FOREST SERVICE APPEALS PROCESS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

THE EFFECTIVENESS OF THE U.S. FOREST SERVICE'S ADMINISTRATIVE APPEALS PROCEDURES, AND THE COST TO TAXPAYERS

JUNE 20, 1996—WASHINGTON, DC

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FOREST SERVICE APPEALS PROCESS

THURSDAY, JUNE 20, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS, COMMITTEE ON RESOURCES,

Washington, DC.

The Subcommittee met, pursuant to call, at 10:02 a.m., in room 1324, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JAMES V. HANSEN, A U.S. REPRESENTATIVE FROM UTAH; AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

Mr. HANSEN. The Subcommittee will come to order. The Subcommittee on National Parks, Forests and Lands convenes today for our sixth hearing on oversight on national forest management issues. Today, we will review the effectiveness of the U.S. Forest Service's administrative appeal procedures.

There are now three different procedures for appealing agency land management decisions, and we would like to determine how each of those are working. We are also hoping to learn how much each procedure is costing the taxpayers so that we can better compare their effectiveness.

When Congress got involved in this issue in 1992, we concluded that, too often, appeals were filed by appellants who did not inform the agency of their legitimate concerns before decisions were made. Instead, they waited until after a decision was made before filing an appeal.

At that time, Congress directed the Forest Service to provide an early notice and comment period for all project decisions and to streamline the procedures for appeal of those decisions.

After two-and-one-half years under this procedure, Congress should assist the agency in reevaluating the effectiveness of the requirements we established. In addition, we need to ask why the Forest Service does not streamline its procedures for appealing forest plans. Several plan appeals have been pending for over nine years, since 1987, which points to a problem with a process that takes too long to resolve fundamental land management decisions.

I know the Forest Service has made progress in implementing its project appeal procedures, but I believe the record shows there is still room for procedural improvements. I hope the witnesses, including the Forest Service, will provide their suggestions, as we all have a stake in making sure that the appeals process is effective.

The Subcommittee will receive testimony today from witnesses here from Montana, Tennessee, Arizona, Wisconsin, and Alaska, in addition to the Forest Service. One witness, Mr. Matson, works in Kanab, Utah. Thank you for coming to testify today. We were expecting several witnesses from the minority, and I am disappointed they have chosen not to attend. I thank our witnesses and Members for your participation in the hearing today. I will turn to my colleague from Colorado for any opening comments that you may have.

Mr. ALLARD. Thank you, Mr. Chairman. I am just interested in hearing the testimony and don't have anything for the record. Thank you.

Mr. HANSEN. Thank you. We are always pleased to have with us the dynamic heads-up and forward-looking gentleman from California, probably one of the most effective Congressman I have ever served with, the Honorable Wallace Herger. Mr. Herger, we will turn it over to you for whatever pearls of wisdom you would like to give us.

STATEMENT OF HON. WALLY HERGER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Thank you, Mr. Chairman. I am pleased that I had an opportunity to treat you to that diet soda last night, but thank you very much. I do thank you for this opportunity to testify before the Subcommittee today.

Mr. Chairman and members, last October, during a Timber Salvage Task Force oversight hearing in my district of Redding in northern California, a forest planner from the Klamath National Forest informed the Task Force of a lawsuit filed by nine environmental activist groups and underwritten by the Sierra Club Legal Defense Fund.

The appeal challenged the newly completed Klamath National Forest plan, which was amended to comply with the President's Forest Plan, and sought an immediate stay on all timber sales, road building, grazing, and mining on the Klamath National Forest pending litigation. Simply put, it demanded that all multiple-use activities on the forest be shut down completely.

Ironically, the litigants had played a prominent role in developing the forest plan they were challenging. The revised plan had reduced timber harvests by three-quarters, added over 100 miles of wild and scenic river protection, established strict visual quality standards, and provided extensive environmental protections.

It would do so at a terrible economic cost to rural communities in my northern California district. Yet, this was not enough for the litigants. They did not get everything they wanted at the negotiation table, so they turned to the Courtroom.

Mr. Chairman, this example strikes at the heart of what is wrong with our current system of forest management. Litigation is replacing science-based planning as the preeminent forest management tool. The results are proving to be catastrophic, both economically and environmentally.

Each year, administrative and judicial appeals cost the Forest Service, and ultimately the U.S. taxpayer, hundreds of millions of dollars in direct agency costs and foregone revenues. The impact of

appeals on the Forest Service timber sales program in 1994 illustrates this point.

In 1994, 1.2 billion board feet of timber—over a quarter of the total volume prepared by the agency for sale—was lost or delayed due to appeals in litigation. The direct costs of these appeals to the Forest Service was nearly $54 million.

The more startling figure, however, is the value of foregone timber sale receipts associated with these appeals. According to the Forest Service data, the agency lost as much as $185 million in foregone timber sales revenue. Combined with direct expenses, these numbers brought the total cost of appeals to the timber program in 1994 to $239 million, nearly a quarter of a billion dollars. Mr. Chairman and members, this is a fiscal tragedy.

Litigation is also taking a tremendous toll on the environment. Presently, management of 24 million acres of forest covering 22 national forests in two regions in the Pacific Northwest and California falls under the jurisdiction of a single Federal District Court Judge because of lawsuits brought by the Sierra Club, National Audubon Society, and others. Of this 24 million acres, the Court has allowed active management on only 3 million acres or 12 percent of these forests.

Tragically, the remaining 88 percent of the forest that has been set aside for no management, especially in northern California, has been choked by overgrowth, killed by disease and insects, and placed in jeopardy of total destruction by catastrophic wildfire.

Conventional science advocates managing these forests to prevent unnatural mortality and reduce fire risk have been stymied by well-funded environmental litigants who openly oppose all logging on Federal lands and have been joined with their judicial counterparts.

Mr. Chairman and members, it is time to take forest management out of the hands of litigants and put it back into the hands of professional managers where it belongs. Today, you will hear a number of recommendations as to how this might be done. I urge the Subcommittee to act immediately on these suggestions so that we can quickly return to the business of managing our forests in an environmentally and fiscally responsible way.

Mr. Chairman, I ask unanimous consent to submit for the record testimony from the California Cattlemen's Association as an extension of my own remarks.

Mr. HANSEN. Without objection.

Mr. HERGER. Thank you.

[California Cattlemen's Association statement may be found at end of hearing.]

Mr. HANSEN. And thank you for your excellent remarks. Some of the things you brought up we find very disturbing. Just the idea that a major so-called moderate organization would call for such a radical thing as banning the timber. Do you have any questions for our colleague, Mr. Allard? Wally, do you want to join us up here? We would be happy to have you on this dais if you would like to join us.

Mr. HERGER. I appreciate that, Mr. Chairman. I do have a prior commitment, but I appreciate the opportunity. I may join you a little later.

Mr. HANSEN. Thanks for your excellent testimony.

Mr. HERGER. Thank you.

Mr. HANSEN. Mr. David Unger, Associate Chief of the Forest Service, who is so accustomed to coming in here, we ought to charge you office space or vice versa.

Mr. UNGER. Thank you, Mr. Chairman. I am accompanied today, with your permission, by Susan Yont-Shepherd, our Appeals Coordinator in the Washington Office, and Steve Sagovia from our land management planning staff so that they might help answer your questions.

Mr. HANSEN. We seriously appreciate you being here. And I talked to Jim Lyons yesterday, and he said you would be here and be the man that we would turn to for all of these difficult questions. How much time do you need?

Mr. UNGER. Pardon?

Mr. HANSEN. How much time do you need? 10 minutes?

Mr. UNGER. That would be fine.

Mr. HANSEN. OK. We will give you 10. We will turn it to you.

STATEMENT OF DAVID G. UNGER, ASSOCIATE CHIEF OF THE FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. UNGER. Let me summarize the main features of our statement, if the complete statement could be included in the record. I might just mention that our administrative appeal process dates back to the year 1907, before all of the present-day structures of public participation and ability of citizens to enter into litigation with the government, which did not exist at that time, were put in place. So it was the only way that our citizens affected by our actions would have an opportunity to challenge decisions at that time.

But this has grown over the years, and today the appeal process, I think, serves three basic purposes: one, to continue an opportunity for public involvement in our decisions and to challenge those where there is disagreement; secondly, to help resolve some of those disagreements and hopefully to avoid some of the litigation which is very difficult and costly, as Mr. Herger has just mentioned; and, thirdly, to provide a system for some quality control for our agency to look at our own decisions and make sure that we are doing a good job in following law and policy.

I would like to focus most of my remarks today on the project appeal process that is found in the regulations in Section 215, but spend also some time, as you indicated, on our process on forest plan appeals and also for permit appeals. Those are found at Section 217 and Section 215 and at 251 in the regulations.

We will be using '95 data—fiscal year 1995 data. Although we have the figures for fiscal year '96, they are somewhat skewed by the fact that the Recision Act eliminated administrative appeals for salvage projects, and so they are not directly comparable and would have to be adjusted. So we will concentrate on the '95 figures.

Just a couple of basic ones. About 20 percent of our decisions were appealed in 1995. We had about 1,000 actual appeals, and of that 1,000, 70 percent were project appeals; not the forest plan appeals, not the permits, but projects. And so the large share is

project appeals, and that is what I would like to spend most of our time presenting.

Just about a year ago, I testified before the Senate Subcommittee on Forests and Public Land Management on our experience after one year of the new process that had been established by the Congress for project appeals in Public Law 102–381.

Our final regulations had become effective a year before that in January of '94, and so we had a little more than a year's experience. And I reported to the Senate at that time that we felt that the process was working smoothly and with generally good results. And today I would say that after another year and a half of experience that we would say, in general, the revised appeals process established by the Congress for project appeals is working well.

The Congress had established several objectives to be met with this new process: one, to get more public involvement upfront in our decisionmaking process; secondly, to streamline the process to make it work more rapidly and more smoothly once a decision was made; to establish shorter timeframes to assure timely decisions; and to encourage informal resolution of issues through face-to-face meetings during the appeals process.

We think that it has been largely successful in meeting those objectives. Last year, we had 700 appeals, about 2,350 projects that were subject to appeal, and all but 30 of them were disposed of during the 45 day time limit. Informal resolution was attempted in a number of them and succeeded in 60 cases, about nine percent of the total, and then another 62 appeals were withdrawn by the appellants.

Of the remaining appeals for which we issued final decisions, 25 projects were withdrawn. So we feel that this indicates that there was a good deal of disposition before some of these appeals had to be decided.

The public is participating in predecisional deliberations to a greater degree, and I think the fact that we disposed of about 95 percent of the appeals in the statutory period shows the timeliness improved markedly.

I might mention a few facts about timber sales. There were 381 appeals filed on about 1,900 sales, about 20 percent—the same rate as being challenged in other arenas such as recreation and other projects. And questions had been asked about litigation. Lawsuits have been filed at a rate of about one lawsuit for every 50 appeals so we do feel that we are successful in avoiding litigation for the large majority of contested project decisions.

Now, for possible changes to the project level appeals process, there has been one rather general criticism and that is that the criterion for establishing the right to appeal is overly broad because people aren't required to express any specific concerns during the predecisional project development.

Some people had recommended that we insist on written comments to establish standing, but we found that in actuality only two percent of the appellants do not provide written comment so that particular approach would probably not improve the process significantly. But there are questions that remain about standing. We have not proposed at this time to set forth any changes in this project appeals process.

Now, moving on to the forest planning and the permit processes under Section 217 and Section 251, the appeals on forest plans have created a very, very substantial workload and have resulted in a backlog of appeals as these plans were developed and amended over the past many years.

It is not surprising that there has been this kind of response to the forest plans because they are complex and broad documents, very important to the overall management of the forest and grasslands. And at the end of last year, we had 115 of those appeals still pending, some of them that had been pending for some years.

As of June 10, we had reduced that number of pending appeals to 15. Today, I am informed by Mr. Sagovia that it is 12 through a very strong effort on the part of our planning staff to bring folks in from the field and help us in reducing that backlog. And we expect to see further reductions by year's end. So although that is very difficult and complex, we have been able to draw the backlog down to a reasonable number.

The appeals of permits and authorizations under Section 251 are different than both the project appeals and forest plan appeals because they relate to our decisions on permits and authorizations, and so the appellants to the appeal process are limited to the parties who are directly involved and affected by the decision on appeal. Everything that we see indicates that that appeals process is working in a reasonably effective and expeditious manner.

But there are some changes that we will be proposing to that process. One substantial one is in response to a new law by the Congress having to do with mediation of livestock grazing disputes on National Forest System lands. And we need to find a way to incorporate that requirement into the process, and we have some other proposals for streamlining the process that we want to bring forward in a couple of months.

I would just like to close by saying that in my testimony in the Senate last year we felt that the changes that the Congress had put forth in the project level appeals process were being realized at that time. We think that this process is working with good results, and after the 15 months that we have now, we have no reason to change our assessment of that process. Thank you.

[Statement of Mr. Unger may be found at end of hearing.]

Mr. HANSEN. Thank you very much, Mr. Unger. The gentleman from Colorado.

Mr. ALLARD. Thank you, Mr. Chairman. I have some questions that are rather specific to my State of Colorado, and if you can't answer them specifically, well, maybe you can get something in the written record back to the committee. But I am interested in your perception of the appeal process and what you actually—maybe more accurately—are experiencing is happening in Colorado.

My perception on the appeals process in Colorado is not so much that we are trying to resolve individual problems, but it is individuals or groups who are coming in to try and change mandates or Federal law that has come out of the Congress and that somehow or other they are going to try to use that appeals process to change them. Do you feel that that is happening in the State of Colorado? And if it is or if it isn't, is that happening in other States?

Mr. UNGER. I wouldn't be able to single out impressions of the situation in Colorado, Congressman, specifically, but certainly there are appellants who, in dealing with our decisions, approach them not just from the standpoint of a particular concern about that particular project, but, obviously, in some cases, they are seeking to make a larger point about a particular part of the law or the policy at issue.

It is hard to separate out motives in this kind of thing. Our feeling is that our only approach that is reasonable and professional is to respond to the facts that are alleged and deal with the issue straight on and try to resolve it in terms of that particular project that has been challenged.

Mr. ALLARD. Are those types of concerns that get raised in these appeal processes creating some divisiveness between certain interest groups in the Forest Service?

Mr. UNGER. Well, obviously, the whole process of public land management today is one where there is a good deal of controversy and debate—sometimes very spirited debate, sometimes rather polarized positions. So at any point where there is an interaction between the Forest Service and the public that we serve, those kinds of issues are going to come forth and be debated.

Of course, an appeal is a way in which people who have a strong view about something do have an opportunity to come forward as they do in the case of litigation. So there are going to be sometimes divisive statements made and proposals made.

Mr. ALLARD. We just had a major forest fire in Colorado in the Pike-San Isabel National Forest and referred to as the Buffalo Creek Fire. And there are about 10,000 acres there that were caught up in flame. It is my sense that the public would support a well planned salvage operation in a situation like that, but I am somewhat concerned about maybe a few individuals preventing that from happening. How critical are emergency salvage projects in this particular situation?

Mr. UNGER. Well, we rely on our regional forester and our forest supervisors and people on the ground to assess situations such as the one that you described; determine what kind of rehabilitation is necessary. We try to get on with that very, very quickly and then determine whether, as in the case you mentioned, salvage is a possibility or a desirable part of the process of recovery. If it is, why, a salvage proposal can be developed and sent on its way to action.

Mr. ALLARD. Let me ask you this before you move off of that. Would a salvage operation be more feasible in an area like Colorado where you have a dry climate and slow growth times, everything, or is it more feasible in areas like the Northwest where you have more rain and faster growth of trees?

Mr. UNGER. Salvage decisions and opportunities will exist throughout the country. They are not limited to just your part of the country.

Mr. ALLARD. OK. In this particular situation, we had an area with heavy public use that caught fire . There were some cabins within that area; a lot of activity. In retrospect, are there things that could have been done to have improved the forest health in that area that would have made it less likely for the fire or would have made it easier to contain the growth of that fire?

Mr. UNGER. I am not familiar with that particular situation, but we know that throughout many parts of the country there are situations regarding a fire hazard that have resulted from exclusion of fire in the past or where there has been encroachment of development on what we call the urban wildland from the interface where there are fire hazards introduced into that environment through that kind of development. And we feel that we need to address both those kinds of situations—forest health situations, as well as the social and economic implications of that kind of development.

Mr. ALLARD. I would suspect that there will be a report coming out as to what is appropriate. I would like to have included as a part of the committee record, if you would, an assessment as to whether salvage operations would play a role after the fire, and what sort of things that we could have done before the fire that would have made it easier to control or maybe improved the forest's health. I would appreciate you making that a part of the committee record.

Mr. UNGER. We will certainly work with the regional forester and provide that to you.

Mr. ALLARD. Thank you.

Mr. HANSEN. I thank the gentleman. Mr. Unger, Jack Ward Thomas recently went out West I notice, and I understand part of the reason for the trip was on salvage sales. Can you tell us anything you found out?

Mr. UNGER. He hasn't made a specific report to the staff or a written report. I know that he was pleased with much of the progress that he saw in responding to the requirements of the law and the requirements of the Administration in carrying out the law, but he has made no specific report.

Mr. HANSEN. We would appreciate it if you would mention to the chief that we would be very appreciative to know what he found out regarding that because it has been a very big issue with us and this particular committee and the Full Committee and the Congress. Over a year ago, the Administration stated with great conviction that Congress receive the Forest Service recommendation to Congress for environmental law reform by June of 1995. I know it was delivered to the Secretary, but what is holding it up?

Mr. UNGER. I can only say, Mr. Chairman, that the Secretary is continuing to review the draft that we provided to him.

Mr. HANSEN. So he has had one year and one month to review it. Is that right?

Mr. UNGER. I believe that is correct.

Mr. HANSEN. Mighty slow. I know that is not your responsibility, but we are finding that unbelievable. We have been waiting to see what the hangup would be. Now, Mr. Unger, I have a letter or a thing by Mr. Hugh Thompson, a man I have great respect for—your forester on the Dixie. And this is two purchasers of national forest timber sale.

Some years ago, Jim Matson and I, we bounced around the Dixie for a day in a couple of vans with—he was then, as I recall, with Kaibab Industries, and we had the Steve brothers with us who did Escalante Sawmills and others. I drove about the Dixie, and from that time until this time I have been on it numerous times.

This letter kind of disturbs me. It is United States Department of Agriculture, Forest Service, Dixie National Forest. And Hugh points out this. I won't read the whole thing. He says, "Since 1993, these forests have lost more than 40 million board feet of sawmill capacity due to local mill closures." I am sure he is referring to Escalante, the little sawmill there that the Steve boys had. About 268 people had jobs there, and that is all gone. Not only did they sell it, it has been destroyed. It was torn down.

Kaibab Industries have one in Fredonia and one in Panguitch. They closed Fredonia. I don't know how long it is going to be before Panguitch closes down, but I have talked to Sheroldson and others.

And certainly he is soliciting people to come in on the Dixie because they are having a real outbreak of bark beetles in old growth areas. And he is concerned that if they don't go in and cut some of that out, they are going to lose the whole darn forest according to this thing. That seems to me that would be a great concern.

It is interesting to note, he even says in this thing—on the back, he said, "Anybody within 500 miles." That is a long way to come. He says, "Anyone that is in 500 miles please bid on this." And, yet, as I hear from some of these folks, they are not inclined to bid on it in the Dixie, not that it is not good timber. What is the problem?

Mr. UNGER. I would have to look into the specifics of that, Mr. Chairman.

Mr. HANSEN. Would you feel that somewhere in there the problem could be that if someone does bid on those deals, that they immediately have a challenge, say, like the Southern Utah Wilderness Association or the Sierra Club or somebody else? Like Mr. Herger recently pointed out just before you got on the stand that the Sierra Club had stated there should be no timber cutting on the national forests in America. In your wildest imagination, do you think that could be one of the reasons?

Mr. UNGER. Well, certainly there may be those challenges. Usually though, that challenge would come before this point when the decision was made to have the sale and the appeal opportunity was provided and people would come forward if they disagreed with it at that time. Once the appeal period is over and we have made the decision to go forward and solicit bids, why I would think that there may be concerns and complaints indicated. But ordinarily that would happen during earlier in the process.

Mr. HANSEN. Do you think your forest supervisors are getting a little gun-shy, that every time that they start to do one of these things, they have to cover every little base and make sure that they have dotted every i and crossed every t, that they don't have some type of legal challenge?

Mr. UNGER. I think that the climate of public land management over the past several years, which has led to many court decisions that have laid out the requirements for documentation of effects to meet the requirements of the Endangered Species Act and other considerations, cause us to be more concerned about making sure that we do the most adequate job of analysis and documentation as we prepare our documents. Certainly, that would be true. We hope that we are not going any farther than is necessary, and we spent a lot of time trying to simplify and streamline those processes.

Mr. HANSEN. Mr. Unger, you know, in the tort reform area, we find—and I have worked on that for 30 years. I did the first no-fault in America for products liability, and in the last term, I did the one on light aircraft on the statute of repose. We have found that sitting on the special task force the Speaker has—over these years I have found that many cases in times we find totally non-meritorious claims.

Orrin Hatch, Chairman of the Judiciary Committee over in the Senate side, has worked diligently to stop the number of appeals on capital punishment. And if you watched Good Morning America this morning, it took 17 years to get this guy that they got yesterday, an admitted murderer, and he had something like 28 appeals. Twenty-eight times he got a bite of the apple. That is ridiculous, and every time he lost.

When you look at some of these things in tort liability, you find why do we give them that many appeals, and why can they strain on the net when we have a confession of some counting going into the criminal side? They are going into your side over here.

Don't you feel that there is too many nonmeritorious claims being filed and things that are only there to be nuisance type of things and mischief type of legal procedures rather than legitimate discussion and legitimate arguments regarding whether or not a timber sale should be allowed?

Mr. UNGER. I don't think that it is appropriate for me to try to characterize any appeal by any group or any citizen in advance as nonmeritorious or frivolous, but I am happy that we find that in the operation of our project appeals system that we are finding that we need to reverse only about five percent of the contested decisions that are appealed. So we think that we are doing a good job.

Mr. HANSEN. Don't you think it could be done better that we could somewhat screen out the nonmeritorious situations?

Mr. UNGER. This has been discussed over and over again, Mr. Chairman, and nobody has yet been able to construct a good definition or good criterion to use in saying that this appeal is not justifiable and this one is.

Mr. HANSEN. That is why you are going through the same frustrations a Member of Congress goes through. See, we form things by committee, and they say a committee designed a giraffe, you know, and nothing came out right. We are finding ourselves in a position where we have got—it is like mixing paint. We keep going and pretty soon you get mud. You just keep adding colors.

Well, we almost have to strike out and try something and then perfect it and refine it. So we maybe have to give you something that immediately you folks will jump on and say, "But it has got this mistake and that mistake and the other mistake, and I am really worried about that, and so what? We will try and run it." And then you guys have to kind of hunker down and say, "We will live with it."

Because what we are getting out of people—I don't know what this next panel is going to say, but in the six hearings we have had and around the United States and all the people I have talked to in my 16 years on this committee, I have come to the conclusion that people are very frustrated about this.

To me, it is just like the same thing on capital punishment, where all of these appeals we have, where these nonmeritorious claims in medicine that put us in a situation where we pay for defensive medicine on every John Henry around. And Medicare and Blue Cross and Aetna and all those providers are going broke and want more money. And you ask them why, and the very first answer they give is nonmeritorious claims.

Mr. UNGER. Well, I know that Congress did struggle with this question when they enacted the law under which our project appeals are carried out now, and a very broad definition of a person with a right to appeal was adopted. It said that it could be a person who was involved in the public comment process through submission of written or oral comments or otherwise notifying the Forest Service of their interest in the proposed action, and that they are all entitled to file an appeal. There were no more restrictions adopted because of this difficulty in making this definition.

Mr. HANSEN. My time is about up, but I just want to hit you on another one, and I apologize for you having to be in the chair. But last night we found ourselves in a situation where Mr. Kennedy of Massachusetts put on an amendment to the Interior Appropriations bill which would limit the amount of roads that could be built by the Forest Service.

And we got into the age-old ad nauseam discussion whether it is below cost timber sales and those of us who argue the other side with our facts and figures, providing all the things of who uses the roads and it went on and on and on.

You know, I have a distinct impression—maybe this is unfair, but I have a distinct impression that the Clinton Administration is trying to stop road building in the American forest.

Mr. UNGER. I don't see that reflected in the appropriations requests that the President has sent forward to the Congress, which have included funding for timber roads and for our recreation roads and our other roads.

Mr. HANSEN. I have no argument with the idea that the request was somewhat reasonable. How come the Forest Service is closing so many roads? I was amazed. What was it? 23,000 miles of roads have closed?

Mr. UNGER. We are trying in a judicious way to in some cases temporarily, in other cases permanently, close roads where they will not be needed for some period of time or will not be needed for the original purposes for which they were built, to avoid maintenance costs, to avoid impacts on other resources. But we are trying to do this carefully and with involvement of the public in making those decisions.

Mr. HANSEN. I think that is a reasonable answer and an answer I would expect from a man of your stature, who I consider a very reasonable and respectable man.

On the other side of the coin, one of the biggest problems we have as Members of Congress is we go into our local districts—and I am in Logan, Utah, for example—the Utah State University in the Walnut Room, and half the professors up there say, "When I go up toward Bear Lake, why is it the blankety-blank-blank Forest Service has closed this particular road that has been open for the last—since I was a little boy?"

And so we asked Mr. Bosworth or somebody what the story is on that, and I agree there should be some roads closed. I just distinctively have the impression, and I just don't mean to lay this on you, but I distinctly have the impression that the Clinton Administration is moving heaven and earth to close every Forest Service road they can. The gentleman from Colorado I yield to you.

Mr. ALLARD. I thank the Chairman for yielding on his time. I wanted to get back before you got on the road issue—you had said that there is about five percent of the appeals that were overturned.

Mr. UNGER. That we overturned. Yes.

Mr. ALLARD. How many total appeals do you have?

Mr. UNGER. The total number of appeals in the last fiscal year was approximately 1,000.

Mr. ALLARD. OK. So then there is 50 that get——

Mr. UNGER. We actually reversed the decision on about 25 appeals last year.

Mr. ALLARD. OK. Do you have a figure of the total cost?

Mr. UNGER. We don't have any total figures of costs because we include these kinds of costs with our planning costs. We did estimate last year that a project level appeal could cost in the neighborhood of $15,000 for processing costs.

Mr. ALLARD. So you have got thousands. You have got 1,000, and how much per appeal?

Mr. UNGER. $15,000.

Mr. ALLARD. $15,000.

Mr. UNGER. So that would be $15 million.

Mr. ALLARD. We just had a Budget Committee meeting yesterday or maybe it was the day before yesterday, and we had gotten a GAO report back that the Forest Service's bookkeeping system was in such a disarray that they couldn't reach any conclusions about what was happening with the budget.

You know, we talked about costs here. Is there something in the plan to try and have more accountability in the budget process? We are trying to look at the cost of these kinds of appeals, and the figures just aren't there. And they keep telling us, "Well, we are in the process of trying to correct it," but I have a feeling they have been saying that for the last 20 years.

Mr. UNGER. Well, we absolutely are trying to correct deficiencies in our accounting processes and install systems that will enable us to do a first-rate job. We have been working on this for the past several years, and we think we have made some progress. We have not achieved full success yet.

Mr. ALLARD. I yield back the balance of my time.

Mr. HANSEN. Thank you. I just have to state that, Mr. Unger, I know you people have wrestled with this problem on appeals and the steps as I pointed out to you. It is my opinion, we will probably come up with a screening board or something. If I were the Forest Service, I would come up with something before Congress does as we may give you something you don't think you can live with. The gentleman from Arizona, Mr. Hayworth.

Mr. HAYWORTH. I thank the Chairman, and I would just associate myself with almost every word and every interrogative that he has offered this morning. Since Utah and Arizona share a common

border, we share common problems. Mr. Unger, thank you for coming by today. I do have a couple of questions.

But combining with that, I just simply have to make the statement that I share the Chairman's suspicion. Even with all due respect to Mr. Unger and his observation of the appropriations request, there is an infamous phrase that was coined by the now junior Senator—well, I take that back—I guess he is—yes, he is a junior Senator from New York—Mr. Moynihan, on another problem, a two-word phrase of infamy, "Benign neglect."

It is my humble contention that even when going through the motions and appropriations, this Administration at best offers benign neglect to thousands upon thousands of rural Westerners who seek to make an honest living in a very perplexing historical situation which has placed untold millions of acres of land under Federal control. So I appreciate again the fact, Mr. Unger, that you are here this morning. But I share the Chairman's frustrations.

And following on his admonition in terms of a screening board, I just simply want to ask, you have been familiar with the appeals process. And, again, for the record, I just would simply ask do you consistently find the same people appealing every proposal on a given forest?

Mr. UNGER. There are some cases where that does occur.

Mr. HAYWORTH. And from your knowledge of the State of Arizona, would you say that is a fairly routine occurrence?

Mr. UNGER. Susan, would you——

Ms. SHEPHERD. Yes.

Mr. UNGER. Our staff agrees that that is the case.

Mr. HAYWORTH. The usual cast of characters, the usual suspects, my dear friend Kiernan Seckley of the Southwestern Center for Biological Diversity and others such as Dr. Robin Silver. Now, to your knowledge——

Mr. UNGER. Mr. Congressman, I, of course, would not characterize any of the appellants in any way, but I am simply saying that there are frequently the same groups or individuals who may appeal individual projects.

Mr. HAYWORTH. To your knowledge, do these groups live directly in the communities involved?

Mr. UNGER. We were asked this question in the Senate last year when we had just gotten started with the new process as to how many people are appealing projects who are from outside the area, so to speak, as compared with those who are in the local vicinity. Our figures at that time were that less than one percent of all of the appeals were filed by people outside, you know, way away.

Mr. HAYWORTH. Well, I am sure we can redefine it as the State. I mean, I am sure if you said, well, the State of Arizona, which, of course, is a large place, the sixth largest State in the Union in terms of land mass. My district, for example, is the size of the Commonwealth of Pennsylvania. And I guess if we wanted to take it on a State-by-State basis, that perhaps has an element of veracity.

But I am just saying I am just curious as to knowing those who—the self-appointed new prohibitionists whose goal is to shut down any type of economic activity in the national forests—I am just wondering how many folks live directly in the affected area

bordering the national forests in question, live in the towns that depend on interaction and economic involvement on the national forests for their livelihood, or perhaps are people who live in metropolitan areas who file these appeals on a routine basis. You may have no way to quantify that, and I understand that.

There is something else. I am sure it is not your intention, but it would seem to me the format that we have established, despite the best intent of individual efforts, good faith efforts of people in your charge and people with the U.S. Forest Service, inadvertently set up the whole nature of an adversarial relationship.

Indeed, I believe one unintended consequence of the appeals process is to set up almost a cooperative stance with those who would obstruct or appeal or stop economic interaction on the national forests, but those who would seek to use the land are viewed as adversaries. I am sure that is not the intent of the Forest Service, but do you see a reasonable construct where that often happens?

Mr. UNGER. I don't believe that we or our employees at all feel that we want to have or contribute toward an adversarial relationship; just the contrary.

Mr. HAYWORTH. Well, I am sure you don't.

Mr. UNGER. And we had proposed changes in the appeals process over the years. In fact, a few years ago, we proposed to substitute a much larger degree of upfront public involvement for the appeals process. There was a very, very substantial public reaction in the negative to that proposal, and the Congress itself decided that it wished to install one by statute.

Mr. HAYWORTH. Well, Mr. Unger, I cannot help but note what has transpired in the Sixth Congressional District of Arizona; indeed, throughout the rural West. And even as I heard the Chairman recount some of his experiences in examining some of the situations in his home State, he mentioned at least one company which no longer exists.

And, indeed, in Arizona we have seen basically the complete evisceration of any meaningful and any modest timber harvest. And I just lament the fact perhaps we should all just sit here and wring our hands and say, "Oh, what a terrible, terrible thing." Mr. Unger, I thank you for coming today. Actions speak louder than words. I yield back my time.

Mr. HANSEN. I appreciate the gentleman's comments. If I may point out to the gentleman from Arizona that many of our forest supervisors when you talk to them on a one to one gets so gun-shy on these lawsuits that are coming out on people who are challenged by the extreme environmental groups, before they even put out that sale, they will call the attorneys for those people to see if they can do it because they know it is an automatic hit.

Now, I have talked to your supervisors all over the West, and they say, "This is an automatic. We are going to get it. We are going to get clobbered with this thing so why don't we just go down and determine what is at issue, as our lawyers say. What is it we are going to fight over?"

Then at that point they go so it doesn't appear on the face when the Forest Service gives their report that there are as many problems as there are because we don't hear about those. These are the

one to one telephone calls in the office trying to work things out so they can get this stuff resolved.

That is why I think it behooves this committee to come up—and I don't mean to belabor it, and I am talking about it too much already, but I do really think it behooves this committee to come up with a straightforward, bang, bang, bang, "Here are three steps. You take it or you are out the door."

I don't mind doing tort reform. I have done tort reform all of my political career, and I am looking forward to us doing one. And, I say this very respectfully to my good friend, Mr. David Unger, if the Forest Service doesn't do it, we will.

Mr. UNGER. Well, let me respond directly, Mr. Chairman, that we would be happy to discuss with you and your staff any ideas that might help to reduce the number of appeals that would be reaching us if that can be done in a reasonable manner.

There are questions about the written versus oral comments. There are questions about whether we could require more specific allegations to be filed rather than general ones. There are questions about whether it is appropriate to deal with issues that weren't raised earlier in the early stages of the project.

Mr. HANSEN. I agree with all those statements.

Mr. UNGER. It is difficult to define those, but we would be happy to discuss them with you and see if we could come up with any proposals that make sense.

Mr. HANSEN. One place in the world I agree with Ross Perot is the devil is in the details, and working those out are difficult. But we have those same frustrations. You folks come in and say somebody involved. Who is involved? Somebody goes to a meeting and chants in the back and sings. Does that make him involved? We want to know who has standing.

I don't think some guy from Timbuktu has standing just because he puts a three-by-five card up. I don't think a lot of these things—this involvement thing has bothered me for years. So maybe we have got to get down to definitions and go from there, and I apologize to the committee for taking too much time. The gentlelady from Idaho.

Mrs. CHENOWETH. Thank you, Mr. Chairman. I apologize for arriving late. I do have a statement I would like to enter into the record.

Mr. HANSEN. Without objection.

[Statement of Mrs. Chenoweth follows:]

STATEMENT OF HON. HELEN CHENOWETH, A U.S. REPRESENTATIVE FROM IDAHO

Mr. Chairman, I want to thank you for holding this hearing on an issue that desperately needs the attention of Congress. And I want to thank the witnesses who have come today to share their experience and insight.

In the last few years we have undoubtedly seen the complete abuse of the Forest Service administrative appeals process. This has resulted in more and more of Forest Service man hours and taxpayer dollars being diverted from the on-the-ground management of the resource to mounds of pointless paperwork. These massive amounts of frivolous appeals have also had the effect of delaying timber sales sometimes for years. These delays have resulted in a dramatic loss of value especially for sales that involve diseased and dying timber. In addition, it has impeded the Forest Service's ability to consistently move timber out of the forests, making it next to impossible for companies and communities to plan from year to year on what is going to come from the Federal forests. These appeals have had the cumulative ef-

fect of not only halting the stable flow of timber out of the forests, but have also greatly contributed to the growing forest health problem.

Mr. Chairman, one benefit we have seen from the emergency salvage legislation that was passed last year has been the ability for the Forest Service to bypass their administrative appeals process to implement emergency salvage sales. Not having to spend countless hours on meaningless paperwork, the Forest Supervisors have been able to commit their people and resources to preparing sites for salvage sales, while at the same time taking on-site steps to protecting sensitive environmental areas. Moreover, communities have been able to count on a dependable flow of timber coming from the Federal forests—giving them much needed relief. We have also seen that eliminating these appeals has not resulted in the bypassing of environmental concerns because the Service has been able to directly exercise laws such as NEPA, the Multiple-Use Sustained-Yield Act, and other Federal statutes which have provisions dealing with environmental protections.

In essence, Mr. Chairman, we need to take a long look at the appeals process as it stands now. I think that we will find that in recent years that it has had nothing to do with the legitimate airing of concerns, but more to do with the blatant abuse of process for the sole purpose of creating gridlock, not workable solutions in our forests. I strongly believe that we as a Congress can take charge and change the process.

Mrs. CHENOWETH. Mr. Unger, thank you for coming today. I do want to say that I have studied and marked up your testimony, even though I didn't get to hear you deliver it, and found it interesting. I also find that you are testifying before Mr. Noel Williams, Mr. Matt Bennett, Jim Matson, Nadine Bailey, and Jack Phelps.

And, you know, I know from just serving in the work that I am doing now that I often lose touch with the folks unless I directly hear from them. I need to hear from them, not just my staff. And I would just like to ask as a personal favor, even though I know your schedule is very busy too, if you would mind waiting and listening to their testimony.

Mr. UNGER. I would be happy too.

Mrs. CHENOWETH. Thank you very much. I appreciate that. Last year, in the Idaho Legislature, our State legislature passed some legislation that authorized the State Land Board to go ahead and work with the Forest Service or work around them to manage some of the forests that were in distressed condition.

And as you are painfully aware, the maturation of rate of the trees is far exceeding our ability to harvest them, and you know the result. You and I talked about it, and I have pounded on the Forest Service about it. But it will be just a short time before that concept reaches the Congress. I think that Senator Craig is looking at something in the Senate. I will be looking at something in the House.

Would the Forest Service be willing to work with us to make sure that you would work with States on critical and distressed areas of forests where we need to? I mean, the debate is no longer distressed families and distressed communities and a lifestyle and a culture that is going out the window but for the health of the forests. Would you be willing to work with us in——

Mr. UNGER. We certainly share your concern with forest health. It has been one of the issues that we think has been growing in public understanding and support over the past few years. We have been trying in our budget requests and in our work to fund additional fuels treatment and other work, use our salvage program where it is appropriate to assist with this, and so forth. And we will always be happy to respond to requests for cooperation with Members of Congress.

Mrs. CHENOWETH. Some of us out West envision certain forests operating under the State Forest Management Practices Act with cooperation with the Forest Service regarding data, maybe personnel, and so forth. But we need to be able to get in there very quickly and straighten those areas out, or we won't have the forests in 20 years.

I thought that some of our people out in Idaho were overreaching when they said, "Helen, we don't have time. We don't have two or three years. It is not just the job, it is the health of the forests." And, indeed, I took a forest tour, and they are right. They are right.

Would the Forest Service be so visionary as to work with us in straightening up some of these areas and hand it over to the States—certain areas to our management to bring about a sustained yield process in there?

Mr. UNGER. We would have to look at whether such a process would indeed be legal and appropriate and in accordance with Administration policy. But we are always willing to discuss these kinds of issues and to discuss them with you.

Mrs. CHENOWETH. Mr. Unger, do you agree that if the Congress passed a law and the President signed it into law, that would be instructive to you?

Mr. UNGER. Of course.

Mrs. CHENOWETH. Good. We agree on that one. In northern Idaho, the last time you appeared before this committee, I mentioned that I am having the same problem that our Chairman is with lots of road closures. People are pretty hot up there. I now have a map of the roads that have just arbitrarily been closed, and many of them—most of them are 2477 roadways that existed even before the turn of the century.

Would you personally work with me on that issue in trying to resolve that?—because people can't use the forest roads. It is not just for logging, but it is berry picking and recreation and everything. Would you be willing to work with me?

Mr. UNGER. I and my staff would be happy to try to provide whatever information and facts we can to assist in understanding that issue.

Mrs. CHENOWETH. You just stated in one of your answers that less than one percent of all appeals are filed by people in the region of the activity. That means that 99 percent of the appeals are filed by people not directly impacted.

Mr. UNGER. No. You misunderstood me. The information that we had a year ago, and I have no reason to believe it is different now, was that only one percent of the appeals were filed by people outside the region. Most were filed by people living closer to the project.

Mrs. CHENOWETH. OK. Well, looking at the Forest Service appeals process, it appears to me that some progress really has been made, although the number of appeals has quadrupled.

Mr. UNGER. Well, could I interrupt, Mrs. Chenoweth? We are experiencing a decline in the number of appeals.

Mrs. CHENOWETH. Oh, are you?

Mr. UNGER. The number of appeals in 1995 was approximately 1,000, which was about half the number that had been filed in fiscal year 1994.

Mrs. CHENOWETH. Thank you. Well, the length of time for appeals has been reduced?

Mr. UNGER. Yes.

Mrs. CHENOWETH. I am very pleased about that, and I applaud your efforts in that. However, what really concerns me is the project and activity appeals process found in 36 CFR 215, which is currently implemented. And it appears that anyone can appeal for just about any reason. In my mind, that is totally wasteful. I think probably you might agree too.

But right now, any interested person can appeal, and this is what really concerns me, the definition of interested person. There is no definition. I want to ask you two questions. What is the Forest Service's definition of who is an interested person, and would the Forest Service be willing to work with this committee in bringing about a congressional definition of what an interested person is?

Mr. UNGER. As I was saying to the Chairman earlier, we would definitely be happy to work with the committee and staff on whether there can be a more adequate definition of that provided. I did read from the law itself their definition of persons who are eligible to appeal, and it is broad.

A person who is involved in the public comment process through submission of written or oral comments or by otherwise notifying the Forest Service of their interest in the proposed action. So that is a broad definition. Now, let me ask Ms. Yahn-Shepherd toward the section of the regulations where we define that further. It is roughly the same. Would you like to read that to——

Mr. HANSEN. While you are looking for it now, would the gentlelady yield?

Mrs. CHENOWETH. Yes, sir.

Mr. HANSEN. I think the answer you received regarding one percent outside of the area is technically correct. However, a lot of these people move into an area from another area, establish themselves, and they are the ones who appeal.

To give you an example, the Southern Utah Wilderness Alliance has been most of the appeals on the Dixie. They don't come from Utah. They have established themselves in that area but have recently moved into the area to do it. As I have talked to forest supervisors, that is what they are finding. So, yes, the answer is technically correct, one percent, but, no, they are not natives of the area if I may respectfully correct that.

Mrs. CHENOWETH. While the research is going on, I do want to say that I happen to have taken a great deal of interest in the life and times and writings and thoughts of Gifford Pinchot. And even from the time he was Governor of Pennsylvania—and, you know, it is interesting, but Gifford Pinchot stated that we should never let the working forests, the national forests—not the national forests, but the national forests be used for just one use.

Mr. UNGER. Be used what?

Mrs. CHENOWETH. Just for a single use because it would amount to no use. And, you know, as we look at the vision of Gifford Pin-

chot and Teddy Roosevelt, we have moved far from that, and I just hope that we can move ahead into the future and move back to the wisdom that they had nearly 100 years ago.

Mr. UNGER. We certainly support and continue to support the concept of multiple use. I found the answer to your question. The definition in our appeal regulation that deals with this section of the law regarding who may file an appeal says that it may be filed by a person or an organization that meets any of these criteria: submitted written comment in response to the draft environmental impact statement or provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period. So it is a broad definition similar to the definition in the law.

Mrs. CHENOWETH. I think there is a lot of work we can do there.

Mr. HANSEN. Thank you.

Mrs. CHENOWETH. Thank you, Mr. Chairman, for being so generous with my time.

Mr. HANSEN. Thank you. Dawn, we are going to go to lights because we have got one of our colleagues here, and when we will finish this panel, we are going to have to go a little faster. So the gentleman from California.

Mr. POMBO. I have nothing, Mr. Chairman.

Mr. HANSEN. The gentlelady from Wyoming, Mrs. Cubin.

Mrs. CUBIN. I have nothing at this time, Mr. Chairman.

Mr. HANSEN. The gentleman from Oregon.

Mr. COOLEY. I am sorry, Mr. Unger. I was late getting in here, but I got tied up in another meeting. I need to ask you a couple of things. In this appeal process, given the fact that anyone can go to court with a complaint, can you tell me why the appeal process is actually necessary under your—because the USDA is the only agency that has this appeal process, and I don't quite understand why?

Mr. UNGER. Well, there are some other agencies with appeal processes, but as I was saying earlier, this actually dates back to nearly the beginning of the century when there were no real opportunities for citizens to litigate the government under the circumstances of the time, and there were no public involvement or public participation processes of the kind that have been established in the last 10 or 20 years.

So it was the only way that a person who is dissatisfied with a Forest Service decision could really seek some higher level of review of a decision, and that was the reason that it was established in the first place.

This has continued through the years, and even though these additional opportunities have been provided, why, the appeal process has remained and has been considered important by the public and the interest groups that represent the various interests across the spectrum.

We did propose, as I mentioned a minute ago, a couple of years ago that we abolish the appeals process for project level of decisions and replace it with a very much expanded process of upfront involvement to try to get people discussing these issues and engaged upfront.

There was a very strong negative public reaction in the comments that came in to that proposal. And instead of that proposal going forward, the Congress decided to institutionalize a process of its own.

Mr. COOLEY. Well, in this process right now, and I am not a big fan of litigation, but certainly a big fan of people having an opportunity to challenge an agency on their decision processes, but don't we now fund Legal Services in order to handle problems that people have with the government? Isn't that what Legal Services is supposed to do?

Mr. UNGER. I am not familiar with what you are speaking of, Congressman.

Mr. COOLEY. Well, we have Legal Services in every area, that we fund with literally hundreds of millions of dollars, that handle inquiries by the public concerning the government. It seems to me that we have two systems here, but one system is not communicating with the other. Maybe we ought to deal with one or the other. But why do we have two systems that handle complaints by the public concerning the agencies? That is what I am concerned about.

Mr. UNGER. Well, I am not familiar with the funding of those services, but I will say that one of the purposes that the appeals process does fulfill is that it does provide for the resolution of a great many complaints at a much lower level in the organization and at lower costs than if those issues went to litigation. There is some reason to believe that if we did not have this appeals process, it could indeed increase the possibility of litigation.

Mr. COOLEY. Well, right or wrong, let us say that in my State and in my district many of the people involved in the appeal process feel that the decisions were already predetermined before they went into the appeal process, and that if they would have had financial funds available or had an outside prosecutor or detective such as people have under Legal Services that they might have a little bit more input into the process.

Mr. UNGER. Having been an appeal-deciding officer in a previous position in the Forest Service for several years, I can only speak to my experience which is that we did not enter the appeal process with a predetermined idea. We looked very hard and very carefully at the arguments for and against the individual allegations.

Mr. COOLEY. Do you have statistics showing where people have appealed and how many they have won and lost?

Mr. UNGER. Probably the closest we can come to estimating that would be somewhere about five to seven percent of the decisions that are appealed are reversed by our appeal-deciding officers or remanded for revision.

Mr. COOLEY. But you don't have any statistics that show exactly how many appeals——

Mr. UNGER. Yes. We would——

Mr. COOLEY. [continuing]—there are and how many of them have there been——

Mr. UNGER. Yes. We would be able to provide that for the record.

Mr. COOLEY. OK. I would like to see that—how many appeals have been applied for or have been requested and how many of those appeals have been acceptable to the people making the appeals. I think it would be very interesting because we in the field,

of course, hear all of the most extreme cases. And it appears basically that, or at least people feel that, the appeal process really doesn't benefit them.

Mrs. CUBIN. [presiding] Thank you very much, Mr. Unger. I don't think that there is anyone else that wanted to ask questions. We do thank you for being here and answering our questions and do appreciate the progress that has been made in shortening the time that the appeals process has taken.

Mr. UNGER. Thank you.

Mrs. CUBIN. So hopefully you will continue in that direction. Thank you very much. Next, I think we have Representative Charles Taylor of North Carolina to give a statement for us. Welcome, Representative Taylor.

STATEMENT OF HON. CHARLES TAYLOR, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. TAYLOR. Madam Chairman, thank you for the privilege of being able to come before this committee. There are so many members on the committee that I admire for the work that you do. I would like to start by saying as the only registered forester in Congress, I am sometimes amazed at some of the information that is put on the floor as being legitimate silviculture.

One of the first problems I think that we need in working with the public is that forestry is a science. People go to our best universities to get forestry degrees and graduate degrees. Just like medicine or law or other professions, it takes a great deal of training.

If you were to have a heart attack at the moment and a surgeon were called, you would not at all let me perform an operation on you, even though I have a doctorate. It is not a medical doctorate. It is a J.D., and you would want the best cardiologist possible.

And yet when we are talking about forest health and the environment and very serious matters of silviculture, anyone that has a bumper sticker that says, "Trees have feelings," seems to have the same authority as people who have spent a lifetime of work from our best universities and with forest experimentation. And that is one of the problems we have in the concept of forestry itself. It is a profession that takes a great deal of study and time.

When we talk about appeals—and we all want the public's involvement in government. We want it at every level. I have more town meetings in my district probably than most. We speak over 1,000 times in the district in a two-year period.

But if you think of building a highway, when you determine, you get public input as to whether or not this highway should be built, where it should be built, where the money should be spent, where the highway is going. You have numerous public hearings all along the way to determine the construction of the highway.

But once you have made the decision to build the highway, you don't have the public out figuring the weights on the bridge. You get a professional engineer who comes out and says this is how the construction ought to take place of this bridge or this curve or these matters. The general public is presumed that it has had its opportunity to determine the direction of the policy, and then you hire professionals to carry it out.

We need to return somewhat to this in the forest management itself. We need to determine the policies with a great deal of public input, where we are going in this country as far as our forest policy. And once we have made that determination and assigned our professionals the direction, then we should give them as much latitude as possible to carry out our direction.

That doesn't mean that you shouldn't have oversight, such as this committee. It doesn't mean that any organization, whether it is the U.S. Forest Service or any other group, is going to be perfect. There is room for improvement always. But the endless frivolous appeals that come in cost the public a great deal of money, hurts the program dramatically, and generally is put there for posturing.

Many of the Washington insider organizations, the so-called environmental organizations, raise close to $600 million scaring people mostly with false rhetoric. And they use this money often to posture in the appeals process, and in many cases it works to the public's detriment, far more than good.

For instance, we have today a group, Earth First, that has appealed numerous times and in many different ways on national forest matters. Yesterday, they were in my office because they did not want to obey the permit process. That is, a large group is coming to the district or wants to come to the district, and the Forest Service has a policy of 75 people or more gathering, they have to get a permit.

Now, this is based on the fact that when you put a large group in the forest—we had over 12,000 one year in our forest, the Rainbow Coalition—that health questions come up and other questions come up. So on the one hand, here is a group that will appeal almost anything with postcards or anyway they can. On the other hand, they don't want to obey the forest regulations, and they don't want to take part in the regular process.

The appeals process that we have had in the past allows those people who are not involved, have not been involved in the original planning, have not been involved in the numerous public hearings and informations to be gathered, to come in and appeal when they have had absolutely no consciousness of what has been going on and many hours that the public has put in many cases working out problems with the Forest Service. They can come in and start the process all over again from outside.

Many of the environmental organizations also are not appealing in good faith. They are, in fact, wanting no harvest in our national forest. They want no cutting at all. And the appeals process is only one weapon they use to see that there is no harvest.

Now, it would be a lot better to have honesty and to go ahead and leave the appeals process alone and just come out with a pool fight and say, "We are going to debate and determine whether or not we will have harvest in our national forests." They have not. Then we could address that on a national basis.

The Sierra Club just voted two to one to have no harvest in our national forest. They will continue, I am sure, to appeal. Even though their objective is no harvest, they will be appealing a process that the public agrees with.

Environmental groups that call for little or no harvest in the national forests have not given us an alternative. This table is made

out of wood. It will be made out of wood, plastic, or metal. If we make it out of the renewable resource of wood that we are growing far more than we are cutting—in fact, we are letting more rot in the forest than we are harvesting today—it is a renewable resource that can continue to provide this service for generations to come in the things we need. We are going to need more tables, more chairs, more things of which wood is made.

Harvesting forest is important, and our national forests were created as a fiber reserve so that the Nation would have a supply of fiber in the future. Our national parks were created to protect things like Old Faithful and other areas, and we put that under Interior.

We put the national forests under Agriculture because we had made such dramatic growth in growing crops such as corn and wheat. We knew that that kind of science applied to timber would enable us to continue to furnish the Nation with a wood supply well into many centuries to come.

If we stop cutting wood in the forest—and let me tell you in the Appalachian Range, I would say over half of the hardwoods making this furniture comes from the national forests, and more of it will have to come from there in the future—then we will not have this furniture. We will have to move to plastic or metals.

If we go to plastic, we must import the oil. We fight to get it out of the Middle East. We spill it two or three times on the way, and the process is more toxic consequently from an environmental standpoint. Wood is the way a true environmentalist should be going, trying to get a renewable resource that is very low in energy. Metal takes eight times the energy to make this table than you do with wood. The recycling is much easier here than it is with thin metals or thin plastics.

So if you were a real environmentalist, you ought to be looking toward promoting wood to take the place of finite resources such as metal or plastic rather than destroying renewable resources and having to rely more on finite processes.

The Forest Service appeal process—we found during the salvage legislation in that bill that we passed recently and will be challenged again, the salvage process gave us some insight of progress that can be made without the numerous appeals and at the same time protecting the environment.

In salvage, the Secretary must certify that the environmental laws that we have today are being met, and then if there is an appeal, it goes directly to the District Court, and they have 45 days to make that decision.

And if they decide that the site to be cut is violating an environmental policy, then it will not be cut. If they decide the other way, then it will be cut, and you get a speedy cutting which is absolutely essential in salvage. Otherwise, you lose the value of the timber.

But what we have found is there has been no appeal at all in the salvage area; not to 318 we are talking about, we are talking about salvage where there has been any indication that environmental law is being bypassed, that the Forest Service is abusing its ability for rapid appeal. And, in fact, there have been very few appeals at all because the Forest Service has used prudent judgment in carrying out salvage legislation.

So I think that we find that we have an agency we should give an authority to move. We should have public input as much as possible in putting together forestry plans. But when we have made our decision the direction we are going, we should not have groups for their own self-interest able to micromanage those items, item by item, and costs the public the great amount of money that it is doing.

I would recommend, Madam Chairman, possibly four things; that we should limit appeals to those who have participated in the decisionmaking process; that we limit appeals to forest-specific issues for bid appeals filed to address national issues or which apply more to laws such as the NFMA than the forest plans or projects that are before us at the specific time; end frivolous appeals and litigation by requiring the appellants to post bond and have something similar to Rule 11 in the Federal Court where you pay if you lose.

If you bring a frivolous action and you lose, then you are responsible for paying the cost; and require the Forest Service to make a full and detailed cost accounting of the taxpayers' dollars spent on appeals and litigation and disclose this information to Congress and the public on an annual basis. If the people see what these frivolous appeals are costing us in tax dollars, then I think the public will become as outraged as many of us who are familiar with this process. Thank you for the opportunity to be with you.

Mrs. CUBIN. Thank you very much, and please pardon all the shuffling of chairs up here. Do you have time just for a question or two?

Mr. TAYLOR. Sure.

Mrs. CUBIN. This really isn't related to the appeals process, but I am from a State, as you know, where timbering is a very important industry. And in our State, I was told they are going to be doing some controlled burning.

And I don't know any—it is like you said, forestry is a science in itself, and we all have ideas about how the forest should look and how it should be maintained. But I don't know about that. Tell me, what are the advantages of a controlled burn over harvesting or a clear-cut or anything? Why would that be a good management——

Mr. TAYLOR. Burning may be used for a variety of purposes, and I will speculate as to why they are doing it now in the West. For the 10,000 years before Europeans settled this continent, Indians managed the forest, and they did it with burning.

They did it with a variety of techniques that they saw was beneficial to both provide any fiber that they needed, and theirs was minimal, but also to promote game and other living resources they needed from the forest. To say that there was no management of the forest has overlooked what the Native Americans did in this country for 10,000 years. Burning was one of the processes used.

What has created the gigantic fires of recent years, and we have lost—we send firefighters from the East to the Western States, and I, frankly, have lost in my home district one fighter the year before last, and, of course, we lost close to 50, I think, in total lives fighting the fires.

As the fuel builds up, as there is no salvage in a forest of timber that dies—windblown, diseased, whatever—it breaks down and

new growth comes up—the fuel base continues to build. At some point, it gets to a level that when you get a fire going, there is so much fuel that the temperatures reach a level where you totally wipe out all life in the soil.

You create a situation where there is such an inferno that there is no possibility of anything living in that kind of fire. It destroys all natural growth, and the fires become so gigantic that they go over firefighters, and we lose lives. It is a very difficult fire to fight.

The object then is to remove that fuel base. Now, that was one of the purposes of the salvage legislation—was to go in and try to collect a lot of the salvage timber, bringing it out at a profit to the taxpayer before it created that fire problem. Another way would be as it is building up to have a low burn that would keep the base clear before it builds to such a level that you could not have a burn without destroying the whole forest.

There are other silviculture reasons for burning. Sometimes you are destroying competitive vegetation. Sometimes if you are getting ready to plant, it is a way to prepare the ground before you plant. But I would suspect what the reason that the controlled burning is going on now is for fire protection.

Mrs. CUBIN. I am familiar with the huge infernos that you are talking about, having lived through the Yellowstone Fires, and that was certainly a tragedy in my mind. But the reason I asked the question in the first place is because the forest managers have to weigh how much can be harvested against the health of the forest. And to me it is like grazing. You have to graze the land in order to keep the rangeland healthy, and you need to allow timbering in the forest in order to keep it at its maximum health.

ISTEA—in my State, I see private land with forests that are not in danger of fire, that are managed well and maintained well. Then there is a line and then here is some Forest Service forest where it looks like a fire has just, you know—the forest is ripe for a fire. And I just wonder if it is a political thing that we can't harvest or a management thing that we can't harvest. i don't know.

Mr. TAYLOR. Well, it is a political decision. In 1799, when George Washington was dying of pneumonia, we bled him. It did not help his pneumonia at all I am sure, but it was the state of our medical knowledge. Today, we can transplant hearts and vital body parts that it is miraculous we have made that kind of advancement in less than 200 years.

We have made similar advancements in silviculture from the days when it was sort of a slash and cut and burn, starting at the turn of the century with the creation of the national forests with people's understanding of skilled silviculture. The first school of forestry is in my district.

We have learned how to do an amazing amount of things in silviculture. We have watched that kind of educational increase. When the public looks, it is easy to demagogue forest practices. Whenever you have a cutting in a forest, it looks bad for the first couple of years. And so you drive by—even if it is a thinning—it doesn't have to be a clear-cutting, it can be a thinning—it doesn't look good. And so it is easy for me to say that is evil, that is bad. And yet it is absolutely essential for forest health.

People don't realize, and just as in medicine, many of the reasons forest practices are carried out. For instance, clear-cutting, which everyone or the environmental organizations use as a tool to beat the whole forestry problem, is a tool that is necessary; for instance, if you want to change a species composition, if you want to promote a certain type of wildlife. Some wildlife uses highbrows, some uses lowbrows. It depends on the species and what you are trying to do.

Oaks are vital in our area. They are vital because it is a beautiful timber, first of all. It is a wood that people love, and it is in high demand. And, secondly, it is important because of the mast, m-a-s-t, which is the nuts, the fruit, that so many of our wildlife species need to exist.

Now, if you talk about old growth, that we can't cut any old growth, and you talk about your clear-cut, look what is happening with oak decline in the Appalachian areas. If you take a Spanish oak, for instance, along a ridge here, which is there, it is going to grow, its life span is going to be about 80 years. Now, that is not very old for old growth.

If you let that tree die and you have an acorn, you are relying on acorn plants that fall from it, you will lose the species altogether because red maple and locust will grow so much faster, it will kill out the oak species. So over a period of time, you will lose the oak in that whole range if you aren't harvesting.

However, if you go in and harvest, you can get a sprout back from the roots while that tree is still alive that will outrace the red maple or locust, and you will keep an oak supply. So the proper management tool would be to go in and cut it. It might be clear-cutting, it might be selective cutting, but to harvest that timber so that you are going to have vigorous, young, more disease resistant oak seedlings coming along for future generations.

Now, this doesn't happen in a day or two so it is hard to watch if you are just someone walking in the forest on the weekend and coming back out. But it is essential for forest health if you maintain that supply. It is going to become more critical because in this country before we first came here, there were a very scattered number of people.

We are farming more land. We needed more land for people to live. And so the forests that we have, especially our Federal and State forests, must be managed. You cannot just let it stay because we have so little of it in a sense. There is a third of the United States that is public land, but not all of that is forest.

But we must manage as a growing population comes along and both for forest health and to provide this renewable resource that fills so many of our needs—from chemical needs, every facet. If you stand around your home and touch the things that wood have provided, you would be amazed. And we are going to have to find replacements for that, and most of that will come from finite resources if we totally destroy our ability to use the renewable resource of wood.

If you talk to any school, our best universities go there, go to experimental stations. The Forest Service has numbers of experimental stations that have been in existence for almost 100 years. It is impossible to come away without seeing the need for management in our forests.

You can disagree and you can work on fine points as to what type of road we might have or where we are going to position it or what type of logging we might do. But the overall need for management is there. To come out as the Sierra Club has done against all harvest in our national forests is the most unenvironmental practice, I think, we could do in the whole country.

Mrs. CUBIN. Thank you very much. Did you have anything, Wes?

Mr. COOLEY. Yes. Mr. Taylor, you and I were, you know, really involved in Public Law 104–19. I look at information provided here. I see the appeal process that we go through here. I know in the State of Oregon we have got literally hundreds of appeals, and yet they are not listed.

But that is not the process. The process is a working base and your involvement as a silviculturist is a working base. It appears that even though we passed a public law and was signed by the President, we are not really totally getting any real benefit. There is some benefit, but basically they are not going to meet their goals because of the way they account.

As you know, the accounting system in Congress is the old accounting system, not like anything anywhere else, and this appeal process that we talk about under Public Law 104–19 is not working. Have you, as a sponsor and the carrier of that bill, had many discussions with people in the field about how the law is being implemented as far as the appeal process is concerned?

Mr. TAYLOR. I have. I know you carried out hearings, and I want to commend you for your work because you were a principal author of that legislation and in many other areas in silviculture. The law is being applied in a sketchy fashion, so to speak, and, of course, it has been in existence a little over a year.

In the Southeast, we are finding it is working reasonably well. In the Pisgah, Nantahala, Chattahoochee, those forests are using it to clean up salvage problems all the way from disease to wind damage and other areas. We have had sales of several million board feet in each of those forests that I am familiar with that have been put together.

In some parts of the country, it is not being used very well. It depends a lot, I think, on the Forest Service. The Forest Service is downsizing. Many of the people who were involved in silviculture have been somewhat dismayed and have chosen to retire.

So unless a district has foresters there who are interested in managing the forest and harvesting, then you are not going to have the drive in that supervisor's area to implement salvage as much as you are if you have someone who understands the need for harvest. And that is probably the difference that I see around the nation.

It depends a lot on that national supervisor's staff and composition that he or she has, and that is why I think it has been sketchy. I don't think they will meet the goals we set out, but they are moving ahead. And the salvage legislation has given some hope to those people who practice modern silviculture in the forest that we are returning some sanity back to the management of our forests. And we are not moving in the direction as we were that the Sierra Club advocates.

Most of you know that we are down to the point now that we only can consider for harvest around 20 to 25 percent of the national forestland. In other words, 75 to 80 percent of the national forest has been put off limits now to any harvest consideration. That doesn't mean we are going to harvest that 20 percent because we have got opposition against doing that. That just means we are down to—that is all we are in the position to consider now.

Mr. COOLEY. Since you have been in Congress quite a few years and are very familiar with this area, the statement you made sort of begs the next question. Are there no standards by the Forest Service as to the personnel that they are required to have in order to run a good shop?

I mean, what I am hearing is that in some districts, depending on the forester, he can decide the makeup of the forester's team. And so if you are getting rid of our silviculturists and keeping other people, therefore, making the inability for them to put out sales. Is that what I sort of understood from your statement?

Mr. TAYLOR. Well, the blame should not be put on a district forester or the forest supervisor or even the regional forester or even the chief forester all the time. The blame stops right here around this circle. We establish the policy. And for 20 years in this country, we took the general direction of the Sierra Club. We want no harvest in our forests.

Now, we would couch it by saying, "Oh, I want to see the forest harvested, but I don't want to see it this way," and there was always a but there so when you finished at the end, it is like the old fellow that you ask a question, "Where are you going?" and he said, "You can't get there from here."

Well, you couldn't get there from here. You couldn't work out any harvest. There were so many roadblocks, and we kept putting them in. We layered regulations. We layered laws that in many times were conflicting. And then we handed all that to a Forest Service to try to carry it out.

At the same time, as the Administrations changed, the Secretary of Agriculture and, more importantly, the Assistant Secretary over Forest Service Management changed, and they then set the—or put pressure down from the chief on for forest policy to go a certain way. And it has taken on more of a political correctness than it has forest management. We have said to them, "We want to be politically correct."

We have this enormous amount of campaign money coming in to the various environmental organizations in Washington, and they are scaring people with a lot of false information. And they are taking positions as the Sierra Club did, which takes in $54 million a year itself, thus saying, "We want no harvest in the forests."

And they are putting pressure on Members. Therefore, the word comes down—even if you are a silviculturist, the word comes down that with this kind of conflict that we can't move any further ahead in modern silviculture practices. So the blame is here more than it is in the Forest Service level itself.

Mr. COOLEY. Thank you, Mr. Taylor. My time is up, Madam Chairman.

Mrs. CUBIN. Mr. Vento, did you have any——

Mr. VENTO. Madam Chairwoman, I don't want to get into the blame game today. I think that a little bit of that goes a long way. I would just observe that in the '80's—most of the 80's—the Congress actually mandated cuts over and above what were sustainable in many forests. I mean, the record is pretty clear in terms of the sales being made and the cuts occurring.

It, obviously, resulted in a superimposing on policy in the appeal process—those types of decisions, which, obviously, had a backlash in terms of what occurred in the appeal process after the stress was not able to cope. Obviously, it was when you try to superimpose a policy that is inappropriate, yet it, obviously, ends up using or misusing some of the appeal process that was in place.

There are a lot of problems that occur. I think that, you know, blaming one organization or another or what I think the fact is I don't think is going to do it. I think we ought to be guided by the facts, and hopefully we will get some of that information in the panels that we have that are here to talk about that, the professionals in the Forest Service. And Mr. Taylor and I continue our debate to agree to disagree on what the analysis and what the cause of this is.

I think there are plenty of problems to go around in terms of dealing with these issues. I don't think the answer is the salvage program. I think, candidly, that many of the probable areas have been harvested, and very often the issue of salvage goes to what is economically feasible, which is what we were basically arguing about last night.

If we put enough dollars to anything, you can make it work. The question is trying to get it to work on the basis of the dollars that are available, not the taxpayer subsidies of the activities. That is one of the major concerns. It has nothing to do with, I suppose, the environment.

If we are concerned about the environment, we know that we have got a lot of areas that have not received the type of attention they should or received the regular attention they should in terms of thinning and reforestation and watershed restoration. All of that is going to cost money. We are going to have to invest money in many of these forests in order to accomplish the goal.

I think the concern that I have is not so much about the investment of dollars but the fact that we continue to aggravate the problem by subsidizing types of sales that don't really achieve or fit within that particular policy.

Mr. TAYLOR. Madam Chairman, would the gentleman yield?

Mr. VENTO. That is the reason, obviously, that we had the closed votes and we contested issues on the Floor yesterday. I would be happy to give my colleague and my friend——

Mr. TAYLOR. Thank you. We disagree over a lot of things that we are talking about here, and you mentioned that we had cut over the years, and we probably disagree on that. We have cut the harvested forest down now to approximately 20 to 25 percent of national forest is about all that can be considered for harvest. Do you think the overcutting is so great across the Nation that we should have 75 to 80 percent of our national forests off limits to harvesting?

Mr. VENTO. I think that, you know, those are decisions with regards to the national forest acreage my colleague knows, but they aren't necessarily—some of the more productive areas and appropriate areas have been—remain to be managed for harvest and for other purposes. It fills the multipurpose goal, as you know.

And, in terms of what is wilderness, what is being studied, what is—I don't know how you include—what numbers you include or what areas are excluded, but they are, obviously, changing science in terms of how we go about harvesting and where we have restrictions and limitations on it. But I can only agree we ought to have a program.

Part of the problem, I think, that you have, and you can see this in some of the areas that are marginal simply don't bring about the sale prices—bid prices to provide for the costs of construction of roads, remediation of watershed and so forth.

They simply don't—and so to disturb those areas, we actually—we have done that repeatedly in the past where we are sort of left with a hangover from that. And if there is any blame to be made, it, obviously, is the fact that we didn't have enough knowledge I guess at that time.

I would suggest—I think there was some information that should have been pretty evident, but it is amazing to me how quickly the information has evolved as to what we need to do. But we have got a big backlog of areas that need to be dealt with. We have got a lot of problems.

And, part of the appeal process, and I think even the Endangered Species Act, have been sort of the—we put too much weight on those because we haven't dealt with this in a different context. And part of that, I think, has to do with legislative objectives except that you—well, you say that they are too sensitive to the environment. They are run by various interest groups.

I look at it from a different standpoint in terms of what was mandated and what actually happened. And while there are a lot of laws out there and good intentions, very often they weren't followed. And when they were applied, it was actually at a crisis type of intervention, and that doesn't work very well for—it doesn't work very well for the Forest Service.

What I think the Forest Service needs and what the industry and the people need is some certainty and predictability, or we are not going to get that on the basis of the sort of winner-take-all type of policies that have been the hallmark of what is going on here. My time has expired, but I would be happy to——

Mrs. CUBIN. Would you like to respond?

Mr. TAYLOR. Well, we could debate. I am here for questions after my statement, and the gentleman didn't give me too many. But he and I have debated this question for six years or more now. I would love to bring him in out of the suburbs into the real world of the forests, and I would be glad to host him if he would come. And I can do that without ethics violation because one member to the other and have you come down to some of the experimental stations and look at silviculture.

Mr. VENTO. Yes. I appreciate the gentleman's willingness. I have gone hand in hand with the Forest Service personnel, and I would

be happy to accompany the gentleman if my schedule permits. I like to go out as often as I can.

Mr. TAYLOR. Good.

Mr. VENTO. Unfortunately, my constituents look at it as a vacation, not as work. So I have got a lot of places to go, as the gentleman would be I think impressed by the schedule of activities of where I have gone and what I have done in terms of not just in your area but around the globe.

Mr. TAYLOR. I would love to have the gentleman as a guest and make a bipartisan release that this is a working trip and not a vacation.

Mr. VENTO. OK. We will try and do that sometime.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. VENTO. We will try to put something together.

Mr. HANSEN. [presiding] Let me just say to our friend from North Carolina that in my own opinion, Mr. Vento, he did a super job yesterday and did a great job in identifying and pointing out the problems as myself and Mr. Taylor see them, maybe not exactly like our friend from Minnesota sees them. I understand there are two others that would like to question Mr. Taylor. Mrs. Chenoweth, do you have something for our colleague from North Carolina?

Mrs. CHENOWETH. Mr. Chairman, I have no questions. I just very much appreciate the Congressman for being here. He has a great understanding of this issue, great experience, and I have learned a lot from him.

Mr. HANSEN. I associate myself with your remarks. I think his understanding probably exceeds 99 percent of our colleagues. The gentleman from California.

Mr. POMBO. Thank you, Mr. Chairman. Mr. Taylor, in your opening statement you made a comment about how when we build a road or a bridge that you call in the engineers, and they design the bridge. And there may be a public debate over whether or not it is good public policy to build the bridge, but you don't have lawsuits and uneducated people or untrained people fighting over how the bridge should be designed, that that is a matter of science, that that is a matter of proper structural engineering.

And yet when we get into decisions such as the Forest Service and timber sales, it seems to me that many times we abandon what science is telling us is proper. And I think that you alluded to that in your opening statement. And I would like you to expand on that just briefly, if you wouldn't mind.

Mr. TAYLOR. Well, as the gentleman has paraphrased somewhat what I said, when we build a road, we have public hearings, and we welcome public input as to whether or not we will build the road, whether or not it is cost-effective, the various questions involved.

Once we have made the decision to build it, then, as you pointed out, we don't have members who are not engineers, know nothing about engineering standing there with the engineers. He figures the weights on the bridge and constructs the bridge to micromanaging that bridge construction because we know that we have science in this area. We turn that over to trained people.

And as we pointed out, forestry, silviculture is a science. It is a science that is taught by our best universities—have schools of for-

estry. There are four years in the undergraduate degree, and then most foresters have graduate degrees, master's, or Ph.D.'s. There are substantial silvicultural research going on.

In my district, the Bent Creek Station—southeastern station—has been there since the 1920's so we are approaching 80 or more years that they have had to see and experiment with forestry practices, working with the extension service, North Carolina State University, Clemson, and other universities around the Southeast.

Anytime that we are doing something, we should use the best science and the best knowledge we have. It doesn't mean that we won't improve that in years to come, but it is the best we have.

What the appeals process has done, more than any other area, certainly in highways or other areas, it allows someone who will admittedly tell you, and if they don't tell you outright after you have talked with them a few minutes, you are certain that they know nothing about the subject at all, to file an appeal, stop a process, to challenge that professional in the middle of his work and put an enormous cost on the public with what amounts to frivolous appeals.

Now, this is not saying the public should not be involved in formation of public policy. When we put together the forest plan, we have enormous amount of public involvements, hearings and rehearings and chances to come in and comment, and all of the things where the public can be involved.

But if we allow the public after we assign the policy is going to be carried out this way to come in and micromanage the professional decisions that have to be made to carry out that policy, it is the same thing as saying the public ought to be figuring the engineering weights on the bridge.

If we want to change policy, we have the public input at the beginning. When we put together the forest plans, we have the opportunity to do it through our elected representatives, both State and Federal, depending on the level of forestry that is involved, and it is an ample time to do it. We do not need numerous frivolous appeals, and that is why I made the recommendations I made.

The Federal Court system, having nothing to do with silviculture in this area, has come up with rules where they make frivolous appeal expensive. It is Rule 11. In the Federal Court system, for instance, it requires you to pay—if you bring a frivolous appeal, then Rule 11 may be applied, and you have to pay the cost of both sides in that appeal. And that has made a lot of difference in the court system about frivolous civil appeals being brought.

Mr. POMBO. And I think that one thing that Mr. Vento said is probably accurate, and that is that you can't force down an agenda that doesn't fit the science because there is a reaction to that.

And I think that in our forests today, I know especially in the West, we are seeing the reaction to an agenda which was forced down from Congress that may have locked up an excessive amount of public lands to multiuse and disallowed them from being used for timber cutting.

And with the forest fires that we are seeing in the West right now, most foresters in the West will tell you that we have this very severe problem, that we do need to take care of that. The science that was ignored when these decisions were being made may have

been a reaction to something that happened in the past, but they don't really fit with what is actually happening on the ground.

Mr. TAYLOR. We encourage town meetings. When I get groups to come in, I encourage them to come to one of our—to go to the Forest Service, go to the Bent Creek Experimental Stations, go out and learn, and then let us talk about it. But we must understand that these organizations that are taking in hundreds of millions of dollars are taking it in by scaring people. You don't get grandma to send in $25 unless you tell her the last tree is being felled.

Now, in fact, that is totally false. It has no bearing. It brings you in the most money, and, therefore, that is feeding a lot of the misinformation that comes into Washington. And it is bad environmental law and bad silviculture, and we will pay for it in future generations for mismanaging our resources.

Mr. POMBO. Thank you very much for coming down.

Mr. HANSEN. Thank you, our colleague from North Carolina. We appreciate your excellent work you have done on this issue and appreciate your testimony today, and thanks so much for appearing before the committee.

Mr. TAYLOR. Thank you, Mr. Chairman. I appreciate it.

Mr. HANSEN. Our last panel is Mr. Noel Williams, Lincoln County Commissioner; Matt Bennett, Vice President of Sales, Emmet Vaughn Lumber Company; Jim Matson, Vermillion Sales; Nadine Bailey, Executive Assistant, Timber Producers Association of Michigan and Wisconsin; and Jack Phelps, Executive Director, Alaska Forest Association. I appreciate your being with us at this time.

You notice in front of you there are three lights. Just like you are driving your car, there is a traffic light there. There is a red, yellow, and green or the other way around. The way you are going to see it is green, yellow, and red. So we try to limit you to five minutes.

I know you have come a long way, and we appreciate you coming and sitting through these. And your testimony is very important to us, and, believe me, it will be pored over by many of us and the staff besides that.

So we will just start on this side with Mr. Williams and move across. When the green light goes on, start; yellow light, wind down; red light, we appreciate it if you would stop. Mr. Williams, the time is yours, and thank you for being here.

STATEMENT OF NOEL WILLIAMS, LINCOLN COUNTY COMMISSIONER

Mr. WILLIAMS. My name is Noel Williams, and I certainly would like to thank you all for having me here today. I have been for the last dozen years the County Commissioner in Lincoln County, Montana. I also sit on the National Association of Counties' Public Lands Steering Committee and am past President of the Western Interstate Region Association of Counties, which includes the 15 western-most States. And in that capacity, I have worked very closely with many of the county commissioners from the States of the Congressmen and women that I see here today.

I could probably simply concur with the comments that I have heard from the Congressman from California and the Congressman

from North Carolina and some of you and call it good. But based on my discussion with your staff, there seemed to be some specific interest in hearing about the results of the current forest salvage program relative to the exemption from the administrative appeals process under the timber provisions of the 1995 rescissions bill.

Let me tell you right upfront that the general consensus of the local leaders, the Forest Service personnel, and the wood products industry participants in western Montana is that the current salvage program has been the most successful, positive change in Forest Service management direction in recent years.

Now, the circumstances of my county, and certainly not dissimilar to a host of other western rural communities, are that virtually every citizen is affected in some way by the management of the Federal lands, which, in my case, encompass 80 percent of Lincoln County. Because of this dependence, we monitor pretty closely the actions and decisions and the results of this management.

Using the Kootenai National Forest as an example, a conservative allowable sale quantity, which could easily provide for a sustained-yield timber program, was determined to be about 240 million board feet annually. Industry and communities were encouraged to make long term planning decisions based on these numbers.

After such plans were made, however, additional environmental consideration, administrative appeals, and litigation quickly eroded them. These appeals and litigation oftentimes do seem to be nothing more than delay tactics and efforts to deter any utilization of commodity resources.

For example, the most recent challenges have stated that the grizzly bear recovery decisions on salvage sales were arbitrary and capricious. However, even the judges that reviewed these claims have unanimously rejected them, inferring that it was the claims themselves that were arbitrary and capricious—your nonmeritorious claims, Mr. Hansen.

In 1994, for example, Kootenai National Forest sold 59 million board feet. In 1995, they sold 58 million board feet. Compare these with '96 under the current exemption process. So far, 96 million board feet sold, with the year-end total projected to be 167 million board feet, 149 of which will be salvage. The inferences, I think, are clear.

This program is keeping many of my constituents employed. This program is giving a measure of security to many of the small operators in our communities who are currently making major investments in low-impact, high-utilization machinery and equipment in order to better comply with environmentally sensitive guidelines. We must not allow this to be a false security.

The owner of one of our major wood product conversion plants stated unequivocally that without raw materials available as a direct result of this salvage rider, their labor force would have been reduced by a minimum of 40 percent from which, of course, would have spun off many more job losses in service and support industries.

He further commented, significantly, I think, for the purposes of this hearing, that it has become obvious to him that the program

has had an extremely positive effect on the morale and productivity and team work of the Forest Service employees on the local level.

There also appears to be a much greater atmosphere of cooperation. Both industry and agency are aware that their actions will be closely scrutinized. They have to do a good job because their future depends upon it, as does the future of our habitat.

These observations have been echoed by various district rangers. They have no doubt that current activities would have been held up by appeals as a matter of course. Some groups do submit identical appeals on every project. Not having to deal with such tactics has allowed the agency at the local level to provide a higher quality of work in less time to utilize their professional judgment.

Relative to the accusation that current law allows lawless logging, our observations are contrary. And you can read in my written testimony just what our observations were and how contrary they are.

I would like to conclude quickly that at least in western Montana and northern Idaho the program has been a resounding success, as witnessed by increased utilization of valuable resources, improved forest health, reduced threat of catastrophic fires, substantial financial return to both local and U.S. Government, substantial increase in raw materials desperately needed by forest-dependent communities, increased deficiency and morale among Forest Service personnel, and all of this without a reduction in sensitivity to the environment.

Our governor of Montana, Marc Racicot, for whom I have a very high amount of respect, has concurred with this assessment and has suggested that we jointly seek even more opportunities to reverse bureaucratic impulse and simplify, not complicate, the quest for responsible management and programs that can better satisfy national interests and local needs. Thank you.

[Statement of Mr. Williams may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Williams. Mr. Bennett.

STATEMENT OF MATT BENNETT, VICE PRESIDENT OF SALES, EMMET VAUGHN LUMBER COMPANY

Mr. BENNETT. Mr. Chairman and members of the Subcommittee, my name is Matt Bennett, and I am testifying today on behalf of the Southern Timber Purchasers Council and the Tennessee Forestry Association. I want to thank you for this opportunity to testify regarding the Forest Service administrative appeals process.

It is the point of my testimony to show that the process, however well intended, has become dysfunctional agency policy. This policy results in unnecessary delays and costly expenditures of taxpayer dollars that could be more wisely spent on perhaps trail maintenance, wildlife habitat, or protecting forest health.

Let me offer an example of how time consuming and expensive forest plan appeals have become. In 1979, the Forest Service began efforts to draft a forest plan for the Cherokee National Forest in Tennessee. After seven years, the plan was approved. However, 28 days later, the plan was appealed.

Appeal issues were national issues or national disputes that extended beyond the scope of the forest planning process. Instead of using appeals to address local management disagreements, the

plan was appealed to advance a national agenda by special interest environmental groups. The groups were attempting to bypass the legislative process and effect change through the agencies or court-ordered action.

In 1991, the Wilderness Society decided to litigate these issues. Happily, the litigation is finally over. On May 22, 1996, 10 years after the original appeal, the Court of Appeals affirmed the dismissal of the challenge to the plan. Ironically, work had already begun on the next forest plan before this one was approved.

Did the appeals process adversely affect the operations of the Cherokee? I believe so. It may have significantly reduced the volume of timber for sale. In 1989, the Cherokee sold 36.2 million board feet. By 1995, the amount had fallen to 12.1 million board feet. And in response to Mr. Unger's comments about the decline in appeals, I would point out that the number of timber sales to appeal has also declined.

When looking at project level appeals, two things quickly become evident. The majority are often brought by one appellant, and they mostly pertain to timber sales. In the most flagrant example, 52 of 57 timber sales have been appealed by one person on the Ouachita National Forest in Arkansas.

Project appeals may be successful delaying tactics, but they rarely contribute little new insight. The overwhelming majority are either dismissed or decided in favor of the original opinion. Environmental groups have now begun litigation against timber sales on both the Ozark and the Chattahoochee National Forest. We are concerned that the Cherokee will not be far behind.

If these two forests are any indication, then the litigation will claim violations of three laws: the Clean Water Act, the Migratory Bird Treaty Act, and the National Forest Management Act.

If the violation of the MBTA is upheld by the court, this could well become the spotted owl issue of the South. Its impact would not be confined to public land, as private landowners would also be subject to the conditions of the Act.

We have a saying in Tennessee that if it ain't broke, don't fix it. Unfortunately, the appeals process is broke, and it does need fixing. I am unaware of any other government agency that goes through so torturous a process to arrive at a decision and spend so much money to get there.

The end result is an uncertain future for forest dependent small communities and businesses, and taxpayer dollars wasted on litigation that could be spent to ensure healthy, more productive forests for future generations. I believe the process can be fixed. Sensible limits need to be placed on who can appeal and what can be appealed. Mechanisms should be in place to discourage frivolous appeals.

And, finally, forest plans and project level decisions are not the appropriate place to pursue the agendas of special interest environmental organizations. Mr. Chairman, that concludes my statement, and I would be happy to respond to any questions.

[Statement of Mr. Bennett may be found at end of hearing.]

Mr. HANSEN. Thank you. Mr. Matson.

STATEMENT OF JIM MATSON, VERMILLION SERVICES

Mr. MATSON. Thank you. Members of the Subcommittee and Mr. Chairman, greetings from Utah. Good to be here. I am Jim Matson. I am currently a consultant from Kanab, Utah. Prior to that, I was with a forest products company headquartered in northern Arizona and southern Utah.

My clients today are the communities of Fredonia, Arizona; Kanab, Utah; and Kane County. We are all very dependent upon administered public lands, whether it is under the BLM, the Forest Service, or the Park Service. I would like to report to you that for the most part that the effects to date are mostly benign or beneficial, but that certainly is not the case.

Leading the list of the adverse impacts on our communities are the Department of Agriculture, Forest Service administrative appeals procedures. Appeals have provided the opponents of human-managed forests the means to breach a forestry system, which, until recently, was of significant value to the American people and public forest lands.

And the people in the communities that I represent have suffered greatly because of administrative appeals. Kaibab Forest Products Company, formerly the area's largest employer of people and their families, was forced out of business by the constant barrage of appeals, and then subsequent lawsuits, and then the acquiescence of the Forest Service in the process.

Administrative appeals continues to be the thin edge of the wedge utilized for purposes of paralyzing public forest lands enhancements and investments. Imagine an appeal system of this sort being applied to the post office. It would take months to get letters instead of days.

Our democratic system of governance usually reacts slowly to correcting excesses that are being enjoyed by a few at the expense of the majority. Clearly, the current and existing appeals procedures are excessive and have benefited a very vocal and aggressive minority in our society.

The fact is the Forest Service appeals rules are little more than a government give-away program. These give-aways allow a very small number, who care little for rural human communities, much less a forest, a free ticket to dismantle months of work and weeks of work and effort. Just grab the appeals rules and let it fly. The Forest Service usually caves in, and the plan or projects are delayed, changed, or canceled. Losses accrue to us all by allowing this kind of appeals procedure to be continually one sided.

The magnitude of laws, rules, guidelines, and procedures that project designers must navigate to implement a successful forest plan or associated project are simply overwhelming. An administrative appeal that stops a program has exploited the soft belly of the Forest Service's administrative processes.

I have noted and been involved with many projects that on one hand were procedurally correct, but not a very good project on the ground but were allowed to proceed. On the other hand, I have reviewed projects that were well conceived for benefiting forest resources but were procedurally flawed and subsequently dropped.

The point is procedurally correct or incorrect implementation of plans and projects are time consuming and costly. And we are

bearing these costs directly and indirectly throughout, but the heaviest impacts are falling on rural communities.

As a side-bar, after the administrative appeals continue to close the mills in Fredonia, Arizona, and potentially the mill in Panguitch, Utah, will be closed, the Dixie National Forest, as you, Mr. Chairman, pointed out earlier, has put out a notice indicating that they are looking for purchasers to come to the area from a 500-mile radius.

A friend of mine from the Black Hills wrote, and he said, "Oh, and if you are looking for a partner to build a mill and take advantage of the wonderful Forest Service opportunity, please don't call me."

Trust in the situation is totally lacking in this process, and you can imagine a firm or a company and their bankers trying to figure out how to commit $8 to $10 million to be able to take advantage of this.

And I guess the question I would ask you all here in this room today, would you invest your savings on a venture such as this with the threat or the potential of appeals stopping the supply of raw material for such a venture? I don't think so.

I would also like to point out that the closing of these two mills resulted in the local area loosing the only area's capability of handling these kind of volumes. These two mill complexes could have handled logs ranging in size from six inches in diameter to 25 inches in diameter. Eighty-eight percent of that volume could have been 16 inches or less, and today the issue in the West is what are we going to do with small timber, fire killed, insect killed, and so on.

The preservationists really have used a bait-and-switch tactic that has evolved a strategy of goading the Forest Service about the low cost timber sales, and then turn right around and start delaying those same programs and increasing those costs.

Eventually, it became impossible for the Forest Service to meet its goals and budget objectives. Before long, the media and others were clamoring for answers as to why costs were higher than revenues. The leading reason for the higher cost is administrative appeals and resulting delays. I have thought from time to time and mused about this as why would the Administration and the Forest Service continue a system that would have those kind of impacts on its own self?

Recommendations: one, I think we should take the free out of the appeal system. If the appellant loses, he pays. Two, on emergency programs and certified emergency, we should limit the appeal to 15 working days so that we can get about the business of salvaging insect and fire-killed timber.

Intervention, as you mentioned before, Mr. Chairman, should be left on the basis to valid standing positions. And then we need to shorten and fast-track the whole program so that we do not exceed 30 working days, about six weeks in the whole thing, so that we can get about our business.

I have another recommendation, and that would be that under the appeals process that from a Federal standpoint that we direct the States, where they have State agencies involved in appeals,

that the governor of that State must approve that appeal before it can go on.

And that the statements of reasons be limited to actual facts, and personal opinions could be submitted as long as they are noted as personal opinions. And I think peer-reviewed science would be a real factor in helping us get along with this. So that concludes my comments, Mr. Chairman. Thank you.

[Statement of Mr. Matson may be found at end of hearing.]

Mr. HANSEN. We will give you another minute to wrap up if you would like to. Have you concluded your statement?

Mr. MATSON. That concludes my statement and recommendations.

Mr. HANSEN. Well, you got right on the minute. Thank you very much. I appreciate it. Nadine Bailey.

STATEMENT OF NADINE BAILEY, EXECUTIVE ASSISTANT, TIMBER PRODUCERS ASSOCIATION OF MICHIGAN AND WISCONSIN

Ms. BAILEY. Members of the Subcommittee——

Mr. HANSEN. Do you want to pull the mike over there by you if you would please?

Ms. BAILEY. Members of the Subcommittee, thank you for allowing me to testify before you today. My name is Nadine Bailey, and I am the Executive Assistant to the Timber Producers Association of Michigan and Wisconsin. I have been in this position since October of 1995. This issue is an issue that has affected me on a very personal level. Before moving to Wisconsin, my family and I lived in the small northern California town of Hayfork.

In 1990, a Federal judge upheld an appeal brought by the Audubon Society against the U.S. Forest Service. The judge placed an injunction against any further timber harvest on national forests until a habitat management plan for the northern spotted owl was completed.

At that time, my husband and I had a small timber falling business that employed approximately 15 people. The Federal Government owns approximately 80 percent of the land in Trinity County. Without access to that land, we were unable to continue operating our business.

In 1993, we closed our business, losing everything that had taken us a lifetime to build. Our story is not unique. Many forest-dependent communities are experiencing the same hardships—high unemployment and a large number of children living below the poverty level.

With no hope of future employment for my husband, my family and I were forced to leave the Trinity County area. This spring, the last remaining forest products employer in Hayfork, the Sierra Pacific mill, closed its doors.

Never once during the appeal process did anyone stop to consider the economic impacts of the appeal procedure or attempt to take public comment from the people being impacted. Many sales outside of the spotted owl injunction were also changed without public comment to address issues that might be included in future litigation.

Sales that should have been sold were delayed and reviewed to ensure that they would not be appealed. This attempt by the Forest Service to appeal-proof all of their existing sales caused the cost of timber sale preparation to rise and caused the future timber sale program to be decreased, creating the massive gridlock that continues today.

This type of gridlock is not just a western phenomenon. In the Lake States region, there are also examples of misuse of the appeal process. In 1993, an environmental group in Michigan appealed the West Hyde II Vegetation Management Plan. They maintained that the Forest Service had done an inadequate job on the environmental impacts of the plan. The plan was upheld by the forest supervisor, and the timber sale was then sold to Nagle Lumber, a small family owned company.

Hoping to reduce some of the plaintiff's concerns about the plan, the Forest Service went back to the purchaser, Nagle Lumber, and asked them if they would be willing to delay harvest on the sale for one year so that a more in-depth environmental study could be completed.

Nagle Lumber agreed, and the Forest Service completed a full revision of the environmental assessment in addition to a biological evaluation on the issues involved in the complaint. Satisfied that they had met Federal mandates, the Forest Service made plans to continue with the vegetation management plan.

On May 31, 1996, the plaintiff of the original appeal resubmitted the appeal alleging the same charges in the first appeal, an appeal already overruled by the forest supervisor's office.

This is just one example of how the Forest Service, through its appeal process, is being forced out of timber sale preparation and into litigation defense preparation. This approach to forest management has already proven disastrous to both the Forest Service and forest-dependent communities.

The present appeal process demeans the land manager and forces undue stress onto rural communities that are adjacent to our national forests. The present timber sale appeals process also costs the American taxpayers money, as the Forest Service is forced to reanswer questions that have already been addressed.

In 1993, I was a speaker on the first round table at the Forest Summit convened by President Clinton. At that summit, President Clinton likened the Federal regulations that governed forest management to a wagon with a team of horses hooked to both ends. He promised that his Administration would be committed to ending that gridlock. The fact that I now live in Rhinelander, Wisconsin, and not my native California, is proof that he has not been successful.

I urge this committee to make the following changes to the appeal process: ensure good faith effort to solve problems by requiring all potential appellants to be part of the early planning. People should not be able to appeal timber sales simply because they do not believe in cutting trees.

Two, limit timber sale appeals to only areas that were not addressed under the forest planning process. Three, shorten the time limit on the appeal process. Four, any emergency decision should be exempt from the appeal process. Five, forest plan appeals can

take years to resolve. The process must be shortened, and a procedure to allow continued operations while the plan is being appealed must be implemented. Thank you for your time.

[The statement of Ms. Bailey may be found at end of hearing.]

Mr. HANSEN. Thank you. We appreciate your testimony. Mr. Phelps.

STATEMENT OF JACK PHELPS, EXECUTIVE DIRECTOR, ALASKA FOREST ASSOCIATION

Mr. PHELPS. Thank you, Mr. Chairman. My name is Jack Phelps. I am the Executive Director of the Alaska Forest Association. Furthermore, I am a member of the Society of American Foresters, as is the gentleman from North Carolina who spoke earlier. And I want to just express my appreciation for his comments and urge the committee to recognize the validity of them.

Let me begin my testimony today by pointing out that the timber industry in Alaska is starving in the midst of plenty. Although we operate on the largest national forest in the country, which includes more than 5 million acres of productive old growth, we are unable to harvest enough timber to meet the needs of our very modest domestic processing capacity. Since the Tongass Timber Reform Act passed Congress in 1990, more than 42 percent of our direct timber industry jobs have been lost.

Ketchikan, the town in which I live, recently lost another independent mill, putting 35 more people out of work. That may not sound like a lot of jobs to you, but in a town the size of Ketchikan, those losses will be felt. And, in any case, they were important to the families whom they used to support.

My message to you today is that the Forest Service cannot supply enough timber to our mills, not because they lack sufficient standing timber, not because too much of the old growth has been cut—in fact, 93 percent of what was standing in 1954 when commercial timber harvest began is still standing according to the Forest Service's own numbers.

The reason they can't supply enough timber is because the process through which they must defend every sale is seriously flawed. The National Environmental Policy Act, though designed with good intentions, is not working to protect the environment so much as it is working to impede America's economy and to interfere with the lives of the resource industry workers upon whom so much of this country depends.

Now, I would like to bring before you one example of how this process is working against us, and I have provided rather detailed comments in my written testimony. And I am only going to summarize them here, but I ask that my written comments be included in the record.

The example I want to give is on an island called Kuiu, which is about the middle of the Tongass, north and south. In the early '60's, there was some beach logging that took place in a place called No Name Bay on the east side of Kuiu Island. There were no roads built. But in 1977, preliminary sale planning for timber harvest on east Kuiu began in connection with the Alaska Pulp Company's long-term contract.

In March 1979, the Tongass Land Management Plan was adopted, and it designated the No Name Bay region as Land Use Designation IV, in other words, for timber harvest. So consequently in April of 1980, the Forest Service began a process which has not yet been completed. In 1980, they published the first environmental impact statement which identified this area for extensive timber harvest activity.

That was appealed and litigated. Five years went by. No timber harvest had come off that area. By 1986, they had to produce a second EIS for east Kuiu. It was also appealed and litigated. Finally, the Circuit Court ordered a supplement EIS to be prepared on the same area which was concluded and signed in 1987. It, like its predecessors, found that there could be a suitable level of harvest with no environmental effect. This was also appealed and litigated.

In 1990, Congress placed an additional 35,000 acres of Kuiu Island into a new wilderness area immediately south of the 66,000 acre Tebenkof Bay Wilderness Area, which lies due west of No Name Bay. At this point, nearly 40 percent of the island, which is heavily forested, was now off limits to harvest.

In 1993, the Forest Service issued the fourth environmental impact statement on the east Kuiu harvest area known as the North and East Kuiu Environmental Impact Statement. It also was appealed and litigated, and harvest was further delayed.

In April of 1994, Alaska Pulp Company's long-term contract was terminated, putting 450 people out of work at the Sitka pulp mill and eventually causing the closure of the company's sawmill in Wrangell at the cost of another 250 direct jobs. The Forest Service then attempted to transfer the planned sales on east Kuiu to the remaining long-term contract with Ketchikan Pulp Company which, due to appeals on its sales, was also short of timber.

Then the Alaska Wilderness Recreation and Tourism Association appealed, filed suit, alleging the need for yet another EIS. And the key issue—the only pointed issue was the timber sale was not reviewed for this particular buyer, and they wanted to force it to go through a fifth EIS.

That lawsuit tied up 282 million board feet of NEPA cleared and desperately needed timber, which is still not available for our harvests. And, indeed, recently after negotiations between the Clinton Administration and plaintiffs, the fiber was given away, and, indeed, the court ordered the east Kuiu area to go through a fifth environmental impact statement, which will cost another $2 million to the taxpayer and take a number of months to produce.

And I know I am out of time, but if I could conclude please. The result is that after nearly 20 years of planning and producing paperwork by the ton, the Forest Service has yet to produce a single stick of wood or support a single private-sector job from the significant stands of timber on Kuiu Island. The sales that were laid out in 1979 are still awaiting harvest.

Now, please remember that this is land that was purposely left in the timber base by Congress in 1990 when the Tongass Timber Reform Act was passed into law. Four environmental impact statements have been performed, now a fifth has been ordered, and we are not allowed to operate. I heard earlier that 20 percent of the

national forests or 20 to 25 percent are available for timber harvest. On the Tongass, it is less than 10 percent.

What we have under the current system is not an environmental protection but a never-ending process. The laudable goals of NEPA simply are not reachable under current law. The problem is NEPA itself. Under NEPA, we never get product, we only get lots of process. It becomes a never-ending planning cycle.

And a big part of the problem is that no justification for any action will ever satisfy the law because anyone at anytime can allege possession of new information or significant impact on some protected activity such as subsistence, thus forcing a new EIS. The east Kuiu example illustrates how this can undermine every attempt by the agency to do its job. I have had Forest Service employees tell me in frustration that they cannot write an EIS that will satisfy court scrutiny. The law is simply too open-ended.

Mr. Chairman, if you want to repair the appeals process, you have to amend NEPA. It has to be rewritten so that it has a closure. It can't remain open-ended. It must have some finality to it. It must be rewritten so that it becomes a tool to protect the environment, not a club to beat up on the people who are trying to work in the West and provide fiber that this country needs. Thank you very much for your indulgence. I would be happy to answer questions.

[Statement of Mr. Phelps may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Phelps, and I thank all of the witnesses for their excellent testimony. We will now turn to questions from the committee. The Chair recognizes the gentlelady from Idaho for five minutes.

Mrs. CHENOWETH. Mr. Phelps, your testimony was very interesting and sad. Has anyone thought about what Congressman Taylor referred to in the Rule 11[b], counterfiling of a frivolous lawsuit?

Mr. PHELPS. Thank you for that question, Congressman. Part of the problem, of course, is that it costs us a great deal of money to fight the lawsuits that are thrown our way. And, frankly, our guys are weary. They are broke. A lot of our companies have gone out of business. And the other side doesn't pay for their lawsuits. This is something that needs to be addressed by Congress.

This business of the other side being able to file public-interest lawsuits and prevent us from working and yet we have to pay—I mean, we are taxpayers. We pay for their stoppage of work. And so, yes, that is something we consider, but it is exceedingly difficult for us to do that when we are continually on the defensive.

Mrs. CHENOWETH. I do want you to know that your suggestions were not lost on us——

Mr. PHELPS. Thank you.

Mrs. CHENOWETH. [continuing]—about bringing language to the NEPA law that brings closure, and I thank you for that good suggestion. Mr. Williams, you testified that the emergency salvage law is working very well up in your area. Let me ask you about the area known as the Yak up in northern Montana. How is that coming along? I have been in the Yak.

Mr. WILLIAMS. It is coming along very well. The case that I mentioned in which the environmental groups litigated, because of the exemption from administrative appeal, they actually did litigate on

that salvage sale due to their stated fear that it would affect the grizzly bear habitat, which is their primary excuse for no activity in the Yak country.

And even the judge said two things. He said, in fact, that the Forest Service would not have had to go through the environmental analysis to determine whether it was having a negative effect on the grizzly bear under the salvage rider. But they did, and they had very good information that said that, in fact, there would be no effect on grizzly bear habitat.

The Yak area is an area that has looked bad from the air because it has been heavily cut in certain areas because the timber has been heavily diseased, dead, and has burned, and is still in danger of catastrophic fire, and just simply needs to be taken out or burned out—one or the other. And the situation in the Yak is still critical. It is still critical, and it needs to be resolved. And the exemption from administrative appeals has helped resolve a good deal of that.

Mrs. CHENOWETH. That is good. Nadine, it is so good to see you again. You know, I met you when you lived in California, and you were a witness before our committees. You have lived through the dismantling of the timber industry infrastructure, and it was sad. You now live in the Great Lakes region. Do you see anything occurring in the Great Lakes area that would lead you to believe that what has happened to us out West could possibly happen out there too?

Ms. BAILEY. Well, just in the last three months, I have seen two appeals on two different forests, one on the Ottawa and one on the Hiawatha, that the appeals were almost verbatim. And this has kind of made everybody a little concerned because there have not been a great deal of appeals, and those appeals that have been filed, the Lake States have won.

So this is a concern because even when you win, you lose because you have delayed the process, and our volumes are not that high in the Lakes States as they were in the West. So if you impact that smaller volume, the impacts could be very significant so we are concerned.

Mrs. CHENOWETH. I thank you, Nadine, and thank you, Mr. Chairman.

Mr. HANSEN. Thank you. Let me point out to the committee and our witnesses that we have first a vote on right now. It is the Parker amendment followed by two additional votes. I think we have got time if it is OK with the witnesses and Mr. Vento that we turn to him at this point. Is that OK, Bruce?

And let me just beg the indulgence after Mr. Vento. A lot of us have some other questions. If we could prevail upon you to stay with us, we will be over on the Floor for about 20 minutes, and we will all come right back, and I hope Mr. Pombo will. And so if that is OK, we would ask you to stay. We would be very appreciative of it. Mr. Vento.

Mr. VENTO. Thanks, Mr. Chairman. You know, I think that, obviously, the testimony reaches back a long ways in terms of problems that are clearly in the appeal process, of course, has been around since the turn of the century. It is not new. It has been an administrative appeal process. And what has happened, I think, is the

growth of information and knowledge, whether it is need to know or not, whether it is NEPA or Clean Water or whatever, has grown expedientially.

And so one of the issues, I think, that really had occurred is that the Forest Service wasn't properly funded, wasn't funding in terms of the information that it was doing in preparation for sales in terms of NEPA, in terms of a variety of other laws. I mean, that is one of the problems. You have to put more in there and have the expertise.

For instance, with NEPA, they have greatly improved their capacity to, in fact, do an acceptable NEPA statement so there has to be that type of expertise. For instance, we don't need people just with forestry degrees, we need master degrees and others in these roles.

Of course, that deals with reorganizing what had been the way that they were functioning at a time when we are downsizing government. Of course, the land management agencies have really taken it on the chin in the 80's and again in the 90's, and that is much to my dismay.

I am interested in seeing more managers and land managers out there to do the job because without people, you can't do it. But you also have to have the advanced degrees to be able to deal with the type of complexities that are challenged, whether it is Clean Air or Water or the other types of laws that deal with a very complex problem like the Endangered Species Act.

And all too often I think that the appeal process, as I said earlier, and some of you, I think, were here, that we are superimposing certain standards from Congress, and then it came down where we were cutting 12 billion on a mandated cut a year, so much in a certain region, and it came down to the fact that they couldn't make that square peg fit into essentially a round hole.

In any case, I have information here which says that the Forest Service testified today saying that the length of appeals, the length of time—I mean, what is a reasonable amount of time for an appeal to be resolved?

I understand that something like 95 percent of the appeals are resolved in 45 days. That, obviously, represents that you put money down or you bid, and you have to wait for that 45 days to elapse. But they do resolve 95 percent of these appeals in 45 days. That is a big improvement, is it not, Nadine? Pardon me for using your first name. Your hand went out so I——

Ms. BAILEY. OK. It is an improvement, but let us look at the other things that have happened on those forests. The operating period five years ago pretty much used to be year-round during the 80's, that you could go out into the forest and actually operate.

But for someone working on Federal lands now, there are spotted owl seasons that you can't be in the forest. There are different times in the winter that you can't be in the forest. There are different breeding seasons so this narrows the window of opportunity to actually go in and perform on those sales.

So if an appeal is filed and we wait 45 days, often the cycle is made so that the sale will be sold and have an operating period real close to the time that you can go into that forest. So that the

area is narrow, and 45 days may not be as bad as it was. But we continue to narrow the window of operating opportunity.

Mr. VENTO. Well, clearly, some of the examples here today are some of the more egregious, more serious problems. And so they are trying to—you know, there are literally thousands of timber sales a year. This year so far there have been 86 appeals filed on what are literally—now, of course, I understand that many of the appeals are barred under the salvage, as our witness from Montana indicated, on the forest that he was referring to.

You know, most of the sales there have been under salvage so there is no appeal. That solves the problem. That represents a big problem for me because this appeal process, which has been around, simply isn't something necessarily for the mischievous. It may have evolved that way. I know that many on this panel feel that that is the case. I did read all of the testimony.

But it is something in terms of an accountability issue here in terms of holding the Forest Service accountable. You, obviously, feel that that—if this isn't appropriate, I would just suggest then what is appropriate, and what is the appropriate format in terms of holding the Forest Service and others accountable when they make the sale? Possibly, this began as a question of whether it was a fair price. It has, obviously, evolved into a much different direction today than that.

So I won't continue, Mr. Chairman. My time has expired, but I just wanted to add in the point—I mean, the number of appeals in some of the regions today are down because of that, but that, I don't think, is the ultimate answer in terms of where we are going. I think it is an overreaction, and I think it, obviously, could have a reaction.

But I think the end result is that they are doing—there are only 160 appeals. They have some from last year. I noted in my material here that we have something like 115 pending right now, and only a small number of those are still from last year. So they are moving through this, but I think the solution that has really been causing this isn't the proper one. So I just wanted to State that. There is no need for a response, Mr. Chairman.

Mr. HANSEN. Thank you, Mr. Vento. Let me just quickly point out on the 45 days, that is the appeal filing period, plus the Forest Service has 45 days to make a decision. Add those two together, and you have got three months on your hands. So I just make another little technicality we always work with around here. Let me stand in recess. We will look forward to seeing you as soon as these votes are over.

[Recess.]

Mr. HANSEN. The meeting will come to order. I apologize to the witnesses and the audience back here. When that thing goes off, that is what they pay us to do, and we just have to run. And I always admire the patience that you have when you come to these things, but let me tell you how valuable your input is. And if we can't get input from people all over America, we are sure not doing our job.

I think Mr. Pombo and maybe one other will be with us, but I will start out if that is OK while we are waiting for them. Jim Matson, you heard and mentioned in your testimony this letter

that the forest supervisor, Hugh Thompson, put out that I referred to earlier when we had Mr. Unger in front of us. You are very familiar with the Dixie——

Mr. MATSON. Yes.

Mr. HANSEN. [continuing]—and that area, probably more so than about anybody. What do you think the real reason is that Hugh Thompson has to send out a letter like this?

Mr. MATSON. The combination of things between appeals, the Southern Utah Wilderness Alliance, the Friends of the Dixie pressures, and I mentioned in my testimony the concerns the Forest Service has had previously about low cost timber sales. The combination of those things where the Forest Service had an expectation for prices for dead spruce timber with helicopter logging.

At one point, that far exceeded the market and our company's capability at that time to participate in that sort of thing. And so we told them, "Unless this thing works itself out, straightens itself out, and you can get something down that is priced in the arena that we can afford with nothing else available, our companies will be forced to go out of business." And that is essentially what happened. So the lesson is that they didn't believe us until we were gone.

And as the infestation continues to spread and go beyond the areas that it was in three years ago, now they find themselves with no capacity. The install capacity in that forest to handle logs of that sort is probably 150,000 logs a year.

Kaibab Forest Products Company could have handled a million of those logs, and we could have had that project worked out and dealt with in a three-year period if it simply would have been priced properly and had gone through the appeals process. So their rate lesson and awakening of this is tragic.

Mr. HANSEN. Do you think there is a possibility that places like Fredonia will come back?

Mr. MATSON. The Fredonia mill and all of that location is subject to a court order in Arizona because of the Mexican spotted owl under Judge Mickey's Court. And any clearances of that issue would then, I think, bring a smaller kind of operating style to the area. More family, more small business oriented than what the Kaibab had at the time.

It definitely is a possibility, but, once again, if you are looking at putting in investments of $5 to $8 to $10 million, you would like to have at least a horizon to amortize that kind of investment. Otherwise, it is very risky. And this issue here today on appeals is a key part of finding a solution to some of that. That material is going to be available.

It is a question of whether we want to have it, you know, killed by insects and rot or burn or all the rest of that or harvest it, and let some entity like a well managed forest products company pay the government for the opportunity to satisfy a customer's needs and end up with a positive cash-flow out of it. Otherwise, these kinds of problems are going to cost our Federal Treasury and the American taxpayer a lot more money than we can afford.

Mr. HANSEN. We have had a lot of people tell us—I don't know if there is any truth in it—that one of the reasons for many of our

forest fires is probably a decrease in harvesting the timber. Anybody agree with that?

Mr. MATSON. The increasing amount of fire is taking place, as was pointed out by the Congressman from North Carolina, that what is happening is the buildup in biomass without a harvesting mechanism out there to help reduce it is causing these significant problems. And fires are going to be a factor of life for some time to come.

And all this gnashing of teeth and wringing our hands over what are we going to do about air quality and things like that because of coal-fired power plants and so on, take a look at what is happening in Arizona and Utah with last summer's set of fires and so on, and you can hardly see Zion, Bryce Canyon, or Grand Canyon because of it. And the rest of that stuff pales by comparison.

Mr. HANSEN. Mr. Phelps, do you want to comment on that?

Mr. PHELPS. Thank you, Mr. Chairman. One of the problems with the severe forest health problem with a significant number of dead trees in the forest is not only the threat of fire, but the effects of fires in that forest situation as opposed to fire in a healthy forest.

The fuel load on the forest floor that results from a significant number of dead trees will increase the heat of the fire near the ground as opposed to crown flaring that happens in a healthy forest, with the result—and a documented result in some recent cases—of literally burning the nutrients out of the soil and making it sterile. And this has happened in the Pacific Northwest. We are very concerned that this can and will happen on the Kenai Peninsula in Alaska.

Mr. HANSEN. Ms. Bailey, you pointed out that you were previously in California and that you and your husband had invested everything you had in your own area there. And the decision of the Federal District Judge—I assume it was the Federal District Judge—on the spotted owl, in effect, took you out of business, and that is why you are now where? Wisconsin?

Ms. BAILEY. Yes.

Mr. HANSEN. How many others do you think fall in that category for northern California, Oregon, and Washington? Do you have any idea at all?

Ms. BAILEY. Well, I am just going to look at my community now, and if you look at northern California when I started in 1990 had 105 sawmills that were in operation. And when I left last year, there were 48 left.

So if you multiply just simply, you know, that 50 percent figure by an average of employees of about 200 people, that is a significant amount of people that have lost their jobs. And those are the direct jobs. Those are the mill jobs. That doesn't count the loggers and the people that service those loggers.

When we did an economic survey in 1989, over 75 percent of the payroll for my community came from the forest products industry. And with the closure of the Sierra Pacific mill, that ends the last significant forest payroll in that community. So the numbers are much higher than what is being projected.

You know, I heard figures—one government figure was 2,000 jobs work loss for the northern spotted owl, and I think that is ri-

diculous, that it is much higher. And the jobs—the multiplier effect—I don't think we will see the true devastation from that for five or ten years.

Mr. HANSEN. We had a lumberjack here from Washington, and he used a much higher figure. He sat there in his flannel shirt and said 35,000. And he said they went to Montana, Idaho, and others and tried to be retrained, and it was a very emotional experience. He said, "Why should we have to? Here we are doing a very valuable service for the people in America." He said, "This is what my father did and my grandfather did. Why do we have to do this?" And it is very hard to equate a species to something that is so close to them as taking care of their families and that type of thing.

Ms. BAILEY. Well, and these are communities that have forest health problems. I can stand at my kitchen window in Hayfork and look out and see dead timber that grew in numbers each day, and we couldn't harvest that. One thing that happened to me, we are trying to buy a house in Wisconsin. And we had used up all of our savings so we had some equity in our home in Hayfork and had been promised a loan for approximately $40,000. We only owed nine, and so they were going to let us take that much equity out.

When they announced the closure of the mill and I went to secure that loan, they said, "We are sorry. We are not going to be able to loan you that money any longer because now there is no security in the community because the mill is gone, and we are afraid people are going to default on their loans." So overnight what—I thought I hadn't lost everything, but I really had because I even lost the ability to take the equity out of that home.

And so the ramifications—it is not just the people that worked in the industry. There are retired people that put their whole life savings into these communities, and they just lost the equity in their homes.

Mr. HANSEN. It is always the periphery thing we have to look at, you know. The anchor store may be a military base or the lumber area or a mine or whatever, but when the anchor store goes, the periphery is tremendous. That is why there are big fights on these base closing things on the military. Well, President Clinton promised you folks at his Forest Summit he would end all that gridlock, and you would be OK. How did that turn out?

Ms. BAILEY. Well, that is $29 million later into the Northwest, and I have spoken with many unemployed loggers that have called me and tried to go through the retraining programs. Most of them are told, "I am sorry. You don't fit into the slot so there is nothing we can do with you."

In 1990, there was one environmental consultant in Trinity County listed. Now there is about 20, the very people that spent time litigating now have environmental consulting firms. And if you think I am exaggerating, there is a list at the State of California for everybody that applied for an Option 9 grant, and they range from acupuncture clinics to sewer systems in Garberville. That money went to fund everything but helping the rural logger that wanted to restart his life after this.

It is incredible to me that something like this could go on. For example, my husband—after we decided that it was too far to commute eight hours, we decided to move from Hayfork down to Red-

ding, which is about an hour and a half away. We used up our savings. We were deeply in debt by then and had owned our own house so we never had to rent.

I found a house in Redding, and they needed $2,400 for me to walk in the door. And I didn't have that kind of money so I called up an agency that had gotten about, oh, $1 million to help bridge the gap for timber workers was their motto. And I said, you know, "I don't want a gift, but I would like a loan of money to put the deposit on this rental house."

And they said, "I am sorry, Mrs. Bailey. There is really nothing we can do for you because your husband already has a job. Now, if he will quit that job, then come into our training program, then we will retrain him, and then we will give you the money you need to relocate to somewhere else." And I said, "You want him to quit his job. He has no unemployment. What are we supposed to live on until then?"

And it was beyond their comprehension that we wouldn't be willing to jump through—and I think we are typical. Most of the men in the timber industry that I know of have never taken a Federal dollar in their life, and the minute they walked into the places that were giving them out were told—explained the hoops they were going to have to jump through to get that money, they just turned around and walked out again. And some never stopped walking. So it is a real, real tragedy, and I hope that someday the money that has been wasted and squandered will be accounted for.

Mr. HANSEN. Well, that whole thing turned out to be a nightmare up in that particular area, and I think someday that should be chronicled and should be brought up when we talk the Endangered Species Act. Actually, I think in this committee we came up with a good piece of legislation which, in my opinion, the environmental community has made it appear like we are doing away with the entire Act. This one was one that modified it and gave local input, and I would just wish those who would criticize it would follow the old adage as, "Please read the bill and speak to the bill instead of emotions." But the Robert Redford mentality is to speak in emotions.

Ms. BAILEY. That is right.

Mr. HANSEN. Just think. He was almost the Park Director, which makes me shiver at the thought. Anyway, Mr. Phelps, what was the cost of that lawsuit that tied up 282 million feet of timber? What did that cost?

Mr. PHELPS. About $4 million.

Mr. HANSEN. What was the cost of the EIS, which had released the timber without the lawsuit?

Mr. PHELPS. Actually, I am sorry. That was $4 million. The new EIS—it is going to cost us—the different lot that the court ordered will cost about $2 million more.

Mr. HANSEN. Wow. Mr. Bennett, you had pointed out that one person had—I can't remember the figure—52 appeals—just one person?

Mr. BENNETT. Fifty-two out of fifty-seven, about 91 percent. Right.

Mr. HANSEN. What standing did this individual have?

Mr. BENNETT. That happened on the Ouachita in Arkansas, and I am really not familiar with the particulars of that. It was just an individual, and I don't know that he had an affiliation with any particular group. He filed under his name. The same individual also filed an additional number of appeals on the neighboring forests in Arkansas at the same time. So he was a pretty busy fellow that year.

Mr. HANSEN. The point I am getting at is as we go through this, and you have heard the discussion we had with the members and the Forest Service, one of the things that I particularly feel strong about is that the person has some standing; you know, that he has some right to get into this thing.

We are finding now that a three-by-five card and a 32-cent stamp can just foul up a lot of good things, whether it be Section 404 of the Wetlands or an appeal process. And that really is of great concern to us.

So I am always curious when I hear this because I go out into the country and talk to people in Forest Service and the States and counties, and I always find some guy that just got a bone in his throat or mad or doesn't like it, and he has got a fax machine and a mailing list, and hang onto your hat. He can grind this government down. He can stop industry right in its tracks, and this is the kind of thing that bothers me. Mr. Bennett, what is happening with the Migratory Bird Treaty Act?

Mr. BENNETT. Well, that is an interesting new interpretation of a law that is actually about 80 years old, and we have seen it used recently on three different legal actions—one in Indiana, one in Georgia, and one I believe in Arkansas.

And what that is, it was a law that was passed around the turn of the century when bird feathers were a very popular fashion accessory. And there was some concern that the birds were going to be overhunted or depleted beyond their ability to come back just to accommodate hats or boas or whatever.

So this particular law was put into place to try to protect these migratory birds. What we found happened on the Hoosier National Forest was that an activist interpreted that particular law to protect any bird anywhere from anything. The judge in that particular court dismissed that particular piece of litigation. Shortly thereafter, that same Act was used to file litigation in Georgia with the judge down there who did actually issue a restraining order and stopped all timber harvesting on the Chattahoochee.

In light of that, the Indiana judge revisited the issue and again came up even more strongly in his conviction that you have to—if you are going to look at what might actually lead to the death of a bird, then you have to consider a much broader range of possibilities than just the fact that it might have a nest in a tree that was cut down.

And he suggested that glass buildings—birds fly into those and are killed or injured. Birds fly into airplanes. Birds fly into antennas. Birds fly into cars. There is just almost any long list of things that might happen, and that, in his opinion, when Congress initially passed that law, they thought that good sense or common sense should prevail, and that we would understand that things like that would—accidents would happen.

When this was presented back to the judge in Georgia, she said she didn't care. She didn't want the life of one bird lost. So she issued her restraining order. This is litigation, and in response to something that Mr. Vento had said earlier, I agree. I think the appeals process for project level decisions has been improved and is probably more efficient. And I think that the environmental community would come to the same conclusion.

And so in Region 8, where I am from, at the time when we have seen a reduction in administrative appeals, we have seen a three-time increase in litigation. So basically as the appeals process failed to serve what they were trying to accomplish, they have turned to the courts now to try to do the same thing.

Mr. HANSEN. I couldn't agree more. Mr. Williams, based on your discussion with Forest Service managers, can you estimate to what degree the appeals process has added cost to timber sales? Any way you could take a stab at that?

Mr. WILLIAMS. I don't have any figures in terms of dollars that it has caused. But also in response to that concern and Mr. Vento's earlier concern about, you know, that the appeals are taken care of in a timely fashion from his perspective, and maybe that is true. I think on the average and on the Kootenai, for example, which is a major timber producer in the West, the appeals are resolved one way or another in an average of about 80 days.

And that seems reasonable except in visiting with the Forest Service personnel on the ground, their concern is more about cost, which is significant, of dealing with those appeals and subsequent court action, but the cost to the consumers, the cost to the industry, and the cost to the American public of the nonproductivity that results during that timeframe. They aren't getting anything else done.

It is like the Region 1 supervisor is fond of saying, so I think he would be not uncomfortable with me quoting him on this, in his observation, "the Forest Service personnel are spending two-thirds of their time dealing with the fear of litigation and the fear of appeals, and only a third of the time getting their job done." And he wants to see that flip-flopped.

They should be spending at least two-thirds of their time getting productive work done in the forest and preparing for a lot more work and a lot more management being done by industry in the forest. And I agree. It needs to be flip-flopped.

That proportion—that two-thirds/one-third does need to be flip-flopped, and I think you would see perhaps not a considerable reduction in cost of operations, but a huge increase in productivity of our Federal lands for the same amount of money.

Mr. HANSEN. I appreciate that. We notice you have all given us some good suggestions on the appeal process. It is kind of intriguing what Mr. Phelps brought up about NEPA, which I see where you are coming from—a tough decision. I think one of you used the statement NEPA instead of protecting the environment has somewhat fouled up the process of getting things done. I guess in my many years on this committee I believe that more every day just in minor things like land swaps and other things—how difficult it becomes.

Let me just say that we really appreciate your patience. You have been with us now almost four hours, and coming back here, it has been very kind of you to do that. This is our sixth or seventh hearing on the forest issues, and we hope that we will soon be able to come up with some legislation which will make a lot of people mad I am sure on both sides. But we really feel there has to be some relief and some remedy to some of the problems created.

It always amazes me around here how some people put a bill in 10 years ago, and they almost think it came from Mt. Sinai, that the hand of God was on it, and you can't change one comma or one semicolon. And just a little old man writes these things, and the best thing we can do is go back and do them over again.

I think as a State legislator, Speaker of the House, as a city councilman that I had those experiences. We always were changing laws to fit and make them better—to make them work better. In my opinion, there are many things regarding forest work that have to be changed, and your input has been very valuable. So with that, we will consider this meeting closed and adjourned. Thank you.

[Whereupon, at 1:40 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

TESTIMONY OF THE
CALIFORNIA CATTLEMEN'S ASSOCIATION
REGARDING THE
UNITED STATES FOREST SERVICE
APPEALS PROCESS

Prepared by Daniel K. Macon
CCA Director of Industry Affairs

June 17, 1996

On behalf of the members of the California Cattlemen's Association, thank you for the opportunity to provide testimony regarding the current appeals regulations for the U.S. Forest Service. We have numerous concerns with the manner in which the current administrative appeals process works, and we also have several ideas for improving this process.

The California Cattlemen's Association (CCA) represents approximately 3,500 members from throughout California on legislative, regulatory and operational issues impacting the beef cattle industry. We also represent 38 local affiliate organizations, and CCA's members include most of the permittees who operate on U.S. Forest Service (FS) lands throughout Region 5.

Our members have had experience in dealing with both the administrative appeals process and the judicial review process regarding the management of FS rangelands, and we will provide comments on both. We will also provide specific comments that we feel will improve the appeals process for permittees as well as for the agency and the public.

When the agency issues a decision regarding the management of a grazing allotment, the permittee has the right to appeal the decision due to his/her contractual relationship with the agency (the grazing permit creates this relationship). Furthermore, members of the

public who have participated in the decision-making process through the opportunities afforded by the National Environmental Policy Act (NEPA) also have the right to appeal these decisions. Finally, preservationist organizations are increasingly turning to the court system as a method of appealing decisions. As in most examples, litigation further complicates resource decisions.

Administrative Appeals Process:

CCA has been directly involved in two significant administrative appeals involving the management of FS grazing allotments during the past 4 years. The first case involved the Tahoe Basin Management Unit and was ultimately resolved in favor of the grazing permittees. The second case involved the Stanislaus National Forest and was resolved unfavorably to the grazing permittees. Both cases illustrate the problems with the current appeals process.

In July 1993, the Lake Tahoe Basin Management Unit issued a decision for the Meiss Grazing Allotment requiring the removal of livestock for up to 15 years. The grazing permittees hired an attorney specializing in natural resource law and filed an appeal of the decision. CCA also filed an appeal of the decision as an interested public (this appeal was dismissed by the Chief of the Forest Service). The preparation of these appeals, particularly that filed by the permittees, was extremely time consuming and costly (the permittees incurred costs in excess of $45,000, while CCA expended numerous staff hours). The decision was upheld by the Forest Supervisor, who then forwarded the appeals to the Regional Forester for the Pacific Southwest Region (R5). Subsequently, the appeals officer, Deputy Regional Forester Dale Bosworth, was promoted to Regional Forester in the

Intermountain Region. After the appointment of Jim Lawrence as his replacement, the permittees and their counsel made an oral presentation to Mr. Lawrence in June 1994. Delays in researching the record of the original decision, as well as additional personnel changes in the R5 office, delayed the final decision until June 1995 (approximately 2 years after the issuance of the original decision and the filing of the original appeal). While the appeal decision overturned the original management plan, the cost to the permittees in terms of time and money was substantial.

In December 1995, the Stanislaus National Forest issued a decision reducing the number of permitted cattle on the Highland Lakes Allotment by 33 percent. Again, the grazing permittees hired legal representation and appealed the decision. CCA, along with the local cattlemen's association and other local agriculture and resource groups, also appealed the decision. In addition, two preservation groups who were represented by the Forest as opposing all grazing also appealed the decision. Based on new FS appeal regulations, the permittees, along with CCA and the other appellants, were invited to an informal disposition hearing. During this meeting, which the environmental organizations were unable to attend, CCA suggested that an impartial third party be contracted to highlight the common interests of all parties interested in the allotment. CCA further suggested that this effort also involve third party scientific participation to assist in developing a management plan that represented these common interests. All parties, including the District staff of the Forest (who coordinated the hearing) seemed enthusiastic about this option. However, the environmental appellants, who participated in a conference call with the Forest several days later, vetoed the idea, apparently still favoring the elimination of

grazing on the allotment. As a result, all interested public appeals, including CCA's, were dismissed. The appeals officer in this case (the Forest Supervisor) was also the individual responsible for the decision which generated the appeals. The permittees' appeal was forwarded to the R5 level, where the Forest's decision was upheld with the directive that the Forest work more closely with the permittees in implementing the new decision than it had in the past.

These two examples highlight a number of problems with the current appeals process. First, successful appeals require vast financial and time resources on the part of appellants. FS regulations have become so cumbersome that legal counsel is often required. Furthermore, CCA believes that it is inherently wrong for the individual official who is responsible for a decision to also be responsible for ascertaining the relevance of appeals of that decision. We feel that this policy infringes upon the right of grazing permittees and other appellants to due process. Congress does not decide if the laws it passes are constitutional; the Supreme Court and the rest of the judicial branch of our government performs this role. Finally, while we applaud new efforts to resolve appeals informally, these efforts appear to be too little, too late. Efforts to involve all interested parties in broad scale planning efforts under NEPA should take place up front, not after a decision has been rendered. Furthermore, informal disposition hearings that do not involve all appellants are a waste of time.

Judicial Proceedings involving the Forest Service:

In 1994, the Sierra Club Legal Defense Fund, representing a coalition of preservation groups, filed suit against the Sierra National Forest for failure to complete NEPA

documentation for annual operating plans, allotment management plans and grazing permit reissuance. The suit also sought an injunction against grazing during that grazing season. While not named as defendants in the litigation, the permittees were obviously extremely concerned about the prospects for utilizing their allotments during the coming grazing season. The permittees contracted legal counsel, and along with CCA and the California Farm Bureau Federation, filed an amicus brief supporting the Forest's position. In our brief, we argued that we should be involved in any discussions between the plaintiffs and FS officials, and we were ultimately granted this right by the judge. These three-way discussions resulted in a settlement which directed the Forest to schedule all allotments for NEPA analysis while providing for interim grazing permits to be issued while such analysis was pending. Under the Equal Access to Justice Act, the Sierra Club Legal Defense Fund received payment from the U.S. government in the amount of $55,000, ***even though the case never went to trial.*** On the other hand, the permittees incurred legal costs in excess of $60,000, which they are still attempting to pay. During an era in which preservation groups have had difficulty in raising funds through membership, access to government funds through the court system has become quite attractive.

This case, along with a similar case in Montana, was largely responsible for the inclusion of language in the Rescissions Act of 1995 dealing with the reissuance of grazing permits and the application of NEPA. This case also demonstrates the inequity in the Equal Access to Justice Act. CCA could just as easily argue that the settlement was more favorable to the permittees, yet neither the permittees nor CCA would be eligible for reimbursement of legal fees by the federal government.

Possible Solutions:

As stated previously, CCA believes that the current appeals regulations inappropriately place the decision-maker in the dual role of appeals officer. That is, those who are making decisions are also ruling on appeals of those same decisions. We believe that appeals process developed by the Bureau of Land Management, which utilizes administrative law judges, is much more appropriate. Permittees who face decisions which significantly reduce or eliminate grazing must be entitled to due process.

Secondly, we believe that while informal disposition hearings may serve a useful role, this role is undermined when all parties to an appeal(s) are not present. Furthermore, by the time an issue has reached the appeal stage, collaborative efforts may be too late. We believe that these types of informal meetings are more appropriate prior to decision points.

With respect to litigation involving the agency, the Equal Access to Justice Act creates in equalities between preservation groups and those private individuals who provide on-the-ground management of FS resources. In cases which are settled out of court, no legal fees should be paid to any party to litigation. Alternatively, each party could be reimbursed at the level of the least costly of the parties' legal fees as an incentive for settling cases prior to formal hearings. In those cases which are decided in court favorable to the position argued by permittees, the government should reimburse the permittees' legal fees.

Conclusion:

Again, the California Cattlemen's Association appreciates this opportunity to provide Congress with a brief description of our experience with the U.S. Forest Service appeals process. We believe that the current system withholds due process from grazing permittees

and other appellants, and we believe that changes are needed to ensure that appeals, both judicial and administrative, are handled in an equitable manner. Thank you for your consideration of our perspective on this important issue.

STATEMENT OF
DAVID G. UNGER, ASSOCIATE CHIEF
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on National Parks, Forests and Lands
Committee on Resources
United States House of Representatives

Forest Service Administrative Appeals Process

June 20, 1996

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to discuss the operation of the Forest Service Administrative Appeals procedures.

It goes without saying that segments of the American public have widely differing views about how the nation's natural resources should be managed. These differences have, in turn, greatly challenged management of the National Forests and Grasslands. Administrative appeals procedures are one method used to help build support for the decisions of this agency. Clearly, the stridency of debate has not gone away. But we believe the appeals procedure has helped to resolve many disagreements and misunderstandings about Forest Service activities--it has certainly lowered the volume in the debate.

Today, I will focus most of my remarks on the process found at 36

CFR 215 that addresses appeals of project-level decisions. I will also touch briefly on the appeals processes for forest plan decisions and for appeals of permits and authorizations. These procedures are found in sections 217 and 251, respectively, of Chapter 36 of the Code of Federal Regulations.

Project-level Appeals

Just over a year ago--March 8, 1995, to be exact--I testified before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources on the Forest Service administrative appeals process. That hearing was prompted by the changes to the appeals process brought about by language in the Interior and Related Agencies Appropriations Act (P.L. 102-381, Section 322). The final regulation implementing these changes became effective on January 4, 1994 (58 Fed Reg 58904). Having operated under the new procedure for a little more than a year, I was happy to report that "We believe that the process is working smoothly and with good results." Today, I can again say that the revised appeals process is working.

The legislated appeals process contained in the 1993 Appropriations Act attempted to accomplish a number of policy objectives. These were: 1) encouraging public involvement in Forest Service decisionmaking before decisions are made; 2) streamlining the procedures for project appeals once a decision is made; 3) establishing time frames in law to assure timely

decisions; and 4) encouraging informal resolution of issues through face-to-face meetings during the appeals period.

Success of the revised project appeals process is indicated in the following numbers. For fiscal year 1995, 694 appeals were filed on the 2,347 projects that were subject to appeal under 36 CFR 215. All but 30 of these appeals were disposed of within the statutory 45 day time limit. In more than 75 percent of the appeals, informal resolution was attempted producing resolutions in 60 cases, or approximately 9 percent of the total number of appeals. Additionally, 62 appeals were withdrawn by the appellant. Of the remaining 542 appeals for which final decisions were issued, 25 projects were withdrawn. However, many of these projects are being redesigned for further consideration.

We evaluate this data in the following way. The public is clearly participating in the predecisional deliberations. This is shown by the number of individuals who demonstrated interest during the predecisional process and who subsequently had standing to file appeals. Moreover, appeals are being handled in a timely fashion--more than 95 percent were resolved in the statutory 45 day period.

Beyond these numbers, we also looked at how the appeals process was working for timber sales and if appeals were merely a step in a process that inevitably led to litigation. With respect to the

timber sales, 381 appeals were filed on 1,897 sales--about 20 percent, a rate similar to that for other types of projects. With respect to litigation, lawsuits were filed at a rate of one lawsuit for every 50 appeals. Clearly, the appeal process provides resolution for the vast majority of contested Forest Service project decisions.

Possible Changes to the Project Level Appeals

In preparation for this heraing, we asked the nine Forest Service Regions how the revised appeals process is working. Only one criticism of the current system was common to most respondents. This criticism is that the criterion for establishing the right to appeal (Section 322(c) P.L. 102-381) is overly broad. Persons are not required to express any specific concerns during predecisional project development. This allows parties to file appeals that are vague or that raise specific concerns for the first time on appeal, and prevents the Forest Service from addressing these concerns before decisions are made. Having noted this concern, our records show that less than two percent of the appellants did not participate with written comments during scoping or the 30 day notice and comment period. In light of these facts, we do not believe that limiting standing to those individuals who had filed written comments during predecisional project development would improve the process significatnly. Certainly, when considering disadvantages of destabilizing the current appeals process, we would not advocate changing the

provisions of section 322(c) at this time.

Appeals Under Section 217 and 251

I would like to review briefly operations under the other appeals processes, section 217 for forest plans and regional guides and section 251 for permits and authorizations.

Deciding appeals on forest plans and regional guides, other than non-significant forest plan amendments covered under section 215, creates a substantial workload. This is not surprising given the broad scope of these documents and the controversy inherent in the management of National Forests and Grasslands. We have made substantial progress in eliminating the backlog of appeals. At the end of fiscal year 1995, 115 appeals were pending. As of June 10, we have reduced this number to 15, and we expect to see further reductions in the backlog by year's end. Certainly we are working to handle forest plan appeals as efficiently as possible. But we also recognize that operation of any appeals process that truly gives the public a voice in deciding how our national forests are to be managed will necessarily require a high commitment of time and resources. We are not considering changes to section 217 regulations at this time.

Appeals of permits and authorizations under section 251 are materially different from project and forest plan appeals. These appeals relate to Forest Service decisions on permits and

authorizations. As such, appellants to the appeal process are limited to parties directly affected by the decision on appeal. Under section 251, 166 appeals were processed in fiscal year 1995. To date, 83 appeals have been filed this fiscal year. We believe that the section 251 appeals process works in a relatively effective and expeditious manner.

We will be proposing some changes to the 251 regulations that will streamline the administrative process and make the terminology consistent with 36 CFR 215. The most substantive change is the result of provisions in Section 282 of the Federal Crop Insurance Reform and USDA Reorganization Act of 1994, relating to participation in mediation of livestock grazing disputes on National Forest System Lands. Currently, we are determining how best to comply with this provision and expect to have proposals for public review in the next few months.

Closing

In closing, I would like to return to my testimony from last year. At that time, I said:

> The changes in the project level appeals process were designed to increase public participation, to help the Forest Service focus even more on listening and ensuring that the views of the public are considered before decisions are made, and to streamline the process. We believe that the new

process is working and with good results.

After an additional 15 months operating under the new regulations, we have no reason to change our assessment of the project level appeals process. This does not mean that we are not working to further improve the decision-making process. For example, we are focusing our efforts on better public involvement in the project formulation stage. Where the public is actively involved in project design, we find that the likelihood of appeals is reduced and, where filed, the appeals are much more focused which, in turn, facilitates timely disposition of the appeal.

This concludes my statement. I will be happy to respond to your questions.

TESTIMONY OF

NOEL E. WILLIAMS
COMMISSIONER;
LINCOLN COUNTY, MONTANA

BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS AND LANDS

ADMINISTRATIVE APPEALS EXEMPTION FOR SALVAGE SALES

JUNE 20, 1996

10:00 AM
1324 LONGWORTH
HOUSE OFFICE BLDG.,

WASHINGTON, D.C.

THANK YOU MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, FOR GIVING ME THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY. MY NAME IS NOEL WILLIAMS AND I HAVE BEEN, FOR THE PAST DOZEN YEARS, A COUNTY COMMISSIONER IN LINCOLN COUNTY, MONTANA. I ALSO SIT ON THE NATIONAL ASSOCIATION OF COUNTIES' PUBLIC LANDS STEERING COMMITTEE, AND AM PAST PRESIDENT OF THE WESTERN INTERSTATE REGION WHICH CONSISTS OF THE COUNTIES WITHIN THE FIFTEEN WESTERN-MOST STATES.

BASED ON DISCUSSION WITH YOUR STAFF, I PERCIEVE MY PRIMARY TASK HERE TODAY IS TO DISCUSS THE RESULTS OF THE CURRENT FOREST SALVAGE PROGRAM ON FEDERAL LANDS RELATIVE TO THE EXEMPTION FROM ADMINISTRATIVE APPEALS UNDER THE TIMBER PROVISIONS OF THE 1995 RESCISSIONS BILL (COMMONLY REFERRED TO AS THE "SALVAGE RIDER").

FROM MY PERSPECTIVE, THE GENERAL CONSENSUS OF LOCAL LEADERS, AND FOREST SERVICE PERSONNEL, AND THE WOOD PRODUCTS INDUSTRY PARTICIPANTS, IS THAT THE CURRENT SALVAGE PROGRAM BASED ON THE SO-CALLED SALVAGE RIDER HAS BEEN THE MOST SUCCESSFUL POSITIVE CHANGE IN FEDERAL FOREST MANAGEMENT DIRECTION IN RECENT YEARS.

LET ME BRIEFLY EXPLAIN THE CIRCUMSTANCES OF THE COMMUNITIES IN MY COUNTY, AND KEEP IN MIND THAT THESE CIRCUMSTANCES ARE NOT DISSIMILAR TO A HOST OF OTHER RURAL WESTERN COMMUNITIES. ALMOST 80 PERCENT OF OUR 3750 SQUARE MILES IS ENCOMPASSED BY THE KOOTENAI NATIONAL FOREST, WHILE ONLY 7 PERCENT IS COMPRISED OF PRIVATE/ NON-CORPORATE OWNERSHIP WHICH PROVIDES THE TAX BASE TO SUPPORT PUBLIC SERVICES. RECENT STATISTICS FROM THE BUREAU OF BUSINESS AND ECONOMIC RESEARCH INDICATES THAT 56% OF OUR LABOR FORCE IS INVOLVED IN THE WOOD PRODUCTS INDUSTRY, AND 29% IS FEDERAL CIVILIAN WORK FORCE -PRIMARILY U.S.F.S. PERSONNEL CHARGED WITH MANAGING THOSE FEDERAL LANDS. THOSE TWO GROUPS ALONE COMPRISE 85% OF OUR TOTAL WORK FORCE; CONSEQUENTLY, IT BECOMES EASY TO SEE HOW VIRTUALLY EVERY CITIZEN IN LINCOLN COUNTY IS IN SOME WAY IMPACTED BY THE MANAGEMENT OF THE KOOTENAI NATIONAL FOREST.

BECAUSE OF THIS DEPENDENCE, WE TRY TO CLOSELY MONITOR THE ACTIONS, DECISIONS, AND RESULTS OF U.S. FOREST SERVICE MANAGEMENT. THE ANNUAL GROWTH OF WOOD FIBER WITHIN THE KNF IS ESTIMATED BY SCIENTISTS TO BE BETWEEN 500 MMBF AND 600 MMBF; WHEN THAT BIOLOGICAL POTENTIAL WAS DISCOUNTED TO MEET THE VARIOUS OTHER RESOURCE NEEDS IDENTIFIED IN THE FOREST PLANNING PROCESS (I.E., WATER QUALITY, WILDLIFE, FISH, RECREATION, ENDANGERED SPECIES, ETC.), IT WAS DETERMINED THAT AN ALLOWABLE SALE QUANTITY THAT COULD BE CONSERVATIVELY PROJECTED ON A DECADAL BASIS, AND EASILY PROVIDE FOR A

SUSTAINED YIELD TIMBER PROGRAM, WAS APPROX. 240 MMBF. INDUSTRY AND COMMUNITIES WERE ENCOURAGED TO MAKE LONG-TERM PLANNING DECISIONS BASE ON THESE NUMBERS. AFTER SUCH PLANS WERE MADE, HOWEVER, SUBSEQUENT ENVIRONMENTAL CONSIDERATIONS, ADMINISTRATIVE APPEALS, AND LITIGATION QUICKLY ERODED THEM. THESE APPEALS AND LITIGATION OFENTIMES SEEM TO BE NOTHING MORE THAN DELAY TACTICS AND EFFORTS TO DETER ANY UTILIZATION OF COMMODITY RESOURCES. THE MOST RECENT CHALLENGES HAVE STATED THAT THE GRIZZLY BEAR RECOVERY DECISIONS ON SALVAGE SALES WERE "ARBITRARY AND CAPRICIOUS". HOWEVER, THE JUDGES REVIEWING THESE CLAIMS HAVE UNANIMOUSLY REJECTED THEM, INFERRING THAT IT WAS THE CLAIMS THEMSELVES THAT WERE ARBITRARY AND CAPRICIOUS.
ILLUSTRATIVE RESULTS: FISCAL YEAR 1994 TOTAL SALES -59 MMBF; FISCAL YEAR 1995 TOTAL SALES -58 MMBF. CONSEQUENCES: RAMPANT UNEMPLOYMENT AND BUSINESS FAILURES AND ASSOCIATED SOCIO-ECONOMIC DISARRAY.

THE RAY OF HOPE IS THE CURRENT SALVAGE PROGRAM EXPEDITED BY THE EXEMPTION FROM ADMINISTRATIVE APPEALS. COMPARE THE PREVIOUS NUMBERS WITH CURRENT FISCAL YEAR 1996: THROUGH MID-JUNE, 96 MMBF SOLD, WITH YEAR END TOTAL PROJECTED TO BE 167 MMBF, 149 OF WHICH WILL BE SALVAGE. THE INFERENCES ARE CLEAR.

THIS PROGRAM IS KEEPING MANY OF MY FRIENDS AND NEIGHBORS EMPLOYED. THIS PROGRAM IS GIVING A MEASURE OF SECURITY TO MANY OF THE SMALL OPERATORS IN OUR COMMUNITIES, WHO ARE CURRENTLY MAKING MAJOR INVESTMENTS IN LOW-IMPACT,HIGH UTILIZATION, MACHINERY IN ORDER TO BETTER COMPLY WITH ENVIROMENTALLY SENSITIVE GUIDELINES. <u>WE MUST NOT ALLOW THIS TO BE A FALSE SECURITY</u>.

THE OWNER/MANAGER OF ONE OF OUR MAJOR WOOD PRODUCTS CONVERSION PLANTS STATED UNEQUIVOCALLY THAT WITHOUT RAW MATERIALS AVAILABLE AS A DIRECT RESULT OF THE SALVAGE RIDER, THEIR LABOR FORCE WOULD HAVE BEEN REDUCED BY A MINIMUM OF 40 PERCENT (FROM 200 TO 120), FROM WHICH WOULD HAVE SPUN OFF AN EVEN HIGHER NUMBER OF JOB LOSSES IN SERVICE AND SUPPORT INDUSTRIES. HE FURTHER COMMENTED (SIGNIFICANTLY, FOR THE PURPOSES OF THIS HEARING) THAT IT HAS BECOME OBVIOUS TO HIM THAT THE PROGRAM "HAS HAD AN EXTREMELY POSITIVE EFFECT ON THE MORALE AND PRODUCTIVITY AND TEAM WORK OF THE FOREST SERVICE EMPLOYEES". THERE ALSO APPEARS TO BE A MUCH GREATER ATMOSPHERE OF COOPERATION: BOTH INDUSTRY AND AGENCY ARE AWARE THAT THEIR ACTIONS WILL BE CLOSELY SCRUTINIZED -THEY HAVE TO DO A GOOD JOB BECAUSE THEIR FUTURE DEPENDS UPON IT, AS DOES THE QUALITY OF FUTURE HABITAT CONDITIONS.

THESE OBSERVATIONS HAVE BEEN ECHOED BY VARIOUS DISTRICT RANGERS. THEY HAVE NO DOUBT THAT CURRENT ACTIVITIES WOULD HAVE BEEN HELD UP BY APPEALS AS A MATTER OF COURSE. SOME GROUPS SUBMIT IDENTICAL APPEALS ON EVERY PROJECT; NOT HAVING TO DEAL WITH SUCH TACTICS HAS ALLOWED THE AGENCY AT

THE LOCAL LEVEL TO PROVIDE A HIGHER QUALITY OF WORK IN LESS TIME OVERALL BECAUSE MORE TIME CAN BE SPENT ON THE GROUND. THE REDUCTION IN PAPER WORK AND DOCUMENTATION HAS ALLOWED THEM TO PROVIDE SMALLER PROJECTS AVAILABLE TO A GREATER ARRAY OF OPERATORS AND CONTRACTORS.

RELATIVE TO THE ACCUSATION THE CURRENT LAW ALLOWS "LAWLESS LOGGING", OUR OBSERVATIONS HAVE BEEN AS FOLLOWS:

1) THE FOREST SERVICE APPEARS TO BE EXECUTING THE SAME LEVEL OF ENVIRONMENTAL ANALYSIS AS BEFORE, INCLUDING PUBLIC INVOLVEMENT, AND APPEARS TO BE CONTINUING COMPLIANCE WITH ALL ENVIRONMENTAL LAWS, WITH THE ADDEI ADVANTAGE OF HAVING MORE TIME AVAILABLE ON THE GROUND TO "PROOF' THEIR ANALYSES AND COMPLIANCE.

2) THE AGENCY HAS CONTINUED TO CONSULT WITH USFW ON ALL SALES THAT MAY AFFECT THREATENED AND ENDANGERED SPECIES.

3) THEY APPEAR TO BE USING A CONSISTENT DEFINITION OF SALVAGE. THE LESS THAN TEN PERCENT "GREEN" VOLUME INCLUDES ONLY THOSE TREES NECESSARILY HARVESTED FOR TRAILS, LANDINGS, ETC., AND THOSE IN EXTREME RISK OF MORTALITY.

AS FOR THE ACCUSATION THAT THE AGENCY IS USING THE APPEALS EXEMPTION AS LICENSE TO "RAPACIOUSLY DENUDE" THE VAST AREAS AFFECTED BY FIRE IN 1994, THE FACTS INDICATE OTHERWISE. FOR EXAMPLE, ON THE KNF, 53000 ACRES WERE BURNED, YET ONLY ABOUT 4500 (LESS THAN 10%) ARE PLANNED FOR SALVAGE. THIS IS HARDLY INDICATIVE OF AN "EXCESSIVE" USE O1 THE APPEALS EXEMPTION LEGISLATION. IN FACT MANY LOCAL OBSERVORS FEEL THAT THE FOREST MANAGERS ARE BEING MORE CONSERVATIVE THAN IS REASONABLE.

I WOULD CONCLUDE THAT, AT LEAST IN THE INLAND NORTHWES' FORESTS OF WESTERN MONTANA AND NORTHERN IDAHO, THAT THE RESPONSIBLE ACTION OF CONGRESS IN PROVIDING FOR SOME RELIEF FROM A LITANY OF FRIVOLOUS APPEALS AND LITIGATION HAS PROVIDED ADDITIONAL BASIS FOR IMPROVED FOREST MANAGEMENT THAT SHOWS SIGNS OF RESOUNDING SUCCESS AS WITNESSED BY:

-INCREASED UTILIZATION OF VALUABLE RESOURCES
-IMPROVED FOREST HEALTH
-REDUCED THREAT OF CATASTROPHIC FIRES
-SUBSTANTIAL FINANCIAL RETURN TO BOTH LOCAL AND U.S. GOVERNMENTS
-SUBSTANTIAL INCREASE IN RAW MATERIALS DESPERATELY NEEDED BY FOREST DEPENDENT COMMUNITIES THAT WERE PROMISED A STABLE FLOW OF FEDERAL TIMBER
-INCREASED EFFICIENCY AND MORALE AMONG FOREST SERVICE PERSONNEL
-ALL THE ABOVE WITHOUT A REDUCTION IN SENSITIVITY TO THE ENVIRONMENT.

OUR GOVERNOR OF MONTANA, MARC RACICOT, HAS CONCURRED WITH THIS ASSESSMENT AND HAS SUGGESTED THAT WE JOINTLY SEEK EVEN MORE OPPORTUNITIES TO "REVERSE BUREAUCRATIC IMPULSE AND SIMPLIFY, NOT COMPLICATE" THE QUEST FOR RESPONSIBLE MANAGEMENT AND PROGRAMS THAT CAN BETTER SATISFY NATIONAL INTERESTS AND LOCAL NEEDS.

ONCE AGAIN, THANK YOU FOR THIS OPPORTUNITY TO SHARE THESE OBSERVATIONS.

TESTIMONY OF MATT BENNETT

BEFORE

THE HOUSE RESOURCES COMMITTEE ON NATIONAL PARKS,

FOREST AND LANDS

JUNE 20, 1996

Mr. Chairman and Members of the Subcommittee, my name is Matt Bennett and I am testifying today on behalf of the Southern Timber Purchasers Council, and the Tennessee Forestry Association. The Southern Timber Purchasers Council is an affiliation of forestry companies across the South who have joined together to advocate, seek and promote federal policies which will provide access to Southern forest resources. The Tennessee Forestry Association is a 1000 plus member organization of landowners, forestry professionals, hardwood and softwood sawmills, furniture manufacturers, and pulp and paper producers dedicated to the proper use and conservation of our state's forestland. I am the incoming President of this organization. Thank you for this opportunity to testify today regarding the Forest Service administrative appeals process.

I. BACKGROUND

To meet its legislative mandate of multiple-use and sustained yield on the land that it manages, the Forest Service uses a decision making process that includes (1) developing management plans for forest, and (2) reaching project-level decisions for implementing these plans. Project-level decisions might include such activities as timber harvest, livestock grazing, wildlife habitat management, and recreational development.

In a good faith effort to increase public participation, the Forest Service implemented an administrative appeals process to provide recourse for disagreements over its management decisions (36 CFR Sec. 215 and 36 CFR Sec. 217). Further recourse is available through the federal courts by those seeking to delay, modify, or stop a project they disagree with.

It is the object of this testimony to show that the process, however well intended, has become

dysfunctional agency policy. This policy results in unnecessary delays, and costly expenditures of taxpayer dollars that could be more wisely spent by the Forest Service to achieve its multiple-use objectives. Plainly speaking, time and money the Forest Service spends on appeals and litigation is time and money not spent on trail maintenance, improving wildlife habitat, or protecting forest and rangeland health.

In 1985, the Forest Service received 118 appeals against timber sales. This doubled in 1986, and by 1990, the Forest Service received 1154 appeals against 585 timber sales. Since 1990, this rate has dropped somewhat, but then the number of timber sales has dropped as well.

It seems unlikely that the problem of excessive administrative appeals results from a lack of diligence on the part of the Forest Service. According to General Accounting Office testimony given before the Senate Subcommittee on Forest and Public Land Management, the "Forest Service estimates that it spends more than $250 million each year conducting environmental analyses and preparing about 20,000 environmental documents to support project-level decisions--consuming about 18 percent of the funds available to manage the National Forest System, and an estimated 30 percent of its field units' staff resources. According to the Forest Service, it has conducted extensive, complies analyses in order to comply with NEPA and other environmental laws and to avoid or prevail against challenges to its compliance with these laws at the project level." (GAO testimony of Barry T. Hill, 1/25/96)

This would seem to be born out by the relatively few times these appeals are successful. In most cases, the original Forest Service decision is confirmed.

Unfortunately, some special interest groups regard administrative appeals as just the first rung on the ladder when it comes to stopping timber sales. According to the Region 8 Forest Service office in Atlanta, there has been a shift in tactics from appeals to litigation in Fiscal Year 1995. The Forest Service estimates that appeals have dropped by 1/3 while litigation has tripled.

There no longer seems reason to doubt the misuse of the appeals process by some groups. The actions of these groups shows a clear pattern that I believe attempts to thwart the multiple-use objectives of the Forest Service. I doubt the administrative appeals process was ever intended to grant so much power to a minority of the public opposed to timber sales. And I do believe it is a minority. At the recent Seventh American Forest Congress, 91 percent of the delegates rejected the

proposal calling for an end to logging on Forest Service land.

However, unless the flaws in the appeals process are corrected, I predict the situation will only worsen. This May, the Sierra Club formally adopted a position to oppose all commercial timber harvest on National Forest. Administrative appeals and litigation are tools they intend to use to accomplish this.

If this is allowed to happen, in the end the losers will be the thousands of small businesses and their workers who depend in whole or in part on Forest Service timber. The U.S. consumer will loose in the higher prices they must pay for fiber and wood products. And the taxpayer will loose in the millions spent fighting appeals and litigation. Tax dollars that could be better spent improving and protecting the National Forest themselves.

II. APPEALS AND LITIGATION

As mentioned above, Forest Service decision making focuses on both long term management objectives through the forest planning process (10-15 years), and the shorter term project-level decisions. Both of these are subject to appeal and litigation. I would now like to offer specific examples of how time consuming and expensive this process has become.

(1) Forest Plan Litigation--Cherokee National Forest

As required by the National Forest Management Act of 1976, Forest Service personnel on the Cherokee National Forest (CNF) made extensive efforts to involve the public in decisions regarding the Forest Plan (the Plan) for the CNF. After seven years of work, the Plan was approved on March 1, 1986. However on March 29, 1986, the Plan was appealed.

It is significant to note that the issues listed in the appeal, such as below cost timber sales, visual quality, and biodiversity were national policy disputes that extended beyond the scope of the forest planning process. The appeal attempted to force the Forest Service to resolve these issues. The appellants thought that if this could be done in their favor, then a precedent would be established for other Forest Plans.

Herein lies a fundamental misuse of the process. Instead of using the appeals process to address local management disagreements, the CNF Plan was appealed to advance a national agenda

by special interest environmental groups. These groups attempted to by-pass the legislative process and affect change through agency or court ordered action.

A partial settlement was reached in August of 1988, and the Plan moved forward with the settlement agreement in place. In the interim, the unresolved issues were reviewed and denied by the Chief of the Forest Service in December 1990.

At the time, most of us thought that would end the matter, however after 18 months of no action, The Wilderness Society (TWS) decided to proceed with litigation on the remaining issues denied in the administrative appeal. Having failed to persuade the Forest Service, TWS decided to try and persuade the courts.

Now, having already worked over 10 years on the Plan, the Tennessee Forestry Association had to go to court to ask for intervenor status in the pending legal battle. I am happy to report the litigation is finally over, although it has not been a short process. Ironically, work had already begun on the next ten year plan, before the present one was finally approved.

At the District Court level, Judge Evans dismissed the suit on the grounds that the plaintiffs, TWS, lacked standing. TWS appealed the Judge Evans decision to the Eleventh Circuit Court of appeals. On May 22, 1996, ten years after the original appeal, the Eleventh Circuit affirmed the dismissal of the challenge to the CNF Plan.

In the Eleventh Circuit's opinion, the environmental group's "claimed injury is not ripe for judicial review" because: (1) it is uncertain whether the Forest Plan will be implemented by a site specific action that injures plaintiffs, and (2) judicial review would be more manageable if it takes place in the context of a concrete timber sale, rather that at the abstract level of a Forest Plan.

No one would disagree that TWS was within their right to appeal and subsequently litigate the Forest Plan. However, within the context of this testimony, it is relevant to ask how the appeals process might have adversely affected the operations of the CNF.

It is possible to conclude that the appeals process may have significantly reduced the amount of timber for sale from the CNF. Anxious to avoid further litigation, CNF staff may have sought to lessen their chances by reducing the volume of timber offered for sale.

In 1989, the CNF sold 36.2 MM bd. ft. (million board feet) of timber, however by 1995 the amount sold had fallen to 12.1 MM bd. ft. The CNF now harvest timber on less than 1/2 of 1

percent of its available land base.

The small businesses that deal with the CNF, owning little or no timber land of their own, have been able to make up most of the decline from private timber sources. However, this may prove to be a short term solution. Imagine the difficulty of operating a small sawmill when the largest landowner in your area, the Forest Service, is an unreliable supplier. Making long range decisions about the growth and operation of your business becomes a roll of the dice.

There is also the question of new forest industry coming to the East Tennessee region. At last summer's 21st Century Jobs Initiative, forestry was selected as an industry that could provide new job opportunities in the region. However, in the course of the discussion, one CNF representative admitted that the uncertain timber supply form the National Forest was likely to discourage new forest industry from moving to East Tennessee.

Some have observed that tourism might serve as a replacement for timber industry jobs. I would only point out that tourism's average annual wage is approximately $9000, while forestry related jobs average about $17,000.

Finally, how much did ten years of appeals and litigation cost taxpayers? If the Forest Service knows, they aren't telling. However, considering the thousands of man hours expended by the CNF staff while they prepared to defend their decisions, the cost must be substantial. Again, in view of competing needs, was money spent in litigation the best use of taxpayer dollars? I would argue, it was not.

In the final analysis, only the special interest environmental groups stood to gain from the appeal, but in the end they lost too. However, the Court's opinion is unlikely to dissuade these groups from future litigation.

(2) Project-Level Appeals

When looking at project-level appeals, two things quickly become evident. The majority are often brought by one appellant, and the majority apply to timber sales. This further supports our contention that the process is being misused by a few whose goal is to stop timber harvesting on the National Forest. Let me cite examples:

- On the Daniel Boone National Forest in Kentucky, 17 timber sale appeals have been filed, 13 (76 percent) by the environmental group Heartwood.
- On the Chattahoochee National Forest in Georgia, 38 timber sales appeals have been filed, 23 (60 percent) by the Sierra Club.
- On the Ouchita National Forest in Arkansas, 57 timber sale appeals have been filed, 52 (91 percent) by a single appellant.
- On the Ozark National Forest, also in Arkansas, 40 timber sale appeals have been filed, 18 by the same appellant who filed 52 appeals on the Ouchita.

Project appeals may be successful tactics for delaying the proposed action, but they contribute little new insight into these actions. To date, of the above appeals that have been decided, the overwhelming majority were either dismissed or decided in favor of the Forest Service's original opinion.

Unable to achieve significant redirection in Forest Service actions, i.e. stopping timber sales, there appears to be a shift from administrative appeals to litigation. Perhaps anticipating the Court's comments that judicial review would be more effective in the context of an actual timber sale, environmental groups have begun litigation against timber sales on both the Ozark and the Chattahoochee National Forest. We are concerned that the CNF will not be far behind.

Probably due to the Forest Plan litigation and a lack of timber sales to appeal , there have been fewer timber sale appeals on the CNF. However, there are two sales where we feel litigation may be forthcoming. The Little Citico sale on the Tellico Ranger District has already been appealed twice, and the Bear Branch sale on the Nolichucky Ranger District, is a roadless area the TWS considers a "Tennessee Mountain Treasure".

If the Chattahoochee and the Ozark are any indication, then the litigation will claim violations of three laws: the Clean Water Act (CWA), the Migratory Bird Treaty Act (MBTA), and the National Forest Management Act (NFMA). (See attached for more detailed discussion.)

If the violation of the MBTA is upheld by the courts, this could well become the "spotted owl" issue of the South. Its impact would not be confined to Forest Service land, as private landowners would also be subject to the conditions of the Act.

It would be difficult to overstate the importance of this to private landowners, sawmills, and loggers in the region should the Court rule harvesting must stop during the April to August nesting season. Logging is a weather dependent industry, and this time coincides with the period of peak production in the industry. It is also a time when the associated environmental impacts of logging are at a minimum for some sites.

III. CONCLUSIONS

We have a saying in Tennessee that, "if it ain't broke, don't fix it." Unfortunately, the Forest Service appeals process is broke and it does need fixing. I am not aware of any other government agency that goes through so torturous a process to arrive at a decision and spends so much money to get there. I don't believe the Forest Service ever intended to give so much power to so few. That has happened none the less, and now the process is dysfunctional and subject to misuse by groups seeking to stop timber sales. The end result is an uncertain future for forest dependent small businesses, and taxpayer dollars wasted on litigation that could be spent to ensure a healthy, more productive forest for future generations.

How can we "fix" the Forest Service appeals process? I would like to reiterate some of the suggestions I have heard over the course of my preparation for this testimony.

(1) Examine and resolve conflicting requirements of the various laws that guide Forest Service policy.

(2) Examine and reconcile multi-agency responsibility for the enforcement of environmental laws. For example, the Forest Service must deal with EPA, U.S. Fish and Wildlife, National Marine Fisheries Service, and the Army Corp of Engineers on different environmental laws. These agencies sometimes disagree among themselves over the interpretation of the law.

(3) Limit appeals to those who have participated in the decision making process.

(4) Limit appeals to forest specific issues. Don't allow appeals filed to address national issues, and apply more to laws such as NFMA act, than to Forest Plans or projects.

(5) End frivolous appeals and litigation by requiring appellants to post a bond.

(6) Require the Forest Service to make a full and detailed cost accounting of the taxpayer

dollars spent on appeals and litigation, and disclose this information to Congress and the public on an annual basis.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

June 11, 1996

INFORMATIONAL UPDATE

Sierra Club Litigation filed in Georgia alleging violations of Clean Water Act, Migratory Bird Treaty Act and National Forest Management Act

On April 17, 1996, the Sierra Club filed a lawsuit against the Chattahooche National Forest timber sales. The suit was filed in the U.S. District Court for the Northern District of Georgia, Atlanta Division. The plaintiffs, in addition to the Sierra Club are: The Wilderness Society, Georgia Forestwatch, The Armuchee Alliance, the Rabun County Coalition to Save the Forest, and Friends of Georgia. The Defendants are George Martin, Forest Supervisor of the Chattahoochee National Forest and Robert Joslin, Regional Forester. Seven timber sales are involved, four with active contracts.

The Sierra Club Claims:

The lawsuit claims three major violations of law. The alleged violations of Clean Water Act and Migratory Bird Treaty Act could potentially affect all lands (public and private) as well as other activities such as development, farming, etc. The claims are:

(1) Clean Water Act : Sierra Club claims that the construction of logging roads without a National Pollutant Discharge Elimination System (NPDES) violates the Clean Water Act. An NPDES permit enables a person to obtain a permit to discharge a "pollutant" from a "point source".

Sierra Club claims "the logging roads, streams crossings, yarding areas, spoil piles and other related grading and construction projects allowed under the projects which are the subject of this suit result in the discharge of sediment to rivers and streams."

(2) Migratory Bird Treaty Act: Sierra Club claims that the Forest Service's approval of the timber sales violates the Migratory Bird Treat Act of 1918 (MBTA). The Sierra Club further states that the harvesting of trees any time during the April to August nesting season for neotropical migratory birds should be stopped as an MBTA violation, because nests will be disturbed and migratory birds will die.

(3) National Forest Management Act: The Sierra Club claims that it is the Forest Service duty to keep current population trend data concerning all "sensitive species."

The Temporary Restraining Order Hearing

On April 18, 1996, the Court had expected to hold a hearing for the Sierra Club's request for a Temporary Restraining Order, which the Sierra Club stated was "necessary to prevent unlawful agency action, forestall irrevocable injury to the environment and preserve the status quo in order to enable a meaningful decision on the merits...".

The Southern Timber Purchasers Council and the American Forest & Paper Association worked with the four timber purchasers to gain a voluntary 20 day suspension of operations which commenced on the close of business on April 19, 1996 through and including May 9, 1996. This action avoided the need for a Temporary Restraining Order.

The Council's Intervention Request

The Southern Timber Purchasers Council and the four timber purchasers filed a request for intervention on April 26, 1996.

The Preliminary Injunction Hearing

A Preliminary Injunction hearing, was held on May 1, 1996. On May 9, the Judge issued a preliminary injunction which extends through September 15, 1996.

Summary of the Southern Timber Purchasers Council's Brief Arguing Against the Sierra Club's Claims

> ***(1) Clean Water Act:*** The Sierra Club's CWA claim fails on the merits because the timber harvesting activities at issue are exempt from the NPDES permit requirement. Normal silvicultural activities such as road construction constitute "nonpoint sources." As such, they do not require NPDES permits because the permit requirement applies only to discharges from *point* sources.
>
> Regulation under the Environmental Protection Agency (EPA) states that forestry and silvicultural activities are nonpoint sources and are in the permit-exempt category. In fact, EPA has reiterated several times that forest roads are nonpoint sources. Regulation expressly exempts most silvicultural activities, including roads: "*The term silvicultural point source does not include non-point source silvicultural activities such as nursery operations, site preparations, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff....*"

Under EPA regulation "only discharges from four activities related to silvicultural enterprises (rock cursing, gravel washing, log sorting and log storage facilities) are considered point sources....subject to NPDES permitting requirements."

(2) Migratory Bird Treaty Act (MBTA): The Sierra Club alleges that the Forest Service's approval of the challenged timber sales violates the MBTA. The Council's brief stated that "The Court should recognize that acceptance of this grandiose theory would virtually halt timber harvesting over a large proportion of the forested United States, and would subject other innocent landowners to the threat of criminal prosecution or injunctions against ordinary land use."

Virtually all birds in the U.S. are covered by international treaties and the MBTA. If the MBTA allows an injunction against a land use or habitat modification that would injure a single migratory bird or nest, the MBTA would significantly constrain land uses nationwide.

The MBTA., like all statutes, should be interpreted to avoid such absurd or odd results. The Court should not so expand the MBTA without a strong showing that Congress recognized and intended that the MBTA impair Fifth Amendment property rights on such an extraordinarily broad scale. This legislative intent cannot be discerned in the limited MBTA statute enacted in 1918, when Congress's intent was to stop poaching.

(3) National Forest Management Act (NFMA): The Sierra Club's claim that the Forest Service must keep current population trend data on all "sensitive species" is not enforceable. Neither the NFMA nor its implementing regulations explicitly require information on all "sensitive species." The Forest Service is only regulated to conduct appropriate inventorying of resources during the process of preparing a forest plan and the regulations leave the decision on the appropriate level of such inventorying to the agency.

Instead of requiring information on each of the thousands of species in a given national forest or on all "sensitive species", the Forest Service selects a "management Indicator Species".... a smaller group of species used to "indicate the effects of management activities" on certain habitats. It would be prohibitively expensive to repetitively survey each of the 749,000 acres in the Chattahoochee National Forest to obtain accurate population counts and population trend information for dozens of "sensitive species." The Court should be sensitive to the separation of powers issues in demanding a level of information on "sensitive species" that exceeds the legislative appropriation.

STATEMENT FOR THE RECORD

BY

JAMES L. MATSON

PRESIDENT
VERMILLION SERVICES

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS,
FOREST AND LANDS

OF THE

UNTITED STATES HOUSE OF REPRESENTATIVES

JUNE 20, 1996

My name is Jim Matson. I am President of Vermillion Services, which is an economic development and natural resources consulting firm headquartered in Kanab, Utah. My clients are the communities of Fredonia, Arizona, Kanab, Utah, and Kane County, Utah. These two communities and Kane County are continually affected by federally administered public lands and the policies of the BLM, Forest Service, and Park Service. I would prefer to report to you that these affects were mostly benign or beneficial, but they are not.

Leading a list of adverse impacts on our communities are the Department of Agriculture, Forest Service administrative appeals procedures. Appeals have provided the opponents of human managed forests the means to breach a forestry system which until recently was of significant value to the American people and public forest lands. People in the communities that I represent have suffered greatly because of administrative appeals. Kaibab Forest Products Company, formally the areas largest employer of people and their 500 families was forced out of business by the constant barrage of administrative appeals, companion lawsuits and the acquiescence of the Forest Service. Administrative appeals continues to be the thin edge of the wedge utilized for purposes of paralyzing public forest lands enhancements and investments.

Our democratic system of governance usually reacts slowly to correcting excesses enjoyed by a few at the expense and detriment to the majority. Clearly the current and existing appeals procedures are excessive and have benefited a very vocal and aggressive minority in our society. The fact is, Forrest Service appeals rules are little more than a governmental give-a-way program. These give-a-ways allow a very small number, who care little for rural human communities much less a forest a free ticket to dismantle months of work and effort. Just grab the appeals rules and let it fly. The Forest Service usually just caves in, and the plan or projects are delayed, changed or canceled. Losses accrue to us all by allowing appeals to be one sided favoring eco- activists while the rest of have both arms tied off.

The magnitude of laws, rules, guidelines and procedures that project designers must navigate to implement a successful forest plan or associated project are simply overwhelming. An administrative appeal that stops a program has exploited the soft belly of Forest Service requirements, procedures and internal politics. I have noted and been involved with lousy projects, that were relatively challenge proof because process steps were adequate. On the other hand I have reviewed projects that were well conceived for benefiting forest resources, but were procedurally flawed and subsequently dropped. The point is procedurally correct or incorrectly implemented plans and projects are time consuming and costly. We are bearing these costs directly and indirectly throughout, but the heaviest impacts are falling on communities like Orderville, Utah and Fredonia, Arizona.

As a side bar after administrative appeals contributed to the closing of the mill in Fredonia, Arizona and a subsequent announcement of the closing of the Panguitch, Utah mill, the Dixie National Forest Supervisor on May 6, 1996 announced that the Forest Service is seeking new purchasers to assist with vegetation management. What I ask, was wrong with ones that were available? A friend wrote me from the Black Hills about the announcement and said "Oh - if you're looking for a partner to build a mill and take advantage of this wonderful Forest Service opportunity - please DON'T call!" Trust in the situation is totally lacking. A company and their bankers would have to commit to invest eight to ten million dollars to meet the needs of the Dixie Forests challenge. Would you invest your savings to help the government out with the specter of running out of a raw material, while that material either rots or burns up in the woods under administrative appeal?

I would also like to point out that the closing of these two mills resulted in the local area loosing the only entity capable of handling the volumes of material that will have to be harvested to handle the current spruce bark beetle infestations on the Dixie National Forest. The alternative is to have taxpayer to foot the bill and expense in order to stay up with the disease, insect killed and fire destroyed trees and ecosystems. The two Kaibab Forest Products Company mills could have processed a log mix of diameters ranging from six(6) inches in diameter to twenty-five(25) inches. These mills were designed to handle a blend of log sizes of 88% six(6) inch through sixteen(16) inches and 12% seventeen(17) inches and greater.

Preservationists bait and switch tactics evolved a strategy of goading the Forest Service about below cost timber sales by delaying and stop planned programs. Eventually it became impossible for the Forest Service to meet its goals and budget objectives. Before long the media and others were clamoring for answers as to why costs were higher than revenues. The leading reason for the higher cost is administrative appeals and the resulting delays. I've mused from time to time, asking if this is the case and Forest Service costs are increasing due to its own appeals rules then was there not an incentive to remedy the problem? Evidently not!

RECOMMENDATIONS:

The following recommendations are offered as basis for considering legislation or for directing the Department of Agriculture to strengthen the administrative appeals program.

1. Take the free out of the appeals process, if the appellant looses, they pay. At time of filing an administrative appeal that appeal would proceed under an agreement that stipulates that if the appeal is turned down and or litigation is unsuccessful, restitution be made.
2. Emergency programs after being certified as an emergency would be limited to an accelerated administrative appeal process that requires a deciding officers final decision within 15 working days.

3. Intervention by affected parties to an administrative appeal be allowed and a intervener be made a party to any settlement process of an appeal after standing is established.
4. Shorten and fast track the administration appeals to not to exceed 30 working days after an appeal is filed. Notice of an appeal received by the Forest Supervisor be made to affected parties who have noticed the Forest Service of their interest in the appeals process.
5. Require that state agencies appealing a particular decision of the Forest Service secure an approval of the governor of that state.
6. Statements of reasons in an appeal be limited to actual facts, personal opinions and peer reviewed biological and physical sciences.
7. All appeals should have one level of review by a designated Forest Officer above the level of the Officer whose decision is being appealed. The reviewing officers decision is to be will be final and due within the 30 working day appeal period.

This concludes my remarks.

Thank you for the opportunity to comment for the record on the Forest Services administrative appeals procedures.

United States Department of Agriculture | Forest Service | Dixie National Forest | 82 North 100 East, P.O. Box 580, Cedar City, UT 84721-0580

File Code: 2430

Date: May 6, 1996

TO PURCHASERS OF NATIONAL FOREST TIMBER SALES:

The Dixie, Fishlake and Manti-LaSal National Forests and the North Kaibab Ranger District of the Kaibab National Forest are seeking additional timber purchasers to assist with vegetation management projects in the southern Utah/northern Arizona area. Since 1993, these Forests have lost more than 40 million board feet of sawmill capacity due to local mill closures.

The Forests are experiencing differing vegetation management needs, but all require the use of commercial timber sales to accomplish desired resource objectives. The Dixie and Manti-LaSal Forests are experiencing heavy outbreaks of bark beetles in old-growth spruce and scattered ponderosa pine stands. Salvage sales on these Forests are designed to remove beetle broods from the forest and make wood products available to industry. The Fishlake National Forest has thousands of acres of aspen stands needing regeneration. The North Kaibab Ranger District has some of the most magnificent stands of ponderosa pine in the Nation, and they need thinning to promote improved Northern goshawk habitat.

Collectively, the four Forest Service units are scheduled to offer more than 63 million board feet of sawtimber in the remainder of calendar year 1996. At the current time we are concerned a significant portion of this volume could remain unsold. For this reason, we are reaching beyond our historic market area boundaries to locate additional purchasers for our timber sales. We have asked National Forests within 500 miles of our operating area to supply us with mailing lists for their timber sale bidders, and that is how we received your name for this mailing.

The volume of timber sales on the four National Forest units along with contacts for information for the remainder of calendar year 1996 are as follows:

Forest Service Unit	Sale Offerings 4/1/96 - 12/31/96 (MMbf)			Forest SBA Percentage	Unit Contact Person
	Salvage	Green	Total		
Dixie NF (Cedar City, UT)	15.0	9.7	24.7	33%	Barry Johnson (801) 865-3725
Fishlake NF (Richfield, UT)	1.0	1.8	2.8	80%	Ron Sanden (801) 896-9233
Manti-LaSal NF (Price, UT)	9.5	.6	10.1	80%	Glen Jackson (802) 637-2817
North Kaibab RD (Fredonia, AZ)	—	25.7	25.7	0%	Scott Nannenga (520) 643-7395
Totals:	25.5	37.8	63.3		

We would be pleased to add your name to our bidders lists. To receive advertisements for timber sales in our area, please notify the contact person listed above for the units you desire. We will also be pleased to discuss program or project specifics with you at any time. Again, please notify the contact person listed above regarding questions or the need for additional information.

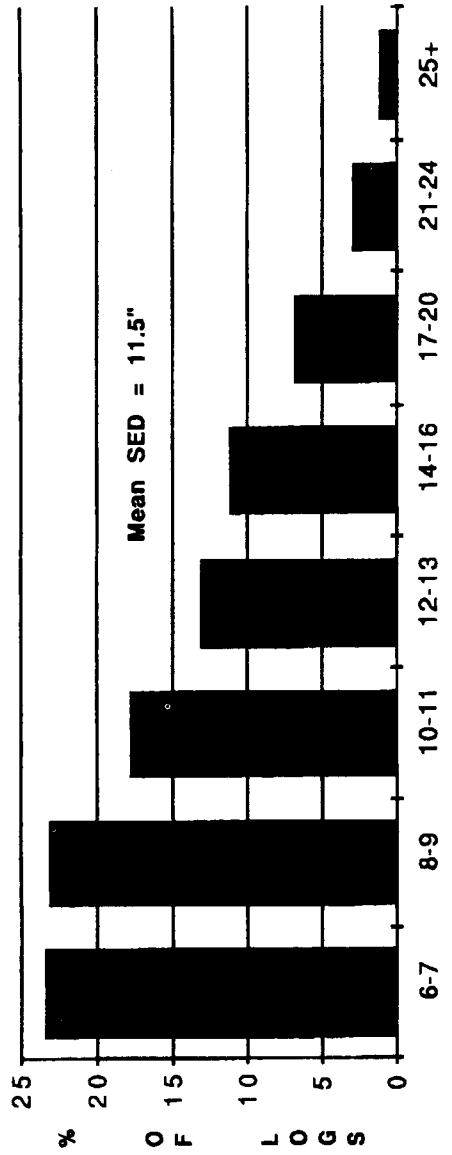
Thank you for taking the time to review this summary of our National Forest timber sale program in the southern Utah/northern Arizona area.

Sincerely,

Daniel H. Deiss

for HUGH C. THOMPSON
Forest Supervisor

KAIBAB FOREST PRODUCTS COMPANY
LOG DISTRIBUTION -- FREDONIA AND PANGUITCH SAWMILLS
FISCAL YEAR 1990



Testimony
House Resources Committee
Subcommittee on National Parks, Forests and Lands
Thursday, June 20, 1996, 10:00am

Nadine Bailey
Executive Assistant
Michigan Wisconsin Timber Producers Association
P.O. Box 1278
Rhinelander, WI 54501

Members of the committee, Thank you for allowing me to testify before you today. This is an issue that has affected me on a very personal level. I now serve as the Executive Assistant to the Timber Producers of Michigan and Wisconsin. I have been in this position since October of 1995. However, before moving to Wisconsin my family and I lived in the small Northern California town of Hayfork.

In 1990, a federal judge upheld an appeal brought by the Seattle Audubon against the US Forest Service. The judge place an injunction against any further timber harvest until a habitat management plan for the Northern Spotted Owl was completed. At that time my husband and I had a small timber falling business that employed approximately fifteen people. Because the federal government owns approximately eighty percent of the land in Trinity County, we were unable to continue operating our business. By the end of 1993 we were forced to close that business losing everything that it had taken us a lifetime to build. Our story is not unique. Unemployment in Trinity County and other forest dependant communities has skyrocketed. Some California school districts still have as many as ninety-five percent of the children on free and reduced lunches because they are living at or below poverty level. As the situation worsened, my family and I were forced to leave the area. This spring, the last remaining forest employer in Hayfork, the Sierra Pacific mill, closed it doors.

Although this is outside the basic question you asked me to address, I believe it is important for this committee to understand my frustration. Never once during the appeal process did anyone stop to consider the economic impacts of the appeal procedure, or attempt to take public comment from the people being impacted. At

the same time, many sales outside of the appeal process were also changed without public comment to address issues that might be included in future litigation. Sales that should have been sold were delayed and reviewed to insure that they would not be appealed. This attempt by the Forest Service to "appeal proof" all of their existing sales caused the cost of timber sale preparation to rise, and caused the future timber sale program to be decreased. This created the massive gridlock that continues today.

This type of gridlock is not just a western phenomenon. In the Lake States region there are also increasing examples of the misuse of the appeal process. In 1993, a small environmental group in Michigan appealed the West Hyde II Vegetation Management Plan. They maintained that the Forest Service had done an inadequate job on the environmental impacts of the plan. The plan was upheld by the forest supervisor. The timber sales were sold to Nagle Lumber, a small family owned company. Hoping to reduce some of the plaintiff's concerns about the plan, the Forest Service went back to the purchaser, Nagle Lumber, and asked them if they would be willing to delay harvest on the sale for one year so that a more in-depth study could be completed. Nagle Lumber agreed, and the Forest Service completed a full revision of the environmental assessment in addition to a biological evaluation on issues involved in the complaint. Satisfied that they had met federal mandates the Forest Service made plans to continue with the vegetation management plan. On May 31, 1996 the plaintiff of the original appeal resubmitted the appeal alleging the same charges in the first appeal, an appeal already overruled by the forest supervisors office.

This is just one small example of how the Forest Service through its appeal process, is being force out of timber sale preparation and into a litigation defense. This approach to forest management has already proven to be a disastrous to both the Forest Service and forest dependant communities.

I want to assure the members of this committee that it is not our intention or desire to circumvent public process or cause harm to any eco-system, but there has to be some reason brought back to the appeal process. The present process demeans the land manager and forces undo stress on the rural communities that are adjacent to our national forests. The present timber sale appeals process also costs the American tax payer money, as the Forest Service is forced to answer questions that have already been addressed .

In 1993, I was a speaker, on the first round table, at the Forest Summit convened by President Clinton. At that summit, President Clinton likened the federal regulations that governed forest management to a wagon with a team of horses hooked to both ends. He promised that his administration would be committed to ending that gridlock. The fact that I now live in Rhinelander, Wisconsin and not my native California, is proof that he has not been successful. I urge this committee to make the needed changes to the conflicting laws that govern resource management in this country. Thank you for your time.

IN THE SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS AND LANDS
U.S. HOUSE OF REPRESENTATIVES

CONCERNING PROBLEMS WITH THE APPEALS PROCESS

TESTIMONY OF ALASKA FOREST ASSOCIATION
Jack E. Phelps, Executive Director
Offered June 20, 1996

Mr. Chairman:

My name is Jack Phelps. Thank you for the opportunity to address you today. I am the Executive Director of the Alaska Forest Association (AFA). The Association was established in 1957, and represents the forest products industry in Alaska, including more than 250 regular and associate member companies statewide.

Let me begin my testimony today by pointing out that the timber industry in Alaska is starving in the midst of plenty. Although we operate on the largest national forest in the country, which includes more than five million acres of productive old growth, we are unable to harvest enough timber to meet the needs of our modest domestic processing capacity. Since the Tongass Timber Reform Act passed Congress in 1990, more than 42% of our direct timber industry jobs have been lost.

Ketchikan, the town in which I live, recently lost another independent mill, putting 35 people out of work. That may not sound like a lot of jobs to you, but in a town the size of Ketchikan, those losses will be felt. In any case, they were important to the families they used to support.

My message to you today is that the Forest Service cannot supply enough timber to our mills, not because they lack sufficient standing timber to sell, but because the process through which they must defend every sale is seriously flawed. The National Environmental Policy Act (NEPA), though designed with good intentions, is not working to protect the environment so much as it is working to impede America's economy and to interfere with the lives of the resource industry workers upon whom so much in this country depends.

I bring before you one example:

There is an island in Southeast Alaska called Kuiu. It is located northwest of Ketchikan, and southwest of Juneau. In the mid-sixties, some logging took place from along the beaches of east Kuiu Island at a place called No Name Bay, although no roads were built. In 1977, preliminary sale

planning for timber harvest on east Kuiu began in connection with the Alaska Pulp Company's long term contract.

In March 1979, the Tongass Land Management Plan was adopted and it designated the No Name Bay region as Land Use Designation IV, meaning that it was available for timber harvest. Consequently, in April 1980, the Forest Service issued an Environment Impact Statement which identified No Name Bay for extensive timber harvest activity. At the same time, the Alaska National Interest Lands Conservation Act (ANILCA) created wilderness areas on west and north Chichagof Island, greatly increasing the importance to the industry of the east Kuiu LUD IV designation.

By 1986, however, there had been no harvest in the area, and the Forest Service was required to produce a second EIS for east Kuiu. It also found the area suitable for harvest with little environmental effect, and again approved extensive harvest in the No Name Bay area.

On each of these EISs, an environmentalist group filed appeals and, failing to achieve satisfaction, filed suit. The Circuit Court ordered a supplemental EIS, which was concluded and signed in 1987. This was now the **third** EIS prepared for the same site. It, too, was appealed and litigated.

In May of 1989, the state of Alaska, exercising its land selection rights under the Alaska Statehood Act, selected 3400 acres around No Name Bay for eventual conveyance to the state, thus further complicating the appeals process under NEPA. The state selection controls access to the planned site of the Log Transfer Facility. In October of the same year, the Forest Service filed with the state a request for road reservations in the No Name Bay sale area. The actual harvest units within the selection were considered a prior existing right, and were still slated for harvest.

In 1990, Congress placed 35,000 acres of Kuiu Island into a new wilderness area, immediately to the south of the 66,000 acre Tebenkof Bay Wilderness Area (TBWA) which lies due west of No Name Bay. The TBWA was created by ANILCA.

In 1993, the Forest Service issued the **fourth** EIS on the east Kuiu harvest area, the North and East Kuiu Environmental Impact Statement. It was appealed and litigated. Furthermore, all efforts by the Forest Service to get concurrence from the state on planned actions affecting its interests were also appealed. Meanwhile, the state was getting pressure from environmental groups to change the intended purpose of the No Name Bay state selection from "remote settlement," the state's given reason for the selection under the Forest Service Community Grant program (FSCG), to "wildlife habitat." It should be noted that "wildlife habitat" would not have been a legally acceptable reason for a state selection under the FSCG guidelines which have been upheld by the United States Supreme Court.

During negotiations on the state's Mental Health Land Trust Settlement case, the environmentalists succeeded in their quest, and No Name Bay was given a tentative reclassification for "wildlife habitat." This resulted in the state dropping the priority for conveyance of this selection from a priority A to priority C. Given the ratio of allowable overselections and the number of

conveyances remaining under FSCG, it is now highly likely that No Name Bay will never be conveyed to the state and will remain under the jurisdiction of the Forest Service. Thus, due to appeals and litigation, the United States Government is being defrauded out of significant revenues at No Name Bay.

In April of 1994, Alaska Pulp Company's long term contract was terminated, putting 450 people out of work at the Sitka pulp mill and eventually causing the closure of the company's sawmill in Wrangell at the cost of another 250 direct jobs. The Forest Service then attempted to transfer the planned sales on east Kuiu to the remaining long term contract with Ketchikan Pulp Company which, due to appeals on its sales, was also running short of timber.

The Alaska Wilderness Recreation and Tourism Association (AWRTA), a local environmentalist group, appealed, then filed suit, alleging the need for yet another EIS since the timber was not reviewed for sale to this particular buyer. The Superior Court found in favor of the government, but AWRTA appealed to the Ninth Circuit and obtained an injunction against 282 million board feet of NEPA cleared timber, including a proposed sale at No Name Bay.

At first, the Forest Service vigorously defended its position, filing an excellent response brief on December 22, 1995. Early this year, however, the Clinton Administration's Justice Department entered into negotiations with the plaintiff (excluding intervenor-defendant Alaska Forest Association) and produced a settlement agreement which strongly favored plaintiff. Eventually, the court approved the settlement agreement and ordered a **fifth** EIS on east Kuiu.

The result is that, after nearly twenty years of planning and producing paperwork by the ton, the Forest Service has yet to produce a single stick of wood or support a single private sector job from the significant stands of timber on east Kuiu Island. Sales that were laid out in 1979 are still awaiting harvest. Please remember that this is land that was purposely left in the timber base by Congress in 1990 when the Tongass Timber Reform Act was passed into law. Four Environmental Impact Statements have been performed, now a fifth has been ordered.

What we have, under the current system, is not environmental protection, but a never-ending process. The laudable goals of NEPA simply are not reachable under the current law. The problem is NEPA itself. Under NEPA we never get product, we only get lots of process. It becomes a never-ending planning cycle.

A big part of the problem is that no justification for any action will ever satisfy the law because **anyone** can allege possession of new information or a significant impact on some protected activity such as subsistence, thus forcing a new EIS. The east Kuiu example illustrates how this can undermine every attempt by the agency to do its job. I have had Forest Service employees tell me in frustration that they cannot write an EIS that will satisfy court scrutiny. The law is simply too open ended.

As a result, NEPA documents have completely lost their usefulness as planning documents. Instead they have become a means for the Forest Service to pad the record so that they have some

hope of prevailing in court when (not if) a lawsuit is filed against the proposed action. This is not right and it is not good. We need environmental laws that protect the environment, not laws that simply gum up the works and impede progress at great expense to the agencies, deprive the Treasury of needed revenue, and cost hard working Americans their jobs.

In summary, Mr. Chairman, if you want to repair the appeals process, you must amend NEPA. It must be rewritten so that it becomes a tool to protect the environment, not a club to prevent action.

Thank you very much.

THE MULTIPLE-USE COUNCIL

June 19, 1996

Comments of Steve Henson, Executive Director of the Southern Appalachian Multiple-Use Council, regarding U.S. Forest Service Administrative Appeals Process.

Submitted to U.S. House of Representatives Subcommittee on National Parks, Forests and Lands.

The Southern Appalachian Multiple Use Council is a nonprofit organization committed to promoting the principles of multiple use on public lands as defined by the MULTIPLE-USE SUSTAINED YIELD ACT OF 1960, that all forest lands should be managed for the multiple uses of sustained yield harvest, fish and wildlife habitat, rangelands and recreation. We actively participate in the decision making processes on National Forest Lands in the Southern Appalachian region to promote these concepts.

Our organization recognizes the importance of public participation in decision making processes associated with National Forests in our area and across the Nation. However, we also recognize that this participation has been abused by organizations and individuals with radical environmental agendas who wish to stop all timber harvesting on public lands. These abuses have created an environment which is counter productive for the wise management of our valuable natural resources on these lands. For this reason, our organization supports the significant restructuring or elimination of the administrative appeals process after a project decision is rendered.

The current appeals process has no negative consequences for those abusing the process with frivolous appeals; therefore, making it attractive for some to appeal any activity they deem objectionable to their private agendas. These superfluous appeals are used to punish decision makers through expenditure of time and monies to further justify and document decisions. It is our opinion that sufficient opportunity exists to address project concerns prior to decisions under the current NEPA process. When a decision is rendered it should be accepted by participants in the process. In the event some organization or individual is not satisfied with the decision, they have the opportunity to pursue it through the courts system. We feel a public participation process structured in this manner will create a situation where any objections will be of some reasonable nature requiring appellant's expenditure of time and monies and place the burden of proof where it belongs.

In the Southern Appalachians, the appeals process has been grossly abused and is having a negative effect on needed management practices to maintain or improve our public lands for multiple use purposes. Very few of the many project appeals in our area have revealed any documented negative consequences on the environment or any species requiring special attention. As a matter of fact, most of these project level appeals concentrate on process technicalities rather than negative environmental impacts. This strongly suggests to us that appellants realize they have little or no valid environmental concerns relating to project implementation.

We are glad to see the Subcommittee taking a serious look at the administrative appeals process and it's obvious flaws. While we support public participation in decision making processes on public lands, we are opposed to a flawed appeals process allowing the system to be abused. **We strongly urge the Subcommittee to significantly restructure or eliminate the administrative appeals process.**

If you have any questions or comments, please feel free to contact me by phone at 704-452-9712 or by mail at 1544 S. Main St., Waynesville, NC, 28786.

Thanks for your time and consideration.

The Ruffed Grouse Society
DEDICATED TO IMPROVING THE ENVIRONMENT
FOR RUFFED GROUSE, WOODCOCK,
AND OTHER FOREST WILDLIFE

P.O. Box 2 • Rice Lake, WI 54868
(715) 234-8302 • Fax (715) 234-5051

Statement of
Daniel R. Dessecker
Forest Wildlife Biologist
regarding
U.S. Forest Service Administrative Appeals Process

Provided to
U.S. House of Representatives
Subcommittee on National Parks, Forests and Lands
12 June 1996

The Ruffed Grouse Society, established in 1961, is a nonprofit wildlife conservation organization dedicated to promoting forest resource stewardship. As the Forest Wildlife Biologist for the Society I work closely with the staff of approximately 30 National Forests in 24 states to further mutually-agreeable initiatives. In addition, my responsibilities require that I interact on a regular basis with personnel at the Regional Office and Washington Office levels.

The Ruffed Grouse Society recommends that public input remain an integral component of that portion of the Forest Service's decisionmaking process where project alternatives are initially prepared and considered for implementation. However, once a project alternative has been selected using public input, tempered by professional analysis, interested publics should respect and accept these decisions. Therefore, the process whereby publics may utilize administrative appeals to halt Forest- or project-level decisions should be eliminated.

The appeals process as outlined in the National Forest Management Act is fundamentally flawed in that it is based on the assumption that potentially negative consequences emanate only from active management. The appeals process largely fails to provide recourse to address the deleterious effects that can be byproducts of a failure to implement management activities. In addition, the inherent complexity of forest ecology renders it possible to appeal any decision based on the fact that any decision, including a no-action decision, will benefit certain forest resources while harming others. This situation literally invites appeals.

Various organizations with a decidedly preservationist agenda use the appeals process to halt management actions they deem objectionable. Habitat development through timber harvest, especially even-age management, for those species of forest wildlife that require young forest habitats is one action that is commonly appealed. Activist organizations have learned that with the investment of only a 32-cent stamp, land management decisions and programs that have been reviewed in detail by agency staff representing numerous disciplines can be derailed.

The current appeals process is a significant hindrance to land management on our National Forests in several ways. First, an inordinate amount of Forest Service staff time is expended in an attempt to ensure that decision documents are appeal proof, that all of the "i's" are dotted and "t's" are crossed. A recent report by the General Accounting Office estimated that 30% of Forest Service field unit staff resources are annually used to respond to filed appeals or in preparation for expected appeals. In summary, Forest Service professionals are forced to concentrate their efforts on paperwork rather than land management.

Second, the Forest Service is often reluctant to issue decisions that it feels may be appealed by local activists. Hence, the mere knowledge that a decision may be appealed has a significant impact on the Forest Service's decisionmaking process and, therefore, on land management policy.

Finally, the continuous barrage of appeals has, more than any single factor, led to a significant decline in the morale of many within the Forest Service. This erosion of motivation may, in the long run, prove to be the most damaging aspect of the administrative appeals process.

I have enclosed the following items that document how those publics philosophically opposed to forest management use the appeals process not to promote meaningful dialogue, but to promote their very narrow agenda.

1. Sing-to-the-trees appeal

   Appeal of a timber sale on the Pisgah National Forest (North Carolina) filed by Preserve Appalachian Wilderness (PAW) stating that forest health is best addressed by singing to the trees. PAW offers to provide the required singers if the Forest Service isn't able to do so.

2. More-the-merrier appeal

   Three appeals filed against one timber sale on the Pisgah National Forest. Appeal documents were obviously prepared on the same word processor. These appeals use identical text including the same spelling errors (page 3). This strategy is commonly used to attempt to assert that a given project has engendered significant public opposition when in reality action is taken by only a handful of individuals.

3. Instructions distributed by Preserve Appalachian Wilderness on how to use the appeals process to halt forest management activities. The instructions pertaining to eventual appeals (page 2) are enlightening. They state "..we'll pick one particularly offensive and well situated sale, go whole hog and take it to court, do some media grandstanding and CD (civil disobedience) to make it a statewide issue."

4. Newsletter from The Forest Trust announcing the development of a workshop designed to instruct participants in how best to use the appeals process to intervene in Forest Service timber sales.

5. Newsletter from The Forest Trust that identifies how the workshop discussed in #4 above was used to train "future activists" at a New Mexico High School.

In summary, US Forest Service land management policy must incorporate public input into the decisionmaking process. However, once decisions have been rendered using this input, these decisions need to be supported and put into action in a timely manner. The process whereby publics may appeal Forest- or project-level decisions should be eliminated.

If you have any questions or comments, please do not hesitate to contact me. Thank you for your time.

92-08-11-0005

1.

APPEAL TO THE FOREST SUPERVISOR
OF THE NATIONAL FORESTS
IN NORTH CAROLINA

Rec'd 10/23/91

SouthFAW [Preserve Appalachian Wilderness]

v.

District Ranger, Michael F. Anderson, Grandfather Ranger District, Pisgah National Forest, U.S. Forest Service, Deciding Officer

In Re: Appeal of the Decision Notice and Environmental Assessment for Silvicultural Prescription Report and Other Resource Management Activities in Compartments 64, 65, 66, and 67 , Grandfather Ranger District, Pisgah National Forest, North Carolina.

APPELLANTS' NOTICE OF APPEAL, REQUEST FOR STAY, AND STATEMENT OF REASONS

Brownie Newman, Staff Writer
SouthFAW [Preserve Appalachian Wilderness]
P.O. Box 3141
Asheville, NC 28802

October 18,1991

insects, simply get lost the shuffle. We act as though ther changes are not significant, but the ecologist among us know they are."

In the Southern Appalachians today, complex combinations of many factors, such as acid rain, ozone poisoning, climatic strains, previous abuse and other poorly understood phenomena are impacting the forest. Songbird populations are in decline. Frasier firs are in decline. Oaks are in decline. Dogwoods are dying off. If proper monitoring were done for non-commercial species such as fungi, arthropods, and non woody plants, it would likely be seen that many more species are in serious trouble. Less than 1% of Appalachian old growth remains. The Forest Service must plan its projects with this proper ecological perspective.

SouthFAW recommends not only that this area not be logged, but that an active management plan be adopted to recover stands with oak decline. This would be accomplished by singing. Music has been demonstrated to have positive effects on the health of plants. There would be no need to hire musicians to perform in the forest (making it below cost). If the Forest Service promises not to cut down the forest, SouthFAW promises to sing there after.

REFERENCES

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Lewsen, Thomas "Site disturbance Reduces Tree's Ability to Battle Pathogens" Forest Watch, July 1988.

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91-08-11-0004

2.

APPEAL TO THE FOREST SUPERVISOR

Of The United States Forest Service

National Forests in North Carolina

REGION 8

(names)__William H. Isely_____	) In re: Appeal of the
__Doris B. Isely_____	) decision Notice and
Appellants	) Finding of No
V	) Significant Impact
	) for the Wildcat Knob
District Ranger -- Michael L. Wilkins	) Project Timber Sale
Nantahala National Forest	) in the Nantahala
U.S. Forest Service	) National Forest,
Deciding Officer -- Michael L. Wilkins	) Wayah Ranger District

APPELLANT'S

NOTICE OF APPEAL,

REQUEST FOR STAY, STATEMENT OF REASONS,

RELIEF REQUEST

dated this 5th day of Sep. '91

(names) William H. Isely
Doris B. Isely
(address) 80 Walnut Creek Rd.
Franklin NC, 28734
(phone) 704-369-7590

Others affiliating with Appellant in this appeal:
Carson Community
Franklin, NC.

(appellant's file) Appeal-1.msc

REQUEST FOR A STAY

should be "Poplar Cove"

The Wildcat Knob Project Timber Sale Decision Notice and Finding of No Significant Impact violate 42 U.S.C. 4223 et seq (herein after called NEPA). This decision violates NEPA, NFMA, and Forest Plan direction. All activities pertaining to the sale must be halted until the Forest Service complies with these federal regulations.

Appellants request a stay, for the duration of this appeal, of the District Ranger's decision to approve the Wildcat Knob Project Timber Sale. Specifically, appellants request that the Forest Service halt the offering and awarding of any commercial timber sale, any planning or offering bids for construction and reconstruction of any roads, and further marking of any trees in the Planning Area for the proposed sale. This stay should be granted for the following reasons:

The Wildcat Knob Project Timber Sale would irreversibly alter the existing natural character of the creeks in the watershed area that are part of the water supply for the town of Franklin, namely Popular Cove and Mill Creek. Wallace Branch would also be damaged. Soil stability would be compromised, stream shading lost, sedimentation would increase, and the forest would be fragmented, resulting in less fish and wildlife diversity than would otherwise exist if the area were allowed to recover from past logging and road building.

Visual beauty from numerous sites would be irreversibly destroyed due to the large number of planned clearcuts, and other harvesting methods that would not maintain a continuous canopy.

The Record of Decision relies on an incomplete assessment of the environmental impacts when it concludes that the selected alternative is the optimal management strategy for the Wildcat Knob Project Planning

91-08-11-0005 -1-

APPEAL TO THE FOREST SUPERVISOR

Of The United States Forest Service

National Forests in North Carolina

REGION 8

(names) Thomas N. Foglesong	:	In ref: Appeal of the
Bernadene M. Foglesong	:	decision Notice and
Repersenting Mill Creek Community	:	Finding of No
Appellents	:	Significant Impact
V	:	for the Wildcat Knob
	:	Project Timber Sale
District Ranger -- Michael Wilkins	:	in the Nantahala
Nantahala National Forest	:	National Forest,
U. S. Forest Service	:	Wayah Ranger District
Deciding Officer -- Michael L. Wilkins	:	file: Appeal-2.msc

APPELLANT'S

NOTICE OF APPEAL,

REQUEST FOR STAY, STATEMENT OF REASONS,

RELIEF REQUEST

dated this 9 th day of Sept. 1991

(names) Thomas N. Foglesong
Bernadene M. Foglesong

(address) 98-35 Mill Creek Rd.
Franklin, N.C. 28734

(phone) 704 524 8954
(winter phone: 407 562 2854)

Others affiliating with Appellant in this appeal:
See attachment "A"

NOTICE OF APPEAL

91-08-11-0008

APPEAL TO THE FOREST SUPERVISOR

Of The United States Forest Service

Ne ·al Forests in North Carolina

RE· · 8

(name) Walnut Creek	) In re: Appeal of the
Neighborhood, Inc.	) Decision Notice and
Appellant	) Finding of No
V	) Significant Impact
	) for the Wildcat Knob
District Ranger -- Michael L. Wilkins	) Project
Nantahala National Forest	) in the Nantahala
U.S. Forest Service	) National Forest,
Deciding Officer -- Michael L. Wilkins	) Wayah Ranger District

APPELLANT'S

NOTICE OF APPEAL,

REQUEST FOR STAY, STATEMENT OF REASONS,

RELIEF REQUEST

dated this 11th day of Sep. '91

(name) Walnut Creek
Neighborhood, Inc.
(address) 80 Walnut Creek Rd.
Franklin NC, 28734
(phone) 704-369-7590

Others affiliating with Appellant in this appeal:
See Attached list of Macon County Residents

(appellant's file) Appeal-w.msc

Topic 179 PAW eastern Forest Task Forces
jeffelliott en.forestplan 6:54 pm Jun 26, 1991

3.

Preserve Appalachian Wilderness Eastern National Forest Task Forces

Greetings

Thanks for contacting PAW about working on Forest issues. We've got enough folks now to really get going and kick some butt.

We'll be working pretty extensively with Jasper Carlton and the Biodiversity Legal Foundation, tying our work in with nationwide campaigns to force the USFS to carry out their mandate to preserve biodiversity on national forestlands, as well as putting pressure on them locally through appeals, guerrilla theater, lobbying and road blocks and tree sits for whoever's up for it, and whatever any of us choose to do on our own time. I think it would be best to build the pressure slowly and steadily, so that by the time things get real controversial and public we'll have all of our research done.

Each of us needs to pick a specific district on the forest we are working on.

The first things to do are to contact the district ranger on your district and ask to be notified of all future management activities in the district. You can write to the main office to get notices for the entire forest if you really like getting mail, but it'd be easier to manage a single district.

Write to the Wilderness Society and ask them for a copy of "How to Appeal Forest Service Decisions" and all updates.

Write to the forest planner at the main office and request copies of the Management area maps for the forest, as well as the forest plan and EIS (Environmental Impact Statement) for the plan.

Also request copies of NFMA (National Forest Management Act), NEPA (National Environmental Policy Act) and ESA (Endangered Species Act) with all amendments.

When you get these, color code the management area maps (familiarize yourself with what the activities are allowed in each management area. Color by number (put the protected areas in green. You won't need a lot of green).

Look through the plan for all information pertaining to Protected, Threatened, Endangered, Rare and Sensitive species on the forest.

You can make an overlay of these areas and habitats of the species to superimpose over the Management areas in your district.

Write to the Fish and Wildlife depts (state and national) and ask for a list of Rare, Threatened, Sensitive, Endangered Protected, and candidate (c1,c2,c3) Species in PA and any habitat maps and studies they may have.

(All this information will most likely be given to you voluntarily. If you don't get a response, or if you get a negative one, write back and request the

information pursuant to the Freedom of Information Act. Its better not to do this the first time you write so that you can establish a friendly working relationship with these foax instead of an antagonistic one.)

Familiarize yourself with these species and their habitat requirement, and where they have been sited. Pick your favorites and start from there.

When you get a notice of a proposed action, request copies of the USGS Quad Maps for the area with outlines of the forest boundaries, and a listing of all management activities in that area (Prior cuts, offerings, and sales) You'll probably have to go go the office yourself and look through the files (with their assistance, of course) to map out all these on the USGS map as well.

Now we'll have a picture of what is actually going on in the forest.

Eventually, once we've got all our research done and know what we're talking about, we'll pick one particularly offensive and well situated sale, go whole hog and take it to court, do some media grandstanding and CD to make it a statewide issue. We'll have better information on the state of the forest than they do, and we'll kick their butts.

civil disobedience

So go to it!

Contact me as soon as possible and tell me what you're working on, and keep me informed as things progress.

Please send a reasonable donation as well to cover mailing and modem costs.

Subscriptions to the PAW journal are available for $20 a year.

All other donations graciously accepted.

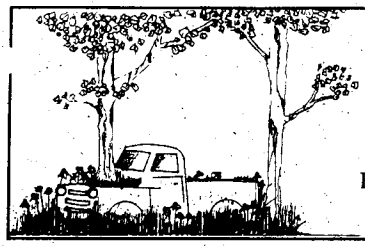
Also, feel free to contact me if you have any questions about anything you're working on.

For all things wild,

Buck Young PO Box 52A Bondville, VT 05340

(802) 297-1022

e-mail: jeffelliot



GRASSROOTS 4.
Network News

Environmental Protection for National Forests

Summer 1993

Timber Sale Intervention Made Simple

Commenting on a timber sale can be hard and confusing work. Finding out about the sale, attending ID team meetings and field trips, and sifting through masses of Forest Service documents is often overwhelming. You know you want to protect the forest, but maybe you're not sure exactly *how*. What good is all of this information unless you know how to use it?

And then, before you you know it, the EA and ecision Notice are out and your only alternative to protect the forest is to appeal the sale.

Meanwhile, the Forest Service is making the appeals process increasingly difficult, heightening the need for greater pre-decisional involvement. But how can you use early involvement to your advantage?

To help activists gain greater influence early in the public participation process, the Forest Trust has developed a new workshop entitled ***Timber Sale Intervention***. The workshop uses a step-by-step mapping approach to identify key factors affecting a timber sale and highlights strategic points where activists can have the greatest impact on the decision-making process.

Activists learn how to:

- Determine ecological units where the impacts of timber sales are felt.
- Identify and map administrative and resource harvesting constraints such as special use areas, semi-primitive non-motorized recreation areas, old growth forest, and unsuitable soils.
- Develop environmental alternatives for sales.

This approach can be used to discourage the Forest Service from offering a sale or to propose that a sale be reduced or redesigned based on the environmental alternative. Whatever tack is taken, the workshop's preemptive strategy will mean fewer appeals. If a timber sale does go to court, the workshop will have armed grassroots activists with a solid groundwork for making their case. But perhaps most inspiring to grassroots organizations is the fundamental help the workshop provides with setting their goals and priorities.

The Forest Trust presented this workshop to an extremely enthusiastic audience at the recent 7th Annual National Forest Reform Pow Wow. One participant, invigorated by the empowering mood of the workshop exclaimed, "Kick butt!"

> ***One participant, invigorated by the empowering mood of the workshop, exclaimed, "Kick butt!"***

The maps used in this workshop were created for an actual timber sale in the Santa Fe National Forest, in which both the Forest Trust and the Forest Resource Council intervened. The Forest Trust is grateful for the use of Forest Resource Council's data maps, which were used in developing the overlays for this workshop.

If your group is interested in having the Forest Trust present this workshop in your region, please contact Shirl Crosman, National Forest Program, at (505) 983-8992.

–SHIRL CROSMAN

TRAINING FUTURE ACTIVISTS:
INVOLVING YOUTH IN FOREST PROTECTION

In February, the Forest Trust's Timber Sale Intervention process survived a rigorous field test. After hosting several workshops on the intervention model for grassroots groups in 1993 and 1994, the Trust recognized the need to expand the process to reach people outside of the environmental community. To this end, the intervention workshop was presented to over 40 students at Santa Fe High School's Academy of Communication Arts and Technology (ACAT).

The Trust's Timber Sale Intervention process was designed to help grassroots activists gain greater influence in decision-making on national forests. The intervention process uses a step-by-step mapping technique to identify key factors affecting a timber sale, and highlights strategic points where activists can have the greatest impact on the decision-making process. The presentation at Santa Fe High was an opportunity to determine whether the process ...ld be useful to non-activists.

ACAT Students Working on Intervention Maps

ACAT is an innovative and challenging program that uses a variety of media to explore the principles of English, Social Studies and Science. The three year-old program stresses community involvement, interdisciplinary learning, hands-on activities and self motivation. Judging from how quickly the students understood and adopted the intervention process, the program is doing a superb job of preparing them to assume community leadership roles in the future.

After a brief overview of the process and its intent, the students were asked to apply it to the 1993 Oso timber sale on the Santa Fe National Forest. The students formed four working groups, and were provided w... maps and data on various resource constraints. Each group was asked to interpret and evaluate a particul... constraint and decide to what extent it shoul... limi... logging activity. These constraints included old gro...h, past logging activity in the area, local use patterns, and roadless areas. In addition, one group used topographic ...aps to identify areas with steep slopes. Based on their ...alysis, each group created a map which reflected the areas of the forest they wanted to protect.

The alacrity with which they approached this task was inspiring. All groups elected to preserve vast tracts of forest. Some groups wanted to protect areas with steep slopes where they felt logging was inappropriate, others wanted to protect sacred sites such as those identified by the Santa Clara Pueblo, while others wanted to preserve roadless areas and diminishing old growth stands. Some groups went beyond the Trust's request to identify areas to protect, and even identified areas which they wanted to see restored. In Forest Service jargon, they developed their own "desired future condition" for the forest.

The maps served as a focal point for a refreshing discussion of some fundamental questions about resource management. Students asked, "Why do they have to cut the wood at all? ... Can't they use other building materials such as adobe? ... Why can't they just leave the old growth alone?" Others questioned the economic incentives for harvesting, wondering if "the only reason to cut the wood was to make money." One group's map included a drawing of a cow. When asked about their feelings of the environmental impacts of grazing, they pointed out that "cows aren't necessarily bad," and suggested that the number of cows and the extent of grazing should be analyzed.

The final result of the Oso timber sale was encouraging to the students. The Forest Service's original planned harvest of over 900,000 board-feet was reduced to under 200,000 board-feet. The area in which the Forest Service decided to harvest coincided with the areas in which no harvesting constraints had been identified. Inspired by these results, many students expressed ...erest in using a variation of the intervention process ... evaluate other Forest Service activities, especially the ...cently proposed Santa Fe ski basin expansion.

Forest Trust's vision for its National Forest Program is to encourage citizens to actively participate in decision-making on national forests. The ACAT students' interest in adapting the intervention process to evaluate a local ski area expansion demonstrates that youth are ready to do their part to realize this vision.

RYAN TEMPLE AND SHIRL CROSMAN

United States Department of Agriculture | Forest Service | Washington Office | 14th & Independence SW P.O. Box 96090 Washington, DC 20090-6090

File Code: 5400

Date: JUN 18 1996

Honorable James V. Hansen
Chairman, Subcommittee on National
Parks, Forests and Lands
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During the Subcommittee hearing held on June 6, 1996, Acting Chairman Richard Pombo asked Forest Service witness, Mr. Gray Reynolds, the following question:

> In how many previous instances have National Forest System lands been conveyed, without consideration, for school-related uses?

Mr. Reynolds did not have this specific information at that time and advised that we would respond later to the Subcommittee. As noted during Mr. Reynolds' testimony, there is no existing authority for the Forest Service to convey National Forest System lands without consideration. Conveyance without consideration would require legislation, therefore, we reviewed our records and found that during the last 10 years, two legislated transfers conveyed lands for local school-related uses. These are summarized as follows:

> Public Law 101-612, enacted on November 16, 1990, conveyed 12.0 acres of land to Del Norte County, California, for a camp for juvenile delinquent boys.
>
> Public Law 103-398, enacted on October 22, 1994, conveyed 30.0 acres of land to Lincoln County, Montana, for Libby Junior High School.

In both instances, the transfers were made subject to a reversionary clause. Under this provision, the land would revert back to the United States should the intended use be discontinued by the county.

Please do not hesitate to contact me again, if you should need any further information on these two legislative conveyances.

Sincerely,

JACK WARD THOMAS
Chief

The Ruffed Grouse Society
DEDICATED TO IMPROVING THE ENVIRONMENT
FOR RUFFED GROUSE, WOODCOCK,
AND OTHER FOREST WILDLIFE

P.O. Box 2 • Rice Lake, WI 54868
(715) 234-8302 • Fax (715) 234-5051

15 August 1996

The Honorable James Hansen
U.S. House of Representatives
2466 Rayburn House Office Building
Washington, DC 20515

Dear Representative Hansen,

The Ruffed Grouse Society, established in 1961, is a nonprofit wildlife conservation organization dedicated to promoting forest resource stewardship through forest management. As the Forest Wildlife Biologist for the Society I work closely with the staff of approximately 30 National Forests in 24 states to further mutually-agreeable land management initiatives. In addition, my responsibilities require that I interact on a regular basis with personnel at the Regional Office and Washington Office levels.

On 12 June 1996 I provided written testimony for consideration during the hearing of the Subcommittee on National Parks, Forests and Lands on the U.S. Forest Service appeals process. In this testimony I called for the elimination of the process whereby publics may utilize administrative appeals to halt Forest- or project-level decisions. Recognizing that this proposed solution may currently be politically untenable, I provide the following comments in the hope that they may aid the Subcommittee as it struggles to identify substantive changes to the appeals process that will maintain the ability of the public to be fully involved in the management of public lands without unduly burdening the Forest Service by forcing it to respond to the misuse of the appeals process by those publics philosophically opposed to the agency's multiple-use mandate.

The tiered nature of the Forest Service decision-making process offers an opportunity to drastically reduce appeals filed for little reason other than to complicate land management planning. Each National Forest functions under a Forest Plan that was developed with considerable public input. Landscape-level issues such as land use allocation (wilderness, old growth, intensive timber production, etc...), allowable sale quantity, forest-type and age-class composition, forest fragmentation, etc..., are all dealt with at length and with considerable input from various publics as the Draft Forest Plan is developed. The Draft Plan is then circulated for additional public comment prior to the preparation of the Final Plan.

Due to the many disparate interests that provide comment throughout the planning process, it is not possible for the Final Plan to provide everything for everyone and the Final Plan may indeed be appealed by any of those publics who perceive that their interests have been slighted. Nonetheless, the rigorous planning process ensures that these publics have been afforded every reasonable opportunity to pursue their agenda.

Project-level decisions are subsequently tailored to fit the management direction outlined in the Forest Plan. The tiered decision-making process is intended to preclude the duplication of effort and the endless debate associated with philosophical differences. Unfortunately, current appeal regulations have allowed such duplication of effort to become the norm on many National Forests.

If administrative appeals of project-level decisions were required to address pertinent, site-specific considerations, the use of "canned appeals" and other tactics designed primarily to obstruct resource management could be greatly reduced from current levels. Likewise, the costs and, more importantly, the wasted personnel time associated with responding to these perfunctory appeals could be minimized.

It is reasonable to suggest that appeals of project-level decisions that raise landscape-level issues should be summarily dismissed if these same issues were addressed during the development of the Forest Plan. I respectfully suggest that only site-specific issues not addressed during the development of the Forest Plan should be legitimate grounds for the appeal of a project-level decision.

If you have any questions or comments, please don't hesitate to contact me. Thank you for your time.

Take care,

Dan Dessecker
Forest Wildlife Biologist

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