

# Timber's fallen: Efforts show promise for working conditions in Oregon forestry

by Emily Green (/users/emily-green) | 18 Feb 2016

PART III | Advocates, reforestation operators say effective policy changes will need to come from the top down



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This is Part III of a [three-part series](#)

[Two Lomakatsi employees clear and burn brush at Table Rock in Southern Oregon. Lomakatsi is a nonprofit that collaborates with native tribes, cities and other nonprofits to complete restoration projects while providing benefits to the area communities.](#)

[Photo courtesy of Lomakatsi Restoration Project](#)

[http://news.streetroots.org/sites/default/files/styles/article\\_image\\_full/public/Forestry1\\_WEB\\_0.jpg?itok=oEv6YMba](http://news.streetroots.org/sites/default/files/styles/article_image_full/public/Forestry1_WEB_0.jpg?itok=oEv6YMba)

<http://news.streetroots.org/2016/02/18/timbers-fallen-three-part-investigative-series> on the working conditions and treatment of Oregon's immigrant forestry workers.

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Marko Bey was sitting in on the squatters' movement and organizing soup kitchens on New York City's Lower East Side when he set his sights on the Pacific Northwest.

He was 19 when he arrived in Oregon. He needed to work, so he took a job planting trees. Today he coordinates large-scale ecological restoration projects in Southern Oregon, but back then, he was an idealistic kid who just wanted to stop clear-cutting.

It was 1987, and an increasing number of tree planters and other reforestation workers in America's forests were Hispanic immigrants. It was a shift from 10 years earlier when hippies and other Anglo outliers were filling these jobs.

Bey worked across Oregon and Northern California throughout his 20s under a handful of reforestation contractors.

He said he enjoyed the camaraderie among crewmembers but was troubled by what he saw.

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Three decades later, [healthier forest policies have emerged](http://news.streetroots.org/2015/10/23/protections-risk-forest-service-revises-regional-plans) (<http://news.streetroots.org/2015/10/23/protections-risk-forest-service-revises-regional-plans>) to circumvent wholesale devastation of the land, but abuse and [exploitation of immigrant forestry workers](http://www.nwforestworkers.org/publications/surveyreportcolor.pdf) (<http://www.nwforestworkers.org/publications/surveyreportcolor.pdf>) endures.

Advocates and reforestation operators say effective policy changes will need to come from the top down – whether that means changes in government contracting policies, a better strategy for enforcing labor laws, stiffer penalties for serious safety violations, or all of the above.

During its September meeting, Oregon's Environmental Justice Task Force listened to Latino forest workers and farmworkers testify about their experiences with wage theft, dangerous working conditions, exposure to toxic chemicals, and retaliation for reporting violations and injuries.

Since then, the task force has been formulating recommendations for better protecting these vulnerable workers, which it will forward to Gov. Kate Brown.

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**STREET ROOTS EDITORIAL: [Oregon must protect all its workers](http://news.streetroots.org/2016/02/18/street-roots-editorial-oregon-must-protect-all-workers)**  
(<http://news.streetroots.org/2016/02/18/street-roots-editorial-oregon-must-protect-all-workers>)

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Task force chair Ben Duncan said in an email, “The testimony we heard in September moved all of us, for its passion, its pain, and perhaps most importantly, for our work, for hope in a better future for those in our state who are most impacted by environmental and workplace hazard.”

He said the task force will work with state agencies to provide more information to workers about their rights and will examine current enforcement investigations to ensure training is adequate and protective of workers.

U.S. Sen. Jeff Merkley, who's taken up issues around H-2B guest workers, said more needs to be done to protect all Oregon workers.

The H-2B non-agricultural worker visa program allowed for more than 800 foreign workers, primarily from Latin America, to fill forestry jobs in Oregon in 2013. Riders attached to [a federal spending bill \(http://www.usatoday.com/story/news/2016/01/05/us-employers-can-now-bring-more-foreign-workers-seasonal-jobs/78258802/\)](http://www.usatoday.com/story/news/2016/01/05/us-employers-can-now-bring-more-foreign-workers-seasonal-jobs/78258802/) last year forbid certain expenditures on the enforcement of protections for these workers.

"First, we need to make sure that Oregonians have a chance to secure these forestry jobs and that contractors are not abusing the H-2B visa program," Merkley said. "Second, strong enforcement is needed to make sure that all workers in Oregon have a safe workplace and aren't being mistreated. There are too many stories of workers being put in unsafe working conditions or exposed to pesticides."

In the meantime, gradual policy shifts on the federal level and grassroots efforts in Southern Oregon show that improvements to the working conditions of Oregon's reforestation workers are possible, if not expeditious.

### It's in the contract

In the late 1990s, the U.S. Forest Service began moving away from its policy of automatically awarding tree planting and thinning contracts to the lowest bidder – a policy that drew criticism for its potential to put contractors under pressure to maximize profits by cutting costs in a sector with already tight margins and high employee turnover.

"The people who get impacted by those corners being cut are the laborers," Bey said.

With government inspections few and far between – Occupational Safety and Health Administration inspects about 5 percent of reforestation contractors each year – remote job sites, and immigrant and guest workers who are fearful of reporting labor violations, employers can keep costs down by shorting workers on pay, skipping formal training and not providing adequate safety gear.

Today, the U.S. Forest Service [awards contracts to the "best value" bidder \(http://umatillacollaborative.org/ufcgmedia/SNW-Forest-Service-Contracting-Guide.pdf\)](http://umatillacollaborative.org/ufcgmedia/SNW-Forest-Service-Contracting-Guide.pdf). This means other criteria, such as technical ability and quality of work, as well as price, are taken into account.

But because bids are confidential, very little data shows how often the lowest bidders are awarded these contracts.

Cassandra Moseley is the director of [Ecosystem Workforce Program \(http://ewp.uoregon.edu/\)](http://ewp.uoregon.edu/) at the University of Oregon. She also chairs the USDA Research Advisory Council. She's been studying U.S. Forest Service contracting for years, and after signing confidentiality agreements, she examined reforestation contracts in New Mexico to see how best-value awards were playing out.

She determined that while criteria varied from contract to contract, price was typically equal to all other factors combined. Of [34 contracts studied \(http://www.swsfp.org/documents/presentation3.pdf\)](http://www.swsfp.org/documents/presentation3.pdf), the U.S. Forest Service awarded 74 percent to the contractor offering the lowest price. However, the sample was so small, she can't definitively say whether it points to a larger pattern.

What she can say for certain is that it's a competitive marketplace.

"Different contractors have different strategies for dealing with that competitiveness," she said, "and some of them are strategies that work better for workers than others."

She said a number of businesses have begun to diversify their services by offering fire suppression during wildfire season and reforestation activities, such as thinning, in the off-season. This allows them to keep people employed and improve their skills – and they can afford to bid lower on thinning contracts because it's not their only source of revenue.

[Grayback Forestry \(http://www.graybackforestry.com/\)](http://www.graybackforestry.com/) is an example of a contracting company that offers year-round services. Its owner, Michael Wheeler, said he pays his employees fair wages and benefits, and follows all labor laws, which puts him at a competitive disadvantage.

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"My biggest grievance is minimum wage," he said. [The Service Contract Act \(http://www.dol.gov/whd/govcontracts/sca.htm\)](http://www.dol.gov/whd/govcontracts/sca.htm) sets wages for reforestation activities. "A lot of competitors don't pay that – add all that other stuff, and it makes it tough to compete."

Stephen Baker, spokesperson for U.S. Forest Service Region 6, which oversees forests in Oregon and Washington, told Street Roots his agency considers "a number of factors when making a decision on how to award a service contract" and "decisions are not decided on 'lowest bidder.'"

Moseley said there isn't any fresh evidence pointing one way or the other.

"I do think that budgets have gotten tighter and targets are still really important and that's an area where the Forest Service is working to make change in how they measure their performance," she said.

She said a shift away from focusing on production volume is a strategy the U.S. Forest Service could take that would remove pressure from businesses to treat high quantities of acres and focus on quality of work instead.

## Enforcing labor protections

The most effective strategy for combating worker exploitation, said Moseley, would be to cross-train U.S. Forest Service and Bureau of Land Management inspectors to function as labor and safety inspectors as well.

State labor and safety regulators don't have the resources to visit more than a small fraction of these remote job sites, and simply finding them can be a challenge.

But federal land management inspectors are already driving out to each of these sites to inspect the quality of the work.

The U.S. Forest Service and state and federal industry regulators have been collaborating on this issue in Oregon since 2006, but how consistently and comprehensively efforts are implemented on the ground is unclear.

U.S. Department of Labor developed a red-flag checklist for the U.S. Forest Service nearly a decade ago so it could train its inspectors on how to spot wage and hour and safety violations, labor department officials told Street Roots.

This way, they said, U.S. Forest Service employees would be better informed to make referrals to their department.

According to its spokesperson, Baker, the U.S. Forest Service does "monitor conditions and report violations to the Department of Labor." He said, "If violations are occurring on site, we can issue a stop work order until the concerns are addressed."

While their inspectors have been trained on how to spot certain labor and safety violations, it's no match for a comprehensive inspection and has not appeared to effectively stifle what research at the [Northwest Forest Worker Center \(http://www.nwforestworkers.org/\)](http://www.nwforestworkers.org/) suggests is still widespread disregard for labor laws among contractors.

Moseley said what she's suggesting would be "an integrated job – and an expectation."

Perceptions among reforestation workers and advocates Street Roots interviewed for this series are that making sure contractors are abiding by the labor laws within its contracts is not a priority for Region 6 inspectors.

Director of the Northwest Forest Worker Center, Carl Wilmsen, said it's been the position of his organization for years that the U.S. Forest Service should enforce the labor provisions in its contracts, and only hire contractors who abide by the law.

"Their response is, 'We don't have that expertise, it's the Department of Labor that does enforcement,'" he said.

Wheeler's experienced a similar reaction.

"They don't check compliance," he said. "They say, 'we got it in our contract.'"

According to Department of Labor officials, it inspects less than 1 percent of America's job sites each year. Since 2004, it's conducted 19 investigations into Oregon reforestation companies for wage and hour violations. Oregon's OSHA inspects an average of 14 per year for safety.

There are 284 reforestation employers across the state, according to data at Oregon Employment Department.

## Combatting fear

The underlying issue, Moseley said, is that reforestation workers are vulnerable to exploitation.

“Making it easy and safe for people that are being mistreated to speak up is really critical, and that’s very difficult in this environment,” she said.

At a Feb. 5 meeting of the Environmental Justice Task Force, top regulators at Oregon’s OSHA and Bureau of Labor and Industry told a representative from the Northwest Forest Worker Center to contact their agencies when workers come to the center with grievances.

Virginia Camberos, program coordinator at the center in Medford, is the person who’d be making those calls.

She said she’s optimistic about conditions improving in light of recent efforts to unite agencies, but it’s difficult to get workers to come forward and file a complaint.

“This is their only source of income, and many do not qualify for unemployment benefits if they are fired,” she said.

There is a solution to this problem, although not a permanent one, said Andrea Miller, executive director at [Causa, Oregon’s Immigrant Rights Organization](http://causaoregon.org/) (<http://causaoregon.org/>).

In November 2014, President Barack Obama announced a series of executive actions to prevent the deportation of up to 5 million undocumented immigrants. In part, the Deferred Action for Parents of Americans would allow undocumented immigrants who have been in the U.S. since 2010 and have U.S.-born children to apply for work permits that protect them from deportation for renewable periods of three years, while Congress comes to an agreement on immigration reform.

While not all reforestation workers are undocumented, this program would have addressed one of the reasons some workers are fearful of coming forward about wage theft, reporting injuries, exploitation and abuse.

The application process would have begun Feb. 18, but a district court judge in Texas issued an injunction that temporarily blocked the implementation process, and the U.S. Fifth Circuit Court of Appeals later upheld that injunction. Now the matter is in the U.S. Supreme Court, with a final decision expected in June.

With the recent death of Justice Antonin Scalia, a vacancy on the Supreme Court means Obama needs the vote of a least one conservative justice. Otherwise, a 4-4 tie would preserve the lower court’s decision.

“If people had their immigration status, they would have more liberty,” Miller said. She said many undocumented immigrants fear that if they lose their job, they might not find another one.

“The reality for many workers is that a bad job is better than no job at all,” she said.

### A different way of doing business

In 1995, Bey and fellow reforestation laborer Justin Cullembine, co-founded a nonprofit called the [Lomakatsi Restoration Project](http://lomakatsi.org/) (<http://lomakatsi.org/>), based in Ashland.

“The reason we formed the nonprofit,” Bey said, “was because we were trying to create a new model.”

Twenty-one years later, Lomakatsi is taking the lead on many large-scale restoration projects in Southern Oregon, working with native tribes, municipalities and contractors to complete ecological projects while benefiting its workers and area communities.

Bey said many of his employees worked for reforestation contractors before coming to work for him.

“It’s night and day – working for us compared to the other contractors,” he said.

Bey said he’s able to avoid pressures associated with low-bid service contracts by focusing on what are [known as stewardship projects \(http://lomakatsi.org/federal-land-stewardship/\)](http://lomakatsi.org/federal-land-stewardship/), which combine timber sales with restoration service contracts.

When the U.S. Forest Service offers a stewardship contract, it reinvests any profit it earns from selling timber into the restorative work that gets done. Normally that money would go to the U.S. Department of the Treasury in Washington, D.C.

These projects are also required to have a restorative emphasis.

“You can’t clear-cut on a stewardship contract,” Bey said. “It’s ecosystem restoration.”

This creates a scenario in which a company may have the ability to win the contract without feeling pressure to bid lower than it can reasonably afford, but whether this benefit trickles down to the worker has not been studied, Moseley said.

Wheeler said his company, Grayback, also prefers stewardship contracts, although he still bids on stand-alone restoration contracts, too.

“Not all service contracts are bad,” Bey said. “There’re some good-paying ones. There’s some good crews that do good work and pay people well. It’s not that it doesn’t happen, but from my experience, typically, it’s more of that low bid system.”

As a nonprofit, Lomakatsi typically operates under agreements with the government rather than bidding on contracts, and often approaches agencies with a proposal.

Like stewardship contracts, these agreements involve both logging and reforestation services, with money earned off timber going back into the project.

But as a partner to the agreement, Lomakatsi must bring 20 percent nonfederal matching funds to the table, which it does in the form of grants and other sources, Bey said.

“It sets up a whole program, not just of restoration, but we can integrate workforce training, youth training and education, work with schools, and we can run all these tribal forest restoration programs with the tribes we work with – because there’s a need to build capacity



*A Lomakatsi employee clears brush at Table Rock as part of an oak restoration and climate adaptation project in 2015. Table Rock, north of Medford in Southern Oregon, was a sanctuary for the Takelma Indians.*

*Courtesy of Lomakatsi Restoration Project*

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“It gives us the opportunity to take people who run chainsaws and help them learn technical skills so they’re not stuck in the labor side their whole life – they can advance. Or in the case of young people, partnering with schools and universities to integrate forestry sciences into the programs. It’s more of a nonprofit-type end result objective in an agreement, where a contract is just work.”

Additionally, when Lomakatsi takes the lead on controversial projects, environmental groups typically don’t sue because they trust his organization will respect the land, he said.

[Klamath-Siskiyou Wildlands Center \(http://kswild.org/\)](http://kswild.org/) has a history of challenging timber sales in southern Oregon, and its conservation director, George Sexton, agreed with Bey’s claim.

“They walk the talk,” he said.

Lomakatsi is the only nonprofit reforestation operation in the Pacific Northwest.

“It took two decades to get there,” Bey said, “but now the agencies are finally paying attention. It was a very bottom-up grass roots effort to move things along.”

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## The series

This is Part III of a three-part series on the working conditions and treatment of Oregon's immigrant forestry workers.

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