s serious need for inventory. OPEGA did not identify any emails at that time from either Stratton Lumber or the Western Region Regional Manager specifically informing the Director of Stratton’s inventory situation. OPEGA notes that the Governor explained to the ACF Committee in March 2018 that an equipment fire played a role in the decision to divert the spruce/fir from one mill to another. The Director clarified to OPEGA that, although there was an equipment fire, it was unrelated to the diversion and did not play a role in his decision making.

OPEGA followed up with Stratton Lumber’s wood buyer to discuss the mill’s inventory levels at the time spruce and fir were diverted to that mill in both November 2017 and February 2018. Stratton’s buyer described details of a low inventory level in October 2017 and an even lower inventory level in February 2018. The descriptions appear consistent with the Director’s perception of Stratton’s inventory levels at those times.

During interviews with the Director and BPL staff, OPEGA inquired whether the impact on MRL/PRL was considered when deciding to divert the deliveries to Stratton Lumber. BPL staff explained that they did not have direct knowledge of the inventories of those mills at that time. The Director referenced the fact that MRL/PRL turned down the opportunity to purchase additional wood from Telos and he interpreted

this to mean they had sufficient inventories. OPEGA notes that the Telos wood was priced higher than the wood that was diverted from the Eastern and Western Regions. The MRL/PRL wood buyer and owners OPEGA spoke with said BPL did not contact them prior to, or after, the deliveries began being diverted to Stratton.

OPEGA observed that the February 2018 decision to divert deliveries differed from the prior November 2017 decision to divert deliveries in two ways:

- The decision to divert deliveries in November was driven by regional staff with the Regional Manager for the Western region suggesting the action to the Director. The decision to divert deliveries in February was driven by the Director.
- The decision to divert deliveries in November was communicated to MRL/PRL by the Regional Manager of the Western Region prior to the change of mill destination. The February decision was not communicated by BPL staff to MRL/PRL and instead the mills heard about it from contractors.

OPEGA also noted that there was no formal process within BPL to undertake a formal cost/benefit analysis prior to the decision to divert the wood from one mill to another. In documents prepared in response to the ACF Committee's request, the Director estimated the diversion resulted in a loss to the State of about \$18,710. This is based on the additional cost borne by the State for transportation costs to the new destination, which in some cases was further away. The Director described the additional cost as arising from 2,514 tons being diverted in February as for a loss of \$10,058 and 1,864 tons being diverted in March as for a loss of \$8,652. OPEGA notes this assessment was calculated after the February diversion was completed and did not appear to play a part in the Director's decision making process.

### **Opportunity for Improvement**

OPEGA observes that the potentially competing objectives BPL pursues in seeking to maximize overall value to the State from the timber harvests inevitably involve making decisions that impact Maine companies in various ways and also have financial impacts for the State. These circumstances expose the State to risks of perceived, or actual, improprieties in the decisions made. Consequently, it would seem prudent and expected that BPL should be able to demonstrate that such decisions were well considered, authorized and communicated to affected parties as appropriate. Toward this end, we suggest BPL consider establishing a more formalized process and procedure to help guide decision-making and communications surrounding the sale of timber from Public Lands, particularly when there are changes to agreements made with wood buyers. The established process should help ensure all relevant impacts are considered and decisions are sufficiently supported and documented, thereby minimizing financial risk to the State and enhancing transparency and accountability for State activities.

## **OPEGA Scope and Methods**

OPEGA’s work on this limited fact finding included:

- Discussed the diversion with the Governor.
- Reviewed information and documents compiled by the Director of the Maine Forest Service
- Conducted brief research of relevant statutes and legislation with assistance from the Law and Legislative Reference Library
- Reviewed the FY16 and FY17 annual reports on Maine Public Reserved, Nonreserved and Submerged Lands prepared by DACF Bureau of Parks and Lands
- Interviewed:
  - the Director of the Maine Forest Service and other relevant Parks and Lands staff, including certain Regional Managers and Foresters;
  - owners and wood buyers for Stratton Lumber and Moose River Lumber/Pleasant River Lumber;
  - relevant CLS contractors and stumpage buyers; and
  - the Governor’s Senior Policy Advisor with the relevant area of policy responsibility.
- Reviewed 6,320 emails occurring between August 1, 2017 and May 10, 2018 involving DACF staff and/or the Governor’s Office that met the criteria in OPEGA’s records request for:
  1. emails between two or more of seven named individuals at DACF;
  2. emails to or from at least one of the seven named individuals at DACF and identified external individuals;
  3. emails to or from at least one of the seven named individuals that included at least one of 32 identified keywords, and
  4. emails internal to DACF/the Governor’s Office and between DACF/the Governor’s Office and any other state agency or external parties that included at least one of the 32 identified keywords.

The emails were provided to OPEGA directly from the Office of Information Technology IT Consultant who is responsible for e-discovery for FOAA/litigation. The emails were searched and compiled from the Cloud archive and, therefore, included emails or drafts that may have been moved or deleted from agency computers. OPEGA ultimately identified only a very few emails that occurred around the time of the February 2018 decision to divert timber from one mill to another and provided context for that decision.

