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# TIMBER SALES PROCEDURE

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## HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT, SOIL  
CONSERVATION, AND FORESTRY

OF THE

COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1360

A BILL TO ESTABLISH AN ADVISORY COMMITTEE ON  
TIMBER SALES PROCEDURE APPOINTED BY THE SECRE-  
TARY OF AGRICULTURE FOR THE PURPOSES OF STUDY-  
ING, AND MAKING RECOMMENDATIONS WITH RESPECT  
TO, PROCEDURES BY WHICH TIMBER IS SOLD BY THE  
FOREST SERVICE, AND TO RESTORE STABILITY TO THE  
FOREST SERVICE TIMBER SALES PROGRAM AND PROVIDE  
AN OPPORTUNITY FOR CONGRESSIONAL REVIEW

MAY 16, 1977



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## TIMBER SALES PROCEDURE

MONDAY, MAY 16, 1977

U.S. SENATE,  
SUBCOMMITTEE ON ENVIRONMENT, SOIL  
CONSERVATION, AND FORESTRY, OF THE  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 324, Russell Senate Office Building, Hon. John Melcher presiding.  
Present: Senators Melcher and Zorinsky.

### STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM MONTANA

Senator MELCHER. The subcommittee will come to order.

Our purpose here today is to listen to testimony on S. 1360 by Mr. Church and myself and others. This is a bill to establish an Advisory Committee on Timber Sales Procedure for the purposes of studying and making recommendations on procedures by which timber is sold by the Forest Service.

Under the bill, an advisory committee would study methods of timber sale and factors affecting pricing of timber.

The committee would make recommendations to the Secretary, with respect to establishing sales procedures by which the Forest Service will be able to sell timber in such a way that will provide for community stability and recognize the diversity of geographical location, climate, and other factors in the public interest.

The task force would complete its mission by submitting a report to the Secretary by January 1, 1979.

Finally, S. 1360 repeals subsection (e) of section 14 of the National Forest Management Act of 1976. The work we did last year on the National Forest Management Act began as a debate over clearcutting. It then evolved into a battle over whether the professional resource manager has the freedom to do what his scientific training tells him is needed on a given forest site.

Generally speaking, the National Forest Management Act was an outstanding response to a crisis that threatened to close down the National forest system.

But now the debate has focused on a major problem within the act, section 14(e), which deals with bidding practices on national forest timber.

The bill we wrote was complex. In many respects, it is surprising that we did not have more areas in the act requiring fine-tuning than just this one section. But this one does need repair.

In the beginning, all public timber was sold under written, sealed bids after a 30-day advertisement period. However, after World War II, the timber industry expressed interest in oral bidding, (1) because of increased competition for timber, and (2) to protect communities dependent on Forest Service timber.

There were proposals to allocate blocks of national forest timbers to landowning firms for noncompetitive award. One such unit was established for the Simpson Timber Co. in the State of Washington. No other such units were established.

Oral bidding was also tied to the cost of roadbuilding. Both BLM and the Forest Service allowed oral bidding, where firms would allow the successful bidder to use an access road.

Finally, oral bidding became important because it gave local operators an opportunity to protect their plant investments by outbidding unexpected competition.

Behind all of this activity was the desire to protect local community economies that were almost totally tied to the milling of public timber.

On a volume basis, about 90 percent of all Forest Service sales are now on an oral bid basis. Under a 1944 act, timber in certain areas of the national forests is limited to purchase by local mills. But since little timber is involved, little can be gained from the experience in trying to protect small towns through this device.

It seems to me that collusion can occur either through the sealed or the oral bidding process. It also seems that neither we nor the Forest Service has enough information on what effect its various sale practices have had on the industry, dependent communities, or the cost of lumber to the public.

Therefore, before we make any rigid commitments in law as to how timber should be sold, I think we should put an advisory committee to work to study all these factors and then come back and make whatever changes are needed in order to meet the public interest.

Now, everybody is tired of special committees or task forces that report back to Congress—and that includes, I think, all the authors and sponsors of this bill.

But the fact is that, call it what you may, you sometimes have to get people together that know something about the business and know something about the industry, and get them together to work out a problem. And that problem exists right now, in whether we are going to have oral bidding or sealed bidding.

We thought we gave the Department a lot of leeway, the Forest Service Chief, when we wrote that bill, to use discretion on whether oral bidding was more in the public interest than was sealed bidding.

And where I come from, the western Montana folks tell me that oral bidding works best. Some of the people in eastern Washington say the same. And I think people in Oregon in the industry feel the same, that oral bidding works better than sealed bidding, because it is more competitive and it is more in the public interest.

But then we run onto this question about what has the Justice Department found out. We have a lengthy letter from them, and I will insert it in the record at this point. It is dated April 26 of this year, to the Secretary of Agriculture, Bob Bergland, and it goes into experience with sealed bidding and experience with oral bidding and

what they are doing, and it is signed by Donald I. Baker, Assistant Attorney General for the Antitrust Division.\*

Now, if we did not need any other reason to put some people to work on why oral bidding works well in some areas and is in the public interest and does not work well in some other areas, perhaps, and why sealed bidding, it is believed at least by the chairman of this committee and by many others, is more in the public interest in their areas.

If we did not need any other reason to put a group of people to work to find out what the facts are, and what would be the right way to advise the Congress on writing law on this, all you would have to do is read this long-winded letter from the Justice Department, because it is very convincing that they have a lot of doubts, have gathered few facts, and have not made up their minds. We are going to hear from them. Mr. Sims is going to testify, and he is going to elucidate on some of this.

Our problem, as you might know, is that we come here, the Congress, not as timberjacks or owners of mills or anyone who has anything to do with the lumber industry—at least I have not—and yet, we have to sort out the facts and write legislation that makes some sense for those people who are going to bid on timber sales in our national forests. This is not something that we take lightly; it is not something we want to shut off. It is something that people depend on for their livelihood if they work in a mill or are connected with the lumber industry which depends on timber harvested from our national forests.

So that is why, despite the reluctance of almost all of us to create another committee, or study group, that is why we reluctantly say that in this instance, we think it is necessary, and we think it is in the public interest to resolve this issue, and that 14(e), as is interpreted by the Forest Service solicitors, seems to be requiring more sealed bidding than we thought it would and seems to be prohibiting oral bidding in the area of the country, the Northwest, where it has worked well and where it has met the test of providing more competition and therefore, being more in the public interest, and has had a great deal of effect on allowing a mill operator in a community to come in and raise the price right during the process of selling that timber and be able to get the timber sale and stay in business. That is a factor we cannot lose sight of; that is specifically what we had in mind in the Forest Management Act of 1976 when we related this particular point to the effect sealed or oral bidding would have on a community. We wanted to make sure that those communities dependent for their mills to operate on Forest Service sales would have that opportunity.

Now, to that extent, it is certainly in the public interest to allow a mill operator to come in and put a little more money on the table by oral bidding and outbid some large conglomerate that wants to come in from the outside and get the timber sale and, when it does, would thereby choke off the smaller mill operator, harm the community and the people that live there who are dependent upon that mill's operation for their livelihood.

That is why we are here with this bill.

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\*See p. 60.

At this point, I will inset a copy of S. 1360 and a report from the Department of Agriculture on the bill.

[The bill and report follow:]

[S. 1360, 95th Cong., 1st sess.]

A BILL To establish an Advisory Committee on Timber Sales Procedure appointed by the Secretary of Agriculture for the purposes of studying, and making recommendations with respect to, procedures by which timber is sold by the Forest Service, and to restore stability to the Forest Service timber sales program and provide an opportunity for congressional review

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### ESTABLISHMENT

SECTION 1. There is hereby established an Advisory Committee within the Department of Agriculture to be known as the Advisory Committee on Timber Sales Procedures (hereinafter referred to as the "Committee").

#### PURPOSE OF COMMITTEE

SEC. 2. (a) The Committee shall study the procedures by which the Forest Service sells timber. Such study shall—

(1) include, but not be limited to, a study of the methods and conditions of sale including among other things the means by which such timber is put up for sale, appraised, bid upon, and the factors affecting pricing of such timber; and

(2) be made for the purpose of providing its independent recommendations with respect to establishing procedures by which the Forest Service will be able to sell timber in a manner which will provide for community stability and will fully recognize the diversity of geographical location, climate, species, and other factors, and will be, over the long term, the most beneficial to the public interest and provide the most stable return to the Federal Government while maintaining diversity in terms of sizes, types, and locations of operations and facilities which process timber.

(b) It is the sense of Congress that the advice and recommendations of the Committee should be the result of the Committee's independent findings and judgment.

#### MEMBERSHIP

SEC. 3. (a) The Committee shall be composed of seventeen members appointed by the Secretary of Agriculture (hereinafter referred to as the "Secretary") within thirty days from the date of enactment of this Act, as follows:

(1) four members who represent those segments of the timber industry which purchase timber from the Forest Service;

(2) four members from labor organizations representing workers engaged in the processing of timber; and

(3) nine members from the general public who otherwise have a significant interest in the use of timber resources.

(b) The Secretary shall appoint a Chairman of the Committee.

#### PAY AND TRAVEL EXPENSES

SEC. 4. (a)(1) Except as provided in paragraph (2) members of the Committee shall serve without pay.

(2) Members of the Committee who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Committee.

(b) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

#### MEETINGS

SEC. 5. The Secretary shall provide that the Committee shall meet as soon as practicable after all the members are appointed and shall meet as often thereafter as the Secretary determines is necessary to complete, in a timely fashion, the report required by section 7.

## STAFF

SEC. 6. The Secretary shall provide an adequate number of employees from the Department of Agriculture to assist the members of the Committee in performing their duties.

## REPORT

SEC. 7. The Committee shall transmit to the Secretary and to the Committee on Agriculture of the United States House of Representatives and the Committees on Energy and Natural Resources and Agriculture, Nutrition, and Forestry of the United States Senate a final report not later than January 1, 1979. The report shall contain a detailed statement of the findings and conclusions of the Committee, together with such recommendations as it deems appropriate.

## TERMINATION

SEC. 8. The Committee shall cease to exist on the date on which the report is transmitted under section 7.

## BID METHODS

SEC. 9. Subsection (e) of section 14 of the National Forest Management Act of 1976 (Public Law 94-588, 90 Stat. 2959; 16 U.S.C. 472a(e)) is hereby repealed, and subsections (f) through (i) of said section are redesignated respectively as subsections (e) through (h).

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DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 13, 1977.

HON. HERMAN E. TALMADGE,  
*Chairman, Committee on Agriculture, Nutrition, and Forestry,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 1360, a bill "To establish an Advisory Committee on Timber Sales Procedures appointed by the Secretary of Agriculture for the purposes of studying, and making recommendations with respect to, procedures by which timber is sold by the Forest Service, and to restore stability to the Forest Service timber sales program and provide an opportunity for congressional review."

The Department of Agriculture recommends that S. 1360 not be enacted; however, we would not object to the enactment of section 9 as separate legislation.

S. 1360 would establish an advisory committee on timber sale procedures within the Department of Agriculture. The committee would study the procedures by which the Forest Service sells timber for the purpose of providing independent recommendations with respect to establishing procedures for the sale of timber. The committee would be composed of four members who represent the timber industry, four members from labor organizations representing workers engaged in processing of timber, and nine members from the general public who otherwise have a significant interest in the use of timber resources. A final report to the Secretary and the Congress would be required by not later than January 1, 1979. The committee would terminate after transmittal of their report. Section 9 of the bill would repeal subsection (e) of section 14 of the National Forest Management Act of 1976, which provides direction to the Secretary of Agriculture with respect to monitoring bidding in timber sales, use of sealed bidding, and reporting to the Attorney General of possible collusive practices or patterns of noncompetitive bidding.

We in the Department strongly support broad based public participation in the review of departmental and agency policies and programs. The National Forest Management Act of 1976, in amending the Forest and Rangeland Renewable Resources Planning Act, specifically requires that we provide opportunities for such participation.

We do not believe it is necessary or desirable to establish a separate advisory committee to advise us on one aspect of National Forest System management. This Administration is emphasizing holding advisory committees to the minimum number essential for effective administration. The National Forest Management Act provides the Secretary authority and direction to "establish and consult such advisory boards as he deems necessary to secure full information and advice on the execution of his responsibilities." Under this direction, we can use a national advisory committee to provide broad, overall guidance on all uses and activities

affecting Forest Service programs, including timber sale procedures. This approach is in keeping with the intent of the Multiple-Use Sustained-Yield Act, the Forest and Rangeland Renewable Resources Planning Act, the National Forest Management Act, and efficient government.

With regard to regulations necessary to implement provisions of the National Forest Management Act applicable to timber sale procedures, it was necessary to immediately issue interim regulations in order to continue programs in a responsible manner. We promptly sought public comment to aid in the formulation of permanent regulations. Our proposed permanent regulations were based in large measure on consideration of the public's comments. We have now gathered both written and oral comment on our proposed permanent regulations. We are evaluating this public input and will carefully consider it in developing the final regulations.

We are aware of the substantial controversy which has resulted from the implementation of subsection 14(e) of the National Forest Management Act of 1976, pertaining to timber bidding. There is disagreement as to how far the law permits us to go in departing from the sealed bidding requirement. It is our present judgment that, as a general rule, we cannot go beyond a maximum of about 75 percent oral auction bidding and 25 percent sealed bidding in dependent areas; but if there is a determination of need, the proposed regulations would allow 100 percent oral auction bidding.

If Congress should find that the provisions of subsection 14(e) are unnecessarily restrictive, we would not object to enactment of section 9 as separate legislation. If this occurred, the Secretary of Agriculture would still have the authority and responsibility to do what he deems necessary to obviate collusive practices in the bidding for National Forest timber. We would not view repeal of subsection 14(e) as in any way lessening this responsibility. We would also like to point out that since the National Forest Management Act was enacted late in 1976, we have not had an opportunity to implement final regulations or gain experience in their implementation. We feel that the repeal of subsection 14(e) may be premature. We are reluctant to see the Act opened to amendment at this time.

We estimate the cost of establishing the Advisory Committee, as proposed in sections 1 through 8 of S. 1360, would be \$14,800 in the current fiscal year; \$39,400 in fiscal year 1978; \$5,800 in fiscal year 1979; and no cost in subsequent years. We do not anticipate any new costs or saving would result from the repeal proposed in section 9.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN C. WHITE, *Deputy Secretary.*

Senator MELCHER. Now, we have as our first witness my good friend and colleague from the House, John Krebs from California, who worked on this bill and who has a profound interest in this particular issue, and who has a concern that, whatever is done on timber sales, that we prohibit fraud, collusion and operate it in a way that is honest and is assuredly in the public interest.

John, we are delighted to have you here and call you as the first witness. We will be pleased to have your comments.

**STATEMENT OF HON. JOHN KREBS, REPRESENTATIVE IN CONGRESS  
FROM THE 17TH DISTRICT OF CALIFORNIA**

Mr. KREBS. Mr. Chairman, members of the committee, first of all, I would like to extend my deep appreciation to members of this committee for giving me the opportunity to appear here this morning and share some views that I have on this particular issue.

It is a special pleasure, Mr. Chairman, to see you again. I know of your deep interest in not only this particular issue but also in the welfare of the timber industry and the welfare of the people that you

have represented so skillfully, both as a Member of the House and now as a Member of the Senate.

So I am deeply appreciative for the opportunity of being here today. And while our views may not necessarily coincide—and I suspect they will differ—needless to say I have the deepest respect for you, Mr. Chairman, and for what you have been trying to do for the people that you have been privileged to represent.

Mr. Chairman, I have a statement which I would like to offer for the record and make a part of the record, and rather than read the statement verbatim, I would like to ad lib and give you some of my thoughts beyond what I have prepared here, if I may.

Senator MELCHER. Certainly.

Your statement will be made a part of the record,\* please proceed, John.

Mr. KREBS. Thank you, Mr. Chairman.

Let me begin by saying that I certainly do not pretend to be an expert on this subject. You might almost say that I stumbled on this particular problem.

I represent a district which includes part of the Sierra National Forest and other national forests, and I have substantial timber interest and substantial timber activity in my district, and I assume from a strictly political standpoint, one might argue with considerable validity that I would have been better off never to touch this particular issue with a 10-foot pole.

But I, frankly, as self-serving as it might sound, Mr. Chairman and members of the committee, do not feel that I was elected to necessarily perpetuate a status quo on any issue, this included.

What has bothered me about this particular situation is that, as the Justice Department letter—at least, in my opinion—so skillfully points out, the facts simply do not substantiate the concerns that have been expressed by the timber industry ever since sealed bidding provision was included in the legislation which both houses passed and which was subsequently signed into law. And I will have more to say about this in a few minutes.

Historically, when I first became concerned about this particular issue, I suggested in the Forest Subcommittee of the House, as I believe the chairman will recall, a proposal or possible solution to what I felt rather strongly did represent the existence of some collusive practices in the sale of timber, and I made a proposal which my colleagues argued was punitive in nature, so I withdrew that proposal, because I thought that their argument had merits. I then came up with a sealed bidding amendment to the act, which was not as far reaching as the one which finally was incorporated into the act.

In the course of the conference committee, my amendment was strengthened on the recommendation of the distinguished Chairman of the Senate Agriculture Committee, the Honorable Herman Tammadge, and as a result of his suggestion, we ended up with what later became known as 14(e) of this legislation.

And it is this part of the Forestry Management Act of 1976 that the bill that is now before us seeks to repeal.

Now, it would appear to me that on its face, the very fact that both Houses have passed this particular legislation in October of 1976, and here it is, May of 1977, that the mere fact that this law has been

\*See p. 57 for the prepared statement of Representative Krebs.

on the books for approximately 6 months, in itself, should represent, if you will, a sign of caution not to repeal legislation that has just been enacted that really has not been given a fair opportunity to work its will.

And, for no other reason, I agree with the recommendation of the Department of Agriculture that the repeal of this particular provision of the 1976 act would be premature.

Now, why do I say that? Contrary to—if you will pardon my use of this expression—the overstating of the case by the timber industry, the fact is that this legislation has worked quite well.

The purpose of this legislation, of course, was to prevent as much as possible collusive and preclusive practices in the sale of timber.

Now, I will be the first one to agree that under sealed bid provisions, there is no guarantee, Mr. Chairman, that preclusive or collusive practices could be avoided or prevented altogether. I certainly agree with your observation in that regard.

But, by the same token, my point—which was also very skillfully expressed by the Justice Department in their thoughtful letter of April 26, 1977, and by Dr. Mead, who is an outstanding authority on this subject, and the GAO report of 1965—is that through the process known as sealed bidding, which is really a process that is used in all other contracts involving the Federal Government and, for that matter, local government, at least where I come from, that sealed bidding practices or the use of this particular process makes collusive or preclusive practices in the sale of timber much more difficult. And in the final analysis, I think that is what we as legislators should be doing—trying to prevent something from happening that is not in the best interest of the people that we represent.

Now, as the letter from the Justice Department correctly points out, the facts simply do not bear out that the sealed bidding provision, as put into effect and which now has been in effect for approximately 6 months—and I am oversimplifying this—has really hurt the communities that the timber industry was particularly concerned about, and these were the so-called dependent communities.

I will not go into the details of the letter from the Justice Department, Mr. Chairman. This letter is available to members of your committee. As I stated previously, I think it is an excellent letter. I think it states the case much better than I possibly could, and certainly, much more objectively than I could.

And I would hope that each member of this committee will have an opportunity to acquaint himself or herself with this particular letter.

What it points out specifically, in addition to some of the points that I have already mentioned, is that on the basis of a survey conducted by them, there simply is no basis for the claims of the timber industry that their industry has been seriously affected by the introduction of sealed bidding. On the contrary, what we have gotten for the first time, is competition, and it has always been my understanding that the timber industry is one of the great defenders or supporters, of the free enterprise system. I think what this particular legislation has done is really bring back competition, Mr. Chairman, to an industry where in a number of places, competition really did not exist. All we really have to do is look at the figures involving sales in a number of places in California and the Northwest, particularly in

the years 1974 and 1975, and in some cases, even 1976, up until the point where the Federal Government started to look seriously into the practices that came to light. Their investigation, incidentally, resulted in a conviction up in Oregon, involving seven timber industries, a conviction which was just upheld by the 9th Circuit Court of Appeals in San Francisco last week, and an investigation which is now involving, as I understand it, six or seven separate grand jury investigations.

And what this sealed bidding provision has done is to return healthy competition to the industry, with the result that we no longer see a bidding pattern which is just above the appraised price, but on the contrary, the prices have been substantially higher than the appraised price. We see healthy competition, which is exactly what we want.

Senator MELCHER. John, are you aware with that case that you mentioned was upheld by the appellate court?

Mr. KREBS. Yes, the *United States v. Champion*; in general terms, Mr. Chairman.

Senator MELCHER. And what were the facts on that—where was the collusion, and how was it developed?

Mr. KREBS. I cannot tell you at this stage. I do not remember the details too well, where the collusion originated. What I know about the case from excerpts I have read is that the *Champion* case involved collusion between timber industries and the sale of timber.

Senator MELCHER. Several different timber companies?

Mr. KREBS. That is correct.

Senator MELCHER. And do you have any knowledge—you do not have any knowledge as to how they arrived at this collusion?

Mr. KREBS. No. I read it—

Senator MELCHER. Did it involve the bid procedures?

Mr. KREBS. My recollection was that it did, but I am just giving you to the best of my recollection.

Senator MELCHER. Well, we will get it from the Chief, and he can elucidate. John, you know, I think you are right, that the usual procedure for Government, the U.S. Government, is to require sealed bids. But in the biggest segment of our agricultural economy, which is livestock, the usual procedure on sales of livestock is oral bidding.

Maybe the Government buys some beef by sealed bids—I suspect they do—but they do not buy much beef or much pork. The vast amount of livestock that is sold in this country is oral bidding.

You say that either way can be collusion; I think that is true. But in the livestock industry, they have found it much harder to have any collusion or hanky-panky in oral bidding than in anything else. I do not care whether it is an auction you go to, or whether you go down to one of these yards like in Sioux City or Omaha, it is oral bidding. You tell somebody what you will pay for the livestock, and they go from there.

Now, it works there, and it works there because everybody likes it that way. I can see, if you have some evidence that collusion has occurred where oral bidding was used that you want to see it corrected. But I wonder what we have to go on that says that you can get rid of crooked people if we go to sealed bidding.

Mr. KREBS. May I respond to that, Mr. Chairman?

Senator MELCHER. Sure.

Mr. KREBS. Mr. Chairman, I think the difference between the example that you cited about the auction practices in the cattle industry—

Senator MELCHER. It doesn't have to be auction—a so-called private treaty is still oral, because the guy that is selling the cattle or the pigs, he will receive oral bids from any number of buyers until he decides what is the highest point he is going to get.

Mr. KREBS. I think the basic difference is—and I think you mentioned it in your statement, and I think the point is well taken—the basic difference is that when you talk about livestock, which you have just mentioned involves sales among private individuals as distinguished from sales to the Federal Government, you are not dealing with public property; you are dealing with private property.

In this instance, however, you are dealing with the sale of natural resources of the American people.

Senator MELCHER. Well, in those instances where Government does own the livestock, it is still that way, but go ahead.

Mr. KREBS. But Mr. Chairman, my concern is that you are dealing with the sale of a natural resource that belongs to the American people. It does not belong to the timber industry; it does not belong to certain unions; it belongs to the American people—you, and I, and everybody else. And I think, this being the case, it seems that we the American people are entitled to get the maximum return for a natural resource that belongs to all of us.

I think what has really happened, Mr. Chairman, is that the timber industry has been involved in sales for a relatively long period of time—I believe basically since 1940, when the oral bidding was instituted in the Northwest. Of course, we all know that in the South and the Southeast and in the Lake State areas we have sealed bidding. We have had sealed bidding there for years, and we have never had the problems in those areas as compared to the Northwest and California, where we have had problems of collusive bidding, because otherwise, I cannot imagine that the Justice Department would have been involved in six separate investigations.

So, the point I am trying to make is that there is a problem, and I think what the industry has done is overreacted. And I think what I am asking for, really, is to give this legislation a reasonable period of time to either prove or disprove itself.

And certainly, on the basis of the evidence we have now, it is working. But maybe over a longer period of time, maybe up to 1 or 2 years, we might find out that it in fact is not working. Then, we can always come back at that time and decide whether we want to repeal this legislation.

Senator MELCHER. Well, the people that come to me—you use that term, "industry," and I do not know who you mean by that—but assuredly the people that come to me are part of the industry; they are not Champion International, and they are not a big company. They are small mills, and they say oral bidding works best and results in a higher price for the timber sales.

Now, that is these small mill operators that say that they can do better on oral bidding. Now, I think we will be hearing some testimony from people that represent small mills, and we will find out why they

say it works best. But what they tell me is that the Forest Service ends up with more money. Now, that is in the public interest.

They get a higher bid on the proposed timber sale. We will listen to how this works from their point of view, but we have to stress that the ones that are approaching myself and others, such as Senator Church, are not the big conglomerates that happen to be in the timber industry or the lumber industry. They are the smaller mill operators, and they talk about putting out more money on this basis.

I just want to say that the ones we have talked to are talking, not about a lower price for the timber sales, but they are talking about a higher price than would be arrived at if it were just sealed bids.

So, you have a little different viewpoint that I do, but I am sure that what we really want to get at is the maximum amount, under competition, that the timber harvested from our national forests—which, as you say, belongs to all of us in America—will produce the maximum amount of money.

Mr. KREBS. I think, Mr. Chairman, that we agree on the purposes. We may have an honest difference of opinion as to how we get there.

Your statement about competition is exactly what I want to do, and I think we want to get the maximum amount of money for our natural resources that belong to all of us. I think there is no philosophical difference of opinion.

Senator MELCHER. Senator Zorinsky?

Senator ZORINSKY. I would like to ask the Congressman, if you are knowledgeable in the area of knowing approximately how many bidders generally bid at this type of event?

Mr. KREBS. It varies, Senator. You take an area—and I would rather not point a finger at anyone, so—let us name it area *x*. Area *x* happens to be in my congressional district, and that is why I alluded previously to the politics that may be involved. It may not be political for me to be involved in this whole issue.

But in that particular area, in 1974 and 1975, you had the following pattern. You had oral bidding, with only the local companies being involved in that bidding process. And then on an occasion or two, you had an outsider coming in. And when the outsider came in under oral bidding, all of a sudden the bids went up substantially, while in those situations where the bidding was done strictly by the local timber companies, the big price was just a few cents. And I can show you. I have a printout from the Forest Service—these are not my figures; these were obtained from Mr. Leonard—and in those situations where an outsider came in under oral bidding, all of a sudden, the bids went up substantially; while there is a repeated pattern in those cases where the bids were strictly by the locals, where the bid would be just a few cents above the appraised value, and that is not just true in my congressional district. That is true in Washington and it is true in places in Oregon.

And that is really what concerns me, and I am sure that is what concerns the Justice Department, and what I feel should concern all of us.

Senator ZORINSKY. Did you ever see any evidence of staged bidding, such as some people at antique sales have witnessed?

Mr. KREBS. No; let me say that, in all candor, I have never been to either a timber sale, nor have I ever been to an antique sale, so I

am really ignorant on both issues, when it comes to trying to relate to you the very practices. I have to go strictly on the information that I have been able to obtain and, let me say, on the testimony that we have heard before the committee.

Now, I really do not particularly want to get into the issue of the big boys versus the little guys, but let me say that the record is clear that those of the small operators who have had the finance and the courage to appear before our committee testified to preclusive and collusive practices—particularly preclusive practices. I remember when we had one gentleman that drove some 500 miles—and I may be slightly off on the mileage, but that is my best recollection. He went, over a period of 5 years, to a certain location where these sales were taking place, and every time he went he was outbid by the locals, because they raised the price. And after 5 years, or whatever the period of time was, he finally decided, "I might as well give up."

So there may be some small operators who may be happy with the present system, but there are some small operators who are not. I just talked to the head of the SBA in my district, who tells me they are getting daily complaints from small operators.

Senator ZORINSKY. Is there a pattern of a rotation system of the awardance of bids that you have noted or can look at through the historical awardance of bids—"It is your turn this time; I will take my turn next time"?

Mr. KREBS. Some of it exists. But I will be glad to furnish you, Senator, with some—and the Forest Service can do that, furnish you with some of the figures that they furnished me, and I think they speak for themselves.

Senator ZORINSKY. I used to have the same problem with paving contracts in the city of Omaha when I was there.

Mr. KREBS. Really, what government contract, Senator, that you are familiar with—and I am certainly not, and I was involved in local government—where you have open bidding? It is all on a sealed basis. And the problems faced by the bidders in those cases are no different than those involving the forestry industry, except you have what is known as dependent communities, and I think some allowances should be made for those.

Senator ZORINSKY. Thank you.

Mr. KREBS. Thank you, Mr. Chairman, unless there are any further questions.

Senator MELCHER. Thank you very much, John. Your work on this has always been extremely helpful for all of us here in Congress who have to deal with forest timber management practices, and we are very much indebted to you.

Mr. KREBS. Mr. Chairman, it has been a pleasure, and I want to express my appreciation to all of you for giving me this opportunity today.

Senator MELCHER. Now, Senator Church, the author of the bill, and one of the truly fine experts on what Congress should do about management of our public forests.

#### STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM IDAHO

Senator CHURCH. Mr. Chairman, Senator Zorinsky, I do appreciate the opportunity to appear before the Forestry Subcommittee this morning to testify in support of S. 1360.

As you know, I introduced this legislation on April 23, along with Senators McClure, Packwood, Hatfield, Hansen, and Melcher.

S. 1360 has been jointly referred to this committee and the Committee on Energy and Natural Resources. The bill would repeal section 14(e), the so-called sealed bid provision, of the National Forest Management Act of 1976, and would create an advisory committee to study Forest Service timber sale procedures.

I might add that the bill contains provisions that would require that committee to complete its work and make its recommendations by January 1, 1979, looking toward the establishment of adequately based, adequately studied bidding practices for the Forest Service.

For the past few months, section 14(e) has caused an uproar of concern in those Northwest communities that are economically dependent upon a steady flow of national forest material.

This section was originally intended by Congress to prevent collusive bidding on Federal timber. However, the Forest Service has interpreted 14(e) to mean that sealed bidding must be used on its timber sales, regardless of whether collusive practices are suspected or not.

The section in question reads as follows:

The Secretary of Agriculture shall take such action as he may deem appropriate to obviate collusive practices in bidding for trees, portions of trees, or forest products from national forest system lands, including but not limited to establishing adequate monitoring systems to promptly identify patterns of noncompetitive bidding; requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation; and requiring that a report of instances of such collusive practices or patterns of noncompetitive bidding be submitted to the Attorney General of the United States with any and all supporting data.

Mr. Chairman, as this provision was written, it is clear that these are various options that the Secretary may use under the law where he deems it appropriate to obviate collusive practices.

I recognize there has been some disagreement about what Congress originally intended by this provision. Although much has and will be said about the intent of Congress with regard to section 14(e), as a member of the conference committee which wrote this section, and recalling well the discussions that took place at the conference, in the presence of the Forest Service, I would like to share with you my thoughts about what the majority of the conferees had in mind when we adopted it.

The congressional intent, as I understood it, was simply to provide the Secretary of Agriculture with enough flexibility to prevent collusive bidding. I certainly did not anticipate that this clause would be used by the Forest Service to establish sealed bids throughout the entire national forest system without regard to long-established practices in areas of the country where oral auction sales have been traditional and where there was no basis to believe that collusion was taking place.

I understood that traditional methods of selling timber were to continue, except that the Secretary was given the means, if he deemed them necessary, to combat suspected collusion. Those means included the use of monitoring systems, the use of sealed bids, or the requirement of a report of such instances of collusion or such patterns of noncompetitive bidding to the Attorney General, obviously for the purpose of taking appropriate action under the antitrust laws.

Section 14(e) was not to be invoked unless the Secretary needed it as a means to prevent collusion.

Like others from the Northwest, I was concerned when the Forest Service later proposed to virtually eliminate oral auction bidding.

Traditionally, national forest materials have been sold primarily by oral auction in the Northwest. Oral auction bidding allows those timber operators who depend upon neighboring national forests to face their competitors across the bidding table.

In many towns in Idaho, there is only one sawmill, and the town depends on the mill for its employment. When the log decks for the mill are depleted and the operator knows he will soon be short of raw material, he will go out and bid to the limit, if that becomes necessary, to keep the mill operating.

So long as he can face his competition directly in an open auction, he knows how high he has to bid. But when sealed bids are used, the mill operator may submit what he regards as a very high bid, only to find that someone has bid higher.

If that happens, and the operator does not get the timber, then the mill will be forced to shut down. And anyone who does not think that a mill closure can bring havoc to a small town should speak to the local car dealer or the barber, or a few of the housewives in McCall, Idaho, and find out, firsthand, how serious even the announcement of such a closure can be.

So, Mr. Chairman, Northwest citizens are deeply concerned not so much about section 14(e) itself, but rather, about the three different sets of regulations adopted by the Forest Service to administer this provision of the law, because these regulations require sealed bids in an area of the country where oral bidding has predominated.

Indeed, the reason why I introduced S. 1360 was not to correct an oversight by Congress, but to provide a legislative solution to the problem created by the Forest Service's misinterpretation of the law as evidenced by their regulations.

I had sincerely hoped that we could find an administrative solution to this problem. For the past 6 months, those of us who represent the Northwest in the Senate, and our counterparts in the House, have actively sought such a solution.

We have written numerous letters and met repeatedly with Forest Service officials to seek alternative regulations which promote vigorous enforcement of the antitrust laws, but also do not jeopardize community stability.

For instance, earlier this year, after the Forest Service had promulgated its interim regulations to implement the 1976 act, Senator McClure and I met with Chief McGuire, on January 28, to discuss those regulations.

This meeting was prompted directly by a bidding policy announcement released after the Forest Service had surveyed all the towns in region 1 and had identified only three communities as being dependent upon national forest timber for their livelihood. Two towns in northern Idaho, Riggins and Elk City, and one in South Dakota were classified as dependent communities.

Now, anyone who lives in this part of the country, Mr. Chairman, as you do, knows that there are scores of small towns in that particular Forest Service region and many more throughout the Northwest whose existence is directly linked to the continuous flow of national forest timber.

In fact, as we pointed out to Chief McGuire, it would be safe to say that all of northern Idaho is economically dependent on the national forest system.

I have attached to this statement, Mr. Chairman, an appendix which contains the news release which Senator McClure and I jointly issued after our meeting with Chief McGuire, and it details our discussion with him.\*

I believe that we have made a determined effort to reach an understanding with the Forest Service through administrative channels—but without success.

So, we are now obliged to seek a legislative solution.

Mr. Chairman, I would like to return for a moment, if I may, to the situation I mentioned earlier, namely, the single sawmill community.

In vast areas of the West, the Forest Service, as you know, is a virtual monopoly owner and seller of timber. Forest Service policies in those areas, as to the amount of timber to be harvested and the way in which it is to be sold profoundly affect the survival of those one-sawmill towns.

In the wood products industry, high fixed investments in mill and logging equipment must precede the purchase of the timber. Thus, the operator of the sawmill needs some assurance that he will have access to timber within a reasonable distance of his mill.

In cases where the trees are held by several different owners, the bidding policies of one owner are of less concern to the sawmill operator than in those instances where one party, the Forest Service, is a monopoly owner of the resource.

In addition, trees, even after they are felled, are expensive to move, and thus cannot be transported profitably over long distances. Logs are of great weight per unit of value, and hence, the sawmill operator cannot afford to truck them over many miles if he fails to obtain a timber sale near his operation.

Thus, in those situations where a community is dependent upon a single mill, which in turn depends solely upon Forest Service timber, which I might say, Mr. Chairman, is typical of the situation facing so many communities in our area, and if the mill cannot get the necessary raw materials from the national forest system, you end up with a sawmill out of business and a town out of jobs.

A choice of sale procedures in that case can make all the difference in the world. In open auction, the sawmill operator has a chance to meet his competitors and bid against them to the point where he is forced to quit. But when the sale is sold by sealed bid, then that operator must guess, and a whole community can go down if he guesses wrong. If he is outbid, there is no second chance, no opportunity to recalculate, and cast a higher bid.

Fred Sohn is president of Sun Studs, Inc., a lumber and veneer company in Roseburg, Oreg., which uses laser beams and a computer to orient each log in relation to the saw so as to get the most lumber out of each log. He testified before the Subcommittee on Forestry of the House Agriculture Committee earlier this year, and described the situation which is now developing in the Umpqua National Forest. I would like to quote his testimony:

Obviously, our unique plant has required great capital investment in recent years. We would make the investment, because we were confident we could compete successfully for the needed timber.

\*See p. 63 for the material referred to by Senator Church.

But under sealed bids, our timber supply has changed. We can no longer raise our bid to protect ourselves. As a result of blind bidding, we now see the timber sales flowing out of the area. And this occurs just as the Forest Service tells us that it must now reduce the annual sales volume on the Umpqua.

To be specific, in calendar 1976, while oral bids were used, the Umpqua sold over 191 million board feet of timber. 80.2 percent of that remained in the area.

I stress that: 80.2 percent of the total timber sold remained in the area.

Since then, the Forest has sold 67.3 million board feet at sealed bids. 41.3 percent of those sales went out of the area—some of it to areas that never before even bid for Umpqua timber.

If this rate of outflow is sustained, in a couple of years, one or two major operating plants in our area will in all probability be eliminated. And in Roseburg, the mills are the sole industrial employers.

To save our plant, we have been forced to go over a 100 miles out of our area to try a blind bid where we were not expected. Sheer luck was with us. On the other hand, we recognized that the protection of our plant, payroll and community forced us to visit dislocations on still another community. We do not like to do this. And we do not think that the Government, as the owner of a practical monopoly of the timber in all these areas, should create the forces that have these economically and socially unhealthy results.

Well, Mr. Chairman, I agree with Mr. Sohn. I do not think the Federal Government should knowingly structure such an economically unstable situation, unless there is a higher public good to be served.

In a recent letter to Agriculture Secretary Bergland, the Antitrust Division of the Department of Justice suggests that sealed bidding be widely used to prevent collusion among purchasers of national forest timber.

Such a policy might best serve the public interest if there were in fact evidence that collusive bidding is now or ever has been common or widespread.

However, in the past 75 years, there have been but two sets of indictments handed down in which it was alleged that a group of sawmill operators were conspiring to restrain free trade by eliminating competitive bidding for U.S. Forest Service timber. Only one of those two cases was ever successfully prosecuted by the Government.

If there is illegal bidding going on, then the guilty should be prosecuted and subjected to the full force of the antitrust laws. These laws were on the books before the passage of the National Forest Management Act of 1976, and they should be sufficient to stop collusion should this activity be taking place.

However, sweeping Government actions should not be aimed at a suspected few, if many innocent people and, indeed, many Western communities, are to be unduly injured.

Mr. Chairman, S. 1360 would allow a return to traditional bidding methods until such time as a study of Forest Service timber sale procedures can be completed.

Throughout this whole controversy, one thing has been clear: not enough is presently known about which timber sale procedures best protect the public interest.

The bill establishes within the Department of Agriculture a 17-member advisory committee to study Forest Service timber sale procedures. The study is to include, among other things, the means by which national forest timber is to be put up for sale, appraised, bid upon, and the factors affecting pricing of such timber.

The study will result in recommended procedures by which the Forest Service will sell timber in a manner which will provide for community stability and fully recognize the diversity of geographical location, climate, species and other factors.

The recommendations, which would be presented to the Secretary of Agriculture and Congress, are to be completed by January 1, 1979, and the advisory committee would be abolished at that time.

This bill will allow a return to traditional timber sale methods, while at the same time provide us with recommendations for future sale procedures.

But I also feel very strongly that an objective study of all Forest Service timber sale procedures, such as the study mandated in S. 1360 should be undertaken as soon as possible, so that we have a sound basis for making future decisions.

Mr. Chairman, I would only conclude by saying that I think a sound basis is not provided in the recommendations of the Justice Department. They are neither familiar with the traditional sale practices, nor particularly familiar with the lumber industry.

However, I believe the study that this bill contemplates would be an adequate basis for developing dependable bidding procedures in the future.

Thank you very much, Mr. Chairman.

SENATOR MELCHER. Thank you very much, Senator. I, too, was on that conference committee, and my recollection is exactly the same as yours. In fact, we thought we had a firm understanding, not just with the Forest Service present at those open conference committee meetings, but with the Forest Service participating. And the response, as I recall Chief McGuire's representative there, was that if section 14(e) was adopted under the language that we had, that where historically, oral bidding had resulted in a greater return to the Forest Service on the timber sales, with no evidence, or even any smell or hint of collusion, that oral bidding would be used. And at the same time, under section 14(e), Chairman Talmadge felt that in his area, in the Southeast, that sealed bidding would be used.

Now, if we repeal 14(e), the Forest Service is not going to be naked, as you point out. They are going to have the former law to fall back on, which directs them, as I understand the law, to use the best procedure in timber sales in the public interest, the maximum amount of money that they can get out of a sale.

That seems to me to be all that the public expects out of the Forest Service and all that we expect in Congress out of them.

Your point about your towns in northern Idaho being dependent on Forest Service sales for the community to have an economy is certainly duplicated in my State, in western Montana. Many of our communities are dependent upon the mills, and if Forest Service timber sales are not there, the mills are not going to be able to operate.

Isn't it true that if the economy seems to be on the rebound, if it looks like housing starts are on the climb, and that things in general are picking up, that then follows a strengthening of the lumber prices?

SENATOR CHURCH. Yes; the bids do go up in those circumstances. That has historically been true. What we are seeing now is just a part of that cycle. I might also add that our experience in the Northwest is that oral bidding tends to produce a higher return to the Govern-

ment. That would seem logical, because if a sawmill is dependent on national forest lands, and a community depends upon the mill, then there is great pressure for the mill to obtain the timber, even if it has to bid higher than it would like. Having that opportunity, seems to both protect the community and increase the return to the Government.

Thus, historically, I think oral bidding has not meant the Government has generally received less for the timber.

Senator MELCHER. In the instance you cited of the testimony given in the House subcommittee, where the smaller mill operator was dependent upon successfully bidding on some timber sales out of the Umpqua National Forest, it appeared that Mr. Sohn's operation at Roseburg was able to keep going that spring by successfully bidding on a timber sale a hundred miles away, rather than closer.

I cannot think of anything that leads to inefficiency and the unnecessary use of fuel for trucks than circumstances like that.

Senator CHURCH. And in addition, Mr. Chairman, it drives up the costs, which are reflected ultimately in the costs to consumers.

I have Mr. Sohn's testimony, and I think it is an excellent example of the dislocation that has been caused by the Forest Service ruling and the regulations they have issued.

I would like to offer his entire testimony for the record, if I may.

Senator MELCHER. We would be delighted to have it, and without objection, it will be made part of the record.\*

Senator CHURCH. A review of that testimony at this time, Mr. Chairman, shows that having lost the sale in their local area, they made a stab outside their general area of operation, and were lucky enough to win the bid there. However, they do not know what is going to happen to them next year.

These mills have thus been put in the situation of a shadow-boxer. They do not know whether they are going to get a sale or not get a sale; they do not know how much they will need to offer, and they have no chance to meet other bids.

That seems to me to be playing Russian roulette with the stability of a great many small Western communities, and I see no reason for it.

Senator MELCHER. Senator Zorinsky?

Senator ZORINSKY. Thank you, Mr. Chairman.

Frank, do you have any idea of the past and present timber sales under the sealed bid process, of whether they are generally at market price or below or above?

What I am trying to get at is some rationale—do you feel that the Federal Government is not getting as much money as they possibly could under the other type of bidding? What has the history been under sealed bid?

Senator CHURCH. The history, Ed, as I understand it, from the familiarity that I have had with the forest products industry through the years—and I had asked that some data be prepared for this hearing, but we were unable to assemble it in time—my understanding has been that through the years, in the Northwest, the customary practice of oral bidding has produced a very satisfactory yield to the Government, and that that yield has often exceeded the yield from sealed bidding. Some sealed bidding has been used in the Northwest, but the predominant practice has been oral bidding.

\*See p. 129 for the prepared statement of Mr. Sohn.

The Forest Service maintains, I understand, that the sealed bidding in recent months has produced a higher return than previously. My feeling is that if that is so, it is due to the rising market, due in part to significantly increased housing starts, such pressure raises the price paid the Government when the market grows strong. We have gone through that before.

I would not attribute it to the sealed bidding.

Senator ZORINSKY. I see. You say that currently, it is producing more than the market price, rather than the historical price?

Senator CHURCH. Currently, it is producing more than had been produced in the immediate past. But the market has been soft in the immediate past. It is firming up now, and characteristically, the bidding goes up when the market improves.

Senator ZORINSKY. Is there any fear on your part that if it is a public auction type bid that the knowledge of outsiders knowing that a local concern is going to bid as high as required in order to obtain the timber for the continuation of their livelihood within that community that there will be no outside bidding, and eventually, the local entity of industry in the forestry area will eliminate competition through the public auction type bidding?

Senator CHURCH. I do not think that has been our experience in the Northwest. Oral auctions have been very competitive. We are reminded here that the returns in the past have run as high as 100 to 400 percent over the appraised price, which suggests to me that there has been a real competitive situation.

But the one thing that oral bidding does provide is a chance. If the local mill cannot meet the competition it loses out. But at least it has had the chance to meet the competition.

And since the community depends on that supply of timber, the least we could do in simple equity, it seems to me, is to give the local mill that chance.

Senator ZORINSKY. Thank you.

Senator MELCHER. Frank, has it been your experience—I wonder if your experience is similar to mine—that the complaints and that the urging for some correction of 14(e) to allow oral bidding in our area has been from small operators, that say to me that this is the procedure that best lets them remain in business, and even though they have to extend themselves to the oral bidding process in order to get a timber sale?

Senator CHURCH. Yes; the principal outcry has come from the small mill operator and from the small communities, chambers of commerce and others, that are worried about what is going to happen to their town, if the mill has no chance to get the timber.

That is who I am principally worried about this morning, Mr. Chairman. I am worried about those communities and the employment that is represented in the small communities of north Idaho.

Senator MELCHER. Most of these plants are the type that employ 100 plus or minus people?

Senator CHURCH. Yes; some, fewer.

Senator MELCHER. Some fewer. That is my experience, too. Thank you very much, Frank, for your testimony and for your leadership on this bill.

Senator CHURCH. Thank you, Senator.

Senator MELCHER. Our next witness is the Department of Agriculture's Assistant Secretary for Conservation, Research and Education, Rupert Cutler. Welcome to the committee, Mr. Secretary, and we are delighted to have your testimony.

**STATEMENT OF HON. M. RUPERT CUTLER, ASSISTANT SECRETARY FOR CONSERVATION, RESEARCH AND EDUCATION, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY CHIEF McGUIRE AND GEORGE LEONARD, U.S. FOREST SERVICE TIMBER MANAGEMENT STAFF**

Mr. CUTLER. Thank you, Mr. Chairman.

I appreciate the opportunity to participate in this hearing today to discuss S. 1360, which proposes to establish an Advisory Committee on Timber Sale Procedures, and to repeal section 14(e) of the National Forest Management Act.

It is my understanding that this bill is designed to resolve the controversy which has been generated by steps which have been taken to implement section 14(e) of the National Forest Management Act of 1976.

I am accompanied by Chief McGuire and Mr. George Leonard, of the Forest Service timber management staff.

I have reviewed the legislative history of this provision and discussed the impact of the statute with several concerned groups. I have concluded that we share with the Congress several common objectives.

We want to provide for the orderly harvesting of timber from our public lands. We want to facilitate competition for publicly owned resources and reduce opportunities for collusion.

But we also want to avoid hardship on local dependent communities, and this goal is supportive of the Department of Agriculture's mission of promoting rural community development.

Meeting all of these objectives is not an easy task. It is obvious if we are going to meet these three objectives, we need flexibility to meet changing situations.

I am very sensitive to the importance of timber sales from national forest land to the economy of many areas throughout the United States. I am aware that a sustained supply of national forest timber is vital to many individual dependent communities, particularly in the West.

Management policies for the national forests under the Department of Agriculture have long been directed to a full consideration of the effects of management actions on the economic stability of local communities, as well as meeting regional and national objectives. I assure you that this direction will continue.

We do have several problems with the bill as proposed, and recommend that it not be enacted. However, we would not object to enactment of section 9 of the bill as separate legislation, provided it is clearly understood that the Secretary would still have the authority to take action to prevent collusion, and that section 9 would repeal section 14(e) of the National Forest Management Act.

First, as you know, this administration is seriously trying to reduce the number of Federal advisory committees, and a number of national forest advisory committees have been abolished by the Secretary of Agriculture in response to President Carter's request.

We would like to retain only those which are essential. The National Forest Management Act provides ample authority for the Secretary to appoint advisory boards consisting of a cross-section of the groups interested in the management of the national forests.

It would be more appropriate in my judgment to utilize a committee under that authority, rather than to appoint a separate, special-purpose committee.

While this issue is urgent and somewhat specialized, it needs to be addressed in context with overall management of all the resources of the national forests.

Mr. Chairman, I can offer you our commitment to establish such a broad-based advisory board soon, and we can ask it to address this particular issue as its first task.

Second, with regard to our regulations under section 14(e) of the National Forest Management Act, we believe that we have adequate flexibility to adjust bidding methods as necessary to minimize adverse impacts on dependent communities.

As you know, we extended the interim regulations governing timber sales in order to have more time to review and consider the public input.

In making this extension, we have relaxed the definition of dependent communities referred to by Senator Church, so that it now encompasses 183 Western sawmill towns. And I hereby submit for the hearing record a list of these dependent communities.\*

The need for this relaxation was well-documented in the public input we received.

The regulations which have been extended provide for a mix of about 50-percent oral auction and 50-percent sealed bid sales.

They also provide authority for the local forest supervisor to increase the proportion of oral auction sales up to 100 percent, if necessary, to provide an opportunity for local firms to meet outside competition.

I expect the Forest Service to utilize the full flexibility built into this regulation to assure that local dependent communities are appropriately protected.

Authority to exercise this flexibility has been delegated to the local forest supervisors, who are thoroughly familiar with the situation on the ground.

We have not completed the analysis of all the input to the regulations which were proposed in February. There is disagreement as to how far the law permits us to go in departing from the sealed bid requirement.

It is our present judgment that, as a general rule, we cannot go beyond a maximum of about 75-percent oral auction bidding and 25-percent sealed bidding in areas tributary to dependent communities.

We will retain the flexibility to increase the proportion of oral auction sales to 100 percent when that is necessary in specific situa-

\*See p. 64.

tions. We believe that such regulations, administered with sensitivity to local situations, will provide adequate protection for the economies or areas dependent upon national forest timber.

We will closely monitor this situation, and if problems develop, we will take prompt remedial action. A formal review will be made at the end of the year. If problems develop that are beyond our ability to handle administratively, we will recommend needed changes in the law.

We would also like to point out that we requested from the Department of Justice a statement of their experience with regard to dealing with suspected collusion and any relationship to bidding methods.

They recently provided us with a statement of their experience, which we are reviewing, and which you have placed in the hearing record this morning. We also understand that they will present testimony before the committee.

If Congress should find that the provisions of section 14(e) are unnecessarily restrictive, we would not object to enactment of section 9 as separate legislation. If this occurred, the Secretary of Agriculture would still have the authority and responsibility to do what he deems necessary to obviate collusive practices in the bidding for national forest timber.

What this says, Mr. Chairman, is that we would hope that the legislation and the committee report would not constrain the Secretary with respect to the kinds of bidding that he could provide.

This would include the use of whatever method or methods of bidding was determined to be appropriate and might include a mix of bidding methods, if it is deemed an important tool to prevent collusion. And I will emphasize "if" there, "\*\*\* if it is deemed to be an important tool to prevent collusion."

We would not view repeal of section 14(e) as in any way lessening our responsibilities to obviate collusive practices.

We would also like to point out that since the National Forest Management Act was enacted late last year, we have not had an opportunity to implement final regulations or gain experience in their implementation. We feel that the repeal of section 14(e) may be premature. We are reluctant to see the act opened to amendment at this time.

In other words, we would like to have a year to see how it works out.

We know that there is concern by some people that if we do not have direction to use sealed bidding, we will have no effective means to prevent collusion. This is not true.

Before passage of the National Forest Management Act, the Forest Service began monitoring bidding patterns on each national forest. This monitoring has been strengthened. Through this monitoring, the Forest Service has an increased capability of detecting collusive bidding patterns if they are present.

When a local forest supervisor detects bidding patterns which appear out of the ordinary, he can and will immediately call upon the Department's Office of the Inspector General. Trained investigators can take the bidding data and follow up to see if evidence of collusion is present.

If a probability of collusion is established, the case would be promptly referred to the Department of Justice. We believe that following this process will enable us to adequately protect the public interest.

At this time, I would be happy to try to respond to questions raised by my statement, or other questions of concern to the committee.

Senator MELCHER. Thank you, Mr. Secretary, for a brief but very much to the point presentation on the bill. Now, the 180 communities you have added to the 3 that you had a few months ago, that Senator Church testified about—I think there was one in South Dakota and two in northern Idaho—still is just a list of places where there have been enough complaints to draw your attention to why they thought they ought to be considered separately under the terms of 14(e).

Mr. CUTLER. Mr. Chairman, may I ask our forest management staff how that list was in fact developed?

Senator MELCHER. Yes; please.

Mr. CUTLER. Mr. Leonard?

Mr. LEONARD. Yes, sir. We developed a set of criteria for defining the dependent communities, that are based on two principal factors. They are communities in which at least 10 percent of the work force is involved in the logging or manufacturing of timber, and communities which obtain at least 30 percent of their timber supply from the national forests. They account for virtually all of the major sawmill towns in the West, and when you array from those dependent communities the areas of national forests that are tributary to those, they result in covering most of the Western national forests, in terms of making them eligible for the mix of bidding methods as prescribed by our regulations.

Senator MELCHER. Well, you do not have Kalispell on here, which is a thriving community that would not be very thriving if some of the mills around it were not operating.

Now, my concern is that—where you take Eureka, which includes Fortine, and Libby includes Troy, you have these blank spots where you have a mill located somewhere in the Kalispell area, which does not fit any of your criteria, and I know they are dependent on getting sufficient supplies from the Forest Service to keep their mills in operation. I think that you have a bigger problem than you realize. That bothers me, because there has been hardly a week gone by since this bill was passed that we have not had some input from small mills, saying that they think this is going to upset oral bidding.

And then, as time marched on, as the months marched by, you got your regulations started. They kept saying, "Well, you see, we were right. These sales are not being offered under oral bidding, and we do not like it. It looks like we are being aced out."

Mr. Secretary, you point out, correctly so, that the Management Act of 1976 does allow for the Secretary to have some broad-based advisory committees. And you plead that, rather than enact a piece of legislation that sets up such an advisory committee, that the Department will form one on their own initiative and under existing law.

Nevertheless, when these regulations were being developed, there was not any such advisory board set up. It was clear from the conference committee that this was an area that needed a great deal of attention by the Forest Service to implement it. And I do not believe there is anything in the act that says you have to have your regulations out on this particular section by March, April, May, June, or July of 1977. There simply was not an advisory board set up.

Now, when it was obvious that there was some misunderstanding between the Forest Service and the Congress on this point, why wasn't an advisory board used before the regulations were promulgated?

Mr. CUTLER. We continued to hope that our amendments of the draft regulations would address themselves appropriately to the problem, and we have not really reached that kind of a solution, so it is obvious, Mr. Chairman, that we need to go ahead with that advisory committee and get at that job, and we will do that, very promptly.

I still think that it needs to be appreciated that the proposed regulations do permit the forest supervisor to go to the 100-percent oral auction level if it appears that the local community is in trouble with respect to its purchasing opportunities.

Senator MELCHER. I have one other point on this local community problem. While it is true that an effort has been sort of orchestrated for these communities—in other words, the business people have been made aware that if the local mill does not get the timber sale, they probably are not going to be in business in a few months, and therefore, the payroll is going to be gone—there is also the situation where there is an isolated—not necessarily isolated—but a mill that is small and is not really a part of a community that meets the criteria you have set up. What is going to happen to them?

Do you feel that you are going to take care of them under the small business set-aside? How are you going to take care of these little mills?

Mr. CUTLER. Typically, if he does employ fewer than 500 employees, he would be given special attention under the small business set-aside program. It does get a little complex, as we get into stratification of all these different kinds of arrangements with small business and with dependent communities and so forth. It does pose problems.

Senator MELCHER. Well, I know it is complex. And we were given plenty of leeway in section 14(e) to take care of these complexities, to be fair to the small operators, and we are disappointed that it apparently has not worked out that way.

Now I do want to emphasize your testimony and the letter that Deputy Secretary White sent up to the committee on behalf of the Secretary, that if Congress thinks 14(e) is a little bit too rigid that you would not object to it being repealed——

Mr. CUTLER. That is correct.

Senator MELCHER [continuing]. Because you do have the mechanism under existing law, under a law that existed prior to the enactment of the 1976 act, that would protect the public interest and that would direct the Forest Service to sniff out collusion and to avoid it and to follow policies that would defeat any efforts on any segments of the industry attempting to collude on a bid.

Mr. CUTLER. The testimony earlier during the hearing seemed to indicate that the decision to make sealed bidding required unless otherwise provided for was a Forest Service decision. And of course, it was a decision of the lawyers in our Department, who did their best to read the plain language of the statute and tell the Forest Service what, in their opinion, were their legal constraints. So it was a matter decided for the Forest Service by the Office of General Counsel.

Senator MELCHER. Well, I understand that when we draft a section in Congress, and we think we have fairly clear language, we can find out later on, when the attorneys look it over, that it does not do everything that we thought it would and what Chief McGuire and his representatives who attended the conference committee sessions thought it would do.

So I think that your testimony is helpful. We may find it advantageous to either repeal section 14(e) or to redraft it. That option is open to us, too.

The bill, S. 1360 does repeal section 14(e), but we do have an opportunity in the same bill to modify it, to amend it, to redraft section 14(e).

Now, can you provide this committee with some language that would modify 14(e), developed by your solicitors, by your Office of General Counsel, that you think would be in the public interest and to safeguard the integrity of the timber sales?

Mr. CUTLER. We have had several alternative pieces of language prepared to amend that section to a greater or lesser degree, and we would be happy to provide them to you, Mr. Chairman.

Senator MELCHER. You already have it prepared?

Mr. CUTLER. We will get it to you very quickly.

Senator MELCHER. We would appreciate that very much, because that is one of the possibilities that we have thought of in terms of action on S. 1360.

Now, there is one further point. While we are impressed whenever the Justice Department acts aggressively on cases that involve collusion, we cannot expect the Justice Department attorneys to develop the type of practice that works best on a technical subject, such as timber sales. So we have to rely on the Department as one area of expertise in this regard, the Forest Service, specifically.

We also have the feeling that in general, you can draw on people from the private sector who are in the business and who are knowledgeable about the procedures that work best, to maximize sales proceeds, to keep small plants operating. Would your advisory board draw on that area, the public sector?

Mr. CUTLER. Do you mean on the private sector?

Senator MELCHER. Yes, the private sector.

Mr. CUTLER. Yes, it would.

Senator MELCHER. Maybe we are making progress. Thank you very much.

Mr. CUTLER. Thank you.

Senator MELCHER. Mr. Joe Sims, Deputy Assistant Attorney General, Antitrust Division, Department of Justice. Mr. Sims, welcome to the committee. We are anxious to hear what you have to say on this subject.

Please proceed, Mr. Sims.

STATEMENT OF JOE SIMS, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. SIMS. Thank you, Mr. Chairman. I have submitted a statement for the record.\* If you have no objection, I will, rather than read it, simply refer to it from time to time.

Senator MELCHER. It will be made part of the record.

Please proceed, Mr. Sims.

Mr. SIMS. First of all, let me accept Senator Church's statement, as well as the necessary inference of some of your remarks, that the Department is far from an expert in timber bidding or timber sales, and we do not represent that we are.

We do have some expertise and some interest in the competitive process, and that is the interest that we have brought to bear on this subject, at the request of the Agriculture Department and as a necessary result of our criminal law enforcement responsibilities.

Our experience in this area comes about largely through a number of investigations of possible antitrust violations. Since 1960, we have investigated situations in at least 10 areas where collusion was suspected or alleged among purchasers of national forest timber. In some of these areas, collusion was believed to have involved several firms and numerous timber sales during periods lasting as long as 10 years.

Six areas are currently being investigated for possible timber-bidding collusion. Since these investigations are being carried out by Federal grand juries, as you are aware, I am not at liberty to discuss them in detail. However, they do cover various Federal forests in northern California, Oregon, Washington, Arizona, and New Mexico.

It is noteworthy—at least, we believe—that over the years, our investigations of bidding practices involving sales of Federal timber have largely concerned areas where oral bidding was the predominant method of selling timber.

As has been pointed out, two criminal cases involving collusive bidding on national forest timber sales have been brought, both in the district of Oregon. In the first case, the grand jury indictment was dismissed in 1964 for insufficient evidence, after presentation of the Government's case at trial. In the second case, *United States* against *Champion*, the grand jury indicated 10 individual and corporate defendants; the court convicted 7 of these defendants after a lengthy trial in 1975, and these convictions were recently unanimously affirmed by the Ninth Circuit Court of Appeals.

In addition, we have now pending a companion civil case to the *Champion* indictment, which seeks recovery of damages caused to the Government by collusive bidding.

Collusive bidding is one of the more difficult antitrust violations to discover and prove in court. Absent an informer or other direct evidence of an agreement, it is very difficult to show that the absence of competitive bids is due to concerted behavior.

Direct evidence is very difficult to obtain, especially in a tightly knit industry such as the timber industry. Thus, the Government may have to rely exclusively upon circumstantial evidence concerning the bidding results alone, which in turn are sought to be explained away by the defendants.

\*See p. 65 for the prepared statement of Mr. Sims.

The oral auctions employed in the past by the Forest Service in our view have compounded the difficulty in proving collusion on national forest timber sales. Oral bidding makes it easier to coordinate and easier to enforce a collusive bidding agreement, because less need be agreed upon in advance of the auction by the participants in such an agreement.

The conspirators need do little more than generally allocate a sale to one of their number and leave the details to the flexible, oral procedure. Since there is little need for detailed plans and policing procedures, there is little trail left for us to follow.

In the past, oral bidding has permitted some timber buyers to dominate timber sales in certain areas, precluding other firms from taking timber.

I think it is important to note that this may occur even without collusion. The oral auction procedure facilitates this domination by making legal intimidation possible, through retaliatory bidding behavior by certain firms.

A firm may become dominant in a particular area by means either of a collusive arrangement or through historical buying patterns. The dominant firm then indicates through its bidding its intention to purchase any timber offered by the Forest Service in certain areas. When timber sales are offered within that area, the company bids to whatever level is necessary to purchase the timber. This practice obviously dissuades bidding by other firms, which soon learn the futility of attempting to purchase timber in the dominant firm's territory.

The result can be that much if not most of the timber offered in such an area is sold without bidding challenge, at or near the minimum price the Forest Service will accept. Purchasing some sales at minimum then gives this dominant firm the economic base to bid as high as necessary, even above its projected economic break-even point, on sales where bidding challenges are offered.

This preclusive bidding raises a significant barrier to entry in the forest products industry. In addition, it frequently results in the Government receiving less than a competitive price for its timber.

These problems are not new. As you know, they were identified by the Comptroller General in his 1965 report on timber bidding. They were also recognized by the Joint Committee of the Congress on Federal Timber in 1956.

With these problems in mind, one may look to sealed bidding as a possible solution. Sealed bidding has two purposes: To insure a fair opportunity among bidders and a fair price to the Agency contracting by that method.

Sealed bidding is the standard procedure in Federal Government procurement. It has long been the predominate method of sale for national forest timber east of the Rockies and is widely used by State and private sellers of timber.

Obviously, sealed bidding will not eliminate collusion on national forest sales. It can, however, we think, lessen collusion, because each bidder has only one bid, and the bids of others are secret; each bidder must bid at a level which corresponds to his interest in a given sale.

To implement a collusive arrangement under sealed bidding, a bidder would have to arrange the actual amounts bid by every likely

active bidder. Whereas, under oral bidding the few dominant firms can control the bidding by merely knowing the general needs and interests of the other dominant firms.

Now, I should emphasize, sealed bidding will not eliminate collusion on timber sales. We have got a number of grand jury investigations and quite a few indictments in other areas, that prove that sealed bidding is not a panacea.

On the other hand, it does make collusion more difficult than with the oral auction process.

We believe that values of competition and an open market should weigh heavily in any assessments of the public interest with regard to timber selling methods.

Absent unique and compelling specific situations, U.S. Government timber, as are other limited natural resources, such as oil, should be sold by the method which best guarantees that this vital raw material will be available to all interested, and that the Government will receive the most competitive price.

We believe that sealed bidding techniques generally satisfy this requirement. The current statutory recognition of this fact, which incorporates on its face sufficient flexibility to deviate from sealed bidding procedures when such would be in the public interest, is thus in our view appropriate.

This concludes my prepared statement, Mr. Chairman. I will be glad to try to answer any questions.

Senator MELCHER. You said that these grand jury investigations that are going on involve mostly timber sales that were offered under oral bidding procedures.

Is it not true that most timber sales in the Forest Service are offered under oral bidding procedure?

Mr. SIMS. Certainly, in the Northwest that is true, yes.

Senator MELCHER. Well, in any of the areas where you have a grand jury investigation going on, is it not true that most of the timber sales are offered under oral bidding procedures?

Mr. SIMS. Our grand jury investigations are under way in the Pacific Northwest, and in that area, oral auction is the predominant method of selling; that is correct.

Senator MELCHER. It is way over 75 to 90 percent?

Mr. SIMS. Yes. It is a very high proportion.

Senator MELCHER. So, if there were any collusion, if you were going to investigate to find out if there were collusion in the area, you would have 4 out of 5 chances, or 9 out of 10 chances that it would be oral bidding, because that is the way the timber sales work. If you are going to investigate any timber sales in those areas, it would be unlikely that you would run onto a sealed bidding sale; is that not true?

Mr. SIMS. That is true in the Pacific Northwest; that is right.

Senator MELCHER. Then, that part of your testimony that says that your investigations concern mostly oral bidding is simply because most of your investigations are where there is oral bidding?

Mr. SIMS. Well, I suppose there is a bit of a chicken and an egg problem. We are not aware of evidence which would indicate collusive bidding in areas of the country where sealed bidding is the common bidding practice. That is not to say that it does not exist; we just are not aware of any evidence which says that it does.

On the other hand, we have uncovered what to us is considerable evidence that it does exist in areas where oral auction bidding predominates. It does not necessarily follow from that, that oral auction bidding encourages or facilitates collusion. But, based on our experience, you could draw that conclusion, and that is our conclusion at the present time.

Senator MELCHER. Now, how long have you been with the Department?

Mr. SIMS. Seven years.

Senator MELCHER. And so, during the 7 years, there has been one conviction or two convictions?

Mr. SIMS. One conviction.

Senator MELCHER. One conviction. And how many grand jury investigations?

Mr. SIMS. I am not sure during the 7 years. I believe it is since 1960, there have been approximately 10 investigations.

Senator MELCHER. Ten investigations. And each investigation you are speaking of was presenting evidence to a grand jury?

Mr. SIMS. Yes, sir.

Senator MELCHER. And are these grand juries still sitting; are they still active, or have you dropped them?

Mr. SIMS. We have six investigations still pending.

Senator MELCHER. Out of 10, you have reached conviction in 1, you have dropped 3—

Mr. SIMS. Reached a conviction in one; filed or returned an indictment in a second, where the individuals were acquitted; dropped two; and six are pending.

Senator MELCHER. Six are pending.

Now, how do you react to the experience of both myself and Senator Church—Senator Church from Idaho, and myself from Montana—how do you react to the fact that the ones that are approaching us and saying, "Well, let us retain this oral bidding," are relatively small mill operators, that feel that it is more competitive and they feel that they are better able to survive if it is oral bidding and they are allowed to meet face to face with their competition and up the bid. How do you react to that?

Isn't that what we generally consider to be in the public interest to keep a system of competitive businesses alive by allowing the smaller ones to survive?

Mr. SIMS. Allow me to parse that question, if you will. I think there are a number of possible explanations for that, one of which is that our conclusions to date are wrong—that oral auction bidding is more competitive. That is certainly a possible conclusion.

Another possible explanation for the fact that you are being approached by many small businesses as opposed to large ones would lie in the way the historical pattern of selling Federal timber has existed in the past.

You will find, for example—and I use this only as a rather strained analogy, but it is the only one that I can think of at the moment—in the banking field that local banks, sometimes quite small local banks, are quite concerned about the influx of outside competition, be it from small or large companies.

Hereto, in the Pacific Northwest, the history of oral bidding has been such that communities have built up, apparently, dependent

upon receiving a certain allotment, if you will—not quite that formal—but a certain amount of Federal timber over the years. And right now, with the change in the bidding process from oral bidding to sealed bidding, there is a transition, a transition which is creating uncertainty, is creating a certain amount of competition, if you will, that did not exist before, and that uncertainty has people concerned, as would be perfectly normal.

The competitive market, if it operates correctly, is a market in which uncertainty is high. Uncertainty is what makes the market go. Uncertainty is what makes people, when they submit a sealed bid, submit a sealed bid that is right up there, where if they get the timber at that bid, they will make a reasonable profit, but no more than that, because they are concerned that if they submit a bid lower than that, in order to make a larger profit, somebody else will submit a higher bid and take the timber.

So, uncertainty is a very key phenomenon in competitive markets, and uncertainty may well account for the fact that you are getting people coming in today saying that they are in trouble, because they are concerned about what the future holds, having gone from a relatively stable environment in the past to one which is less stable today.

Senator MELCHER. Well, I do not know if that is an answer. A small operator says that rather than put in a sealed bid, he would rather sit across the table from his competition and up the ante as much as is necessary to get the timber purchased.

They are telling us, Senator Church and myself, that that is what they prefer, because they think they can survive competitively better that way.

My question is: How do you react to that? You say uncertainty leads to more competition. Well, I am asking you how do you react to these business people that are in business yet, because they have been able to survive the tough times that the mill operators have gone through for the past 20 years or longer, and they say that, "In our business, this works the best, and we are best able to survive."

Now, how do you react to that? These people, evidently, know what their business is, and how they can best survive, because they have survived some tough times. They have not floated the mill operation because it is a bonanza.

They have floated into these mill operations because they were in there 20 years ago, and they have been able to survive some tough times, and they are telling us now this is what keeps us in business, and we want to stay in business.

Now, how do you react to that? Don't you give credence to what they say?

Mr. SIMS. Certainly I do, but I do not really know how to react to it any more than I have. You would think that, given the transportation costs that Senator Church indicated or spoke about in his testimony, that the local operator would have a built-in competitive advantage over outside sources.

His costs for producing timber should be less, at least by that transportation allotment, than an outside mill owner equally efficient.

If they are saying that there is some other competitive advantage that is required for them to be competitive, the only reaction I can give to that is the one I have had, that it seems like they are concerned more about uncertainty than anything else.

Senator MELCHER. Well, don't you think many times, in many businesses, in order to get raw material that you are going to bid higher for a raw product than you would otherwise in order to guarantee yourself a supply? Don't you think there are many instances a plant has to exceed on their bid the point where they think they are going to get a profit, just because if they shut down, they are out of business?

Mr. SIMS. Certainly, there are fixed costs, which are the first costs that you try to cover.

Senator MELCHER. But don't you think they have to exceed fixed costs and actually bid higher than what they think they can make a margin of profit on, simply because the alternative is to go out of business?

Mr. SIMS. But they cannot do that on a regular basis.

Senator MELCHER. I know they cannot do that on a regular basis; of course, they could not, or they are out. But don't you think that that is exactly what they are telling us, they have to have that freedom to go beyond what you would figure—you said that the sealed bid would naturally contain the price that they feel that they could make some sort of a profit on—but don't you really believe that many businesses, and particularly mill operators, must sometimes go above what they know they can make a profit on; they know they are going to be bidding into a loss situation, unless the situation is one where you have an ascending market, in order to keep operating?

Mr. SIMS. Certainly, they are going to have to take into account the volume that they need to keep their operation going, and that would have to be a factor they would take into account, whether in an oral bid or in a sealed bid.

And you may be right, that in a given bidding situation, the ability to go 1 penny above whatever the highest bid is makes considerably more certain their opportunity to get that buy and to keep their plant going.

Senator MELCHER. I think that is what they are telling us. I do not think they are telling us that they are just going to bid up to where the point is that they know they can make a decent margin. I think they are telling us that at times, they have to exceed the point where they could conceivably make a profit on that particular operation, unless the price of the finished product goes up.

Mr. SIMS. But I think you have to realize there are costs involved in that. I mean, the only way that a mill operator can do that is to make up for the profit he does not make on those jobs, by gaining a lot of jobs, or at least, enough to offset that, at the minimum or close to the minimum price, so that he makes an extra profit on those.

There has to be a balancing process in there somewhere.

Senator MELCHER. One other point. Have any of your investigations involved sales of timber where they did not meet the appraised price?

Mr. SIMS. Where they did not meet the appraised price; not that I am aware of.

Senator MELCHER. I think that, in effect, the procedure is that there is an appraised price, and the bids have to be above that.

Mr. SIMS. To put a bid in at the appraised price, and then there is an auction among those who have qualified, yes.

Senator MELCHER. And different than many procedures that are followed either by Government or in the private sector. This type of sale is designed to protect the public interest because you start from an appraised price. If the appraised price is not met, then it would be an unusual circumstance where the Forest Service would ever make the sale; is that not true?

Mr. SIMS. I assume that is true. I assume they would not sell it at below the appraised price, absent unusual circumstances.

Senator MELCHER. They would have to be real unusual circumstances. So what we are talking about is a type of collusion on bids that really is used to force somebody out of business or to gain a type of monopoly, is it not?

Mr. SIMS. That has certainly been our experience in the past.

Senator MELCHER. So, when we are approached, we on this committee and the rest of us in Congress who have constituents who are in this business—when we are approached by them, and they say “In order for us to keep going, we need oral auctions to continue,” it seems to us that puts a pretty heavy burden on us to determine whether or not they are not correct, and to assess their reasons for saying that they need oral auctions, because they find themselves having to go higher and higher on timber sales from the national forests.

Could you cooperate with the Solicitor’s Office in the Department of Agriculture, and review the language that they will propose to us to modify section 14(e)?

Mr. SIMS. We would be happy to.

Senator MELCHER. We would appreciate that very much. Thank you very much, Mr. Sims.

Mr. SIMS. You are welcome.

Senator MELCHER. Tom Barlow, Natural Resources Defense Council.

#### STATEMENT OF THOMAS BARLOW, STAFF MEMBER, NATURAL RESOURCES DEFENSE COUNCIL

Mr. BARLOW. Thank you, Senator.

If I may, I would like to submit my testimony for the record and just summarize some points that have come up, both this morning and in prior hearings on this subject where I have testified.

Senator MELCHER. Please proceed.

Your testimony will be made part of the record.\*

Mr. BARLOW. I think the biggest advantage of the sealed bidding situation in the Northwest is going to come over the long term, and that is, as we move into this period of recomputing in the next 10 years the allowable cuts in national forests, and as past cutting programs reach their zenith and annual cuts start to decline in these national forests, with sealed bidding you will have the ability to shift local producers around among other national forests; as harvests in their own national forests decline. They will be much freer to move into other areas and bid more freely than under the open bidding situation that exists now.

\*See p. 68 for the prepared statement of Mr. Barlow.

So we see for the long term a lot of value coming from the sealed bidding process. There will be, we hope, much less pressure toward overcutting in individual national forests.

We feel also that the committee system that is proposed in the bill is unwise. The National Forest Management Act has a committee of scientists that sets forth many of the harvest procedures, the harvest approaches, in the individual national forests across the country. This committee is just now convening. It is going to have to work under a very tight time schedule to get out its findings on how harvest programs should be reordered.

We do not see that a committee that is composed predominantly of users, looking over the shoulder of this committee of scientists is going to help them reach objective findings in better management systems.

We feel also that the right of the timber industry, with sealed bidding coming into these heretofore open bidding areas, is perhaps a bit premature because new regulations with much less sealed bidding than now being administered are due out shortly.

There have been a few tie-ups that we have been made aware of, as a result of the interim regulations that the Forest Service put forth last fall. But the Forest Service has still to come out with final regulations. These final regulations are going to be somewhat different than the interim regulations the industry has operated under, and we feel that there really has to be some time for these new regulations, the final regulations, to be tried out in the field.

If this is the way the timber industry is going to react, every time every set of regulations comes down out of the National Forest Management Act, we do not see any constructive gain coming, in terms of improvement in management practices in the national forest system in years ahead.

So we would like to see some time go by in which to try out the final regulations, and then perhaps, if things are still in a fix up there, come back with this section and perhaps some other sections of the National Forest Management Act, and take a look at all of them.

On your last point, about deficit sales, the Forest Service does have studies on the number of sales made below the appraised price. This can happen. It is called a deficit sales situation, and it happens quite frequently in the intermountain region.

The Forest Service, however, does not take into account their costs in setting appraised prices. So appraised prices are generally, especially in the intermountain region, way below what it actually costs to get the timber out there.

We see open bidding as compounding the problem of losses to the Federal Treasury in terms of costs not covered on a lot of these sales, and we would like to see over the course of time the Forest Service shifting to an appraisal system which takes into account costs.

If the industry wants to move back to an open bidding situation, we would like to see some greater assurance in law that the Forest Service costs are going to be recovered.

That is the sum of my points.

Senator MELCHER. Well, there is nothing more public than an open auction, and it is hard for me to view the circumstances where that does not satisfy the criteria of serving the public interest.

But you mentioned that you think there will be some sort of transition period, where the Forest Service implements the bill and, indeed, implements the bill preceding that, that there may be some moving around of these mills. Well, that is what I am very skeptical about, because we have gone through a period of time in the intermountain area, and western Montana is part of that area, where there have been an awful lot of mills closed down. These small mills, you can just drive by and see them sitting there.

I suspect that if you are real knowledgeable in an area, you will find that there is no longer any signs of the mills that were there 10 years ago.

So it seems to me we have wrung out these small, inefficient mill operators to the point where he had better pay attention to what we have left, or we will lose virtually all of the small operators. And how that serves the public interest, I do not know.

I am of the opinion that in order to have competition in an industry, you need to retain what we call small business. I am also of the opinion that as Senator Church so vividly described in McCall, Idaho, that communities like that are entitled to stay and entitled to continue, and that their demise, through the closing down of their local mill and the shift of people out of those small towns, the drying up of the small towns, is not in the public interest either.

So I really take to heart in the comments we have been receiving by these small operators that tell us that oral bidding is better for them, and that it works well. The evidence that we have seen does not indicate there is collusion involved with the premises they are making and the assertions they are making.

So I am disturbed a little bit about your comments, because it seems to me that they are telling us there is an urgency here. And rather than go through a period of, say, 2, 5, or 10 years to see how this particular system works, I think we ought to pay attention to the urgency that they are describing and help them to survive.

Mr. BARLOW. Well, I think the tradition has been up in the Northwest for those small companies to draw the timber they need out of one timbershed, and the customs and the culture has evolved that they try and keep everybody out of that timbershed. They do the drawing from that timbershed, and they do not go anywhere else, and nobody comes into their area.

I am not sure that that is a situation that is going to continue over the long term, as evidenced by a number of mills that have already closed out there, because once you move through that timbershed and it is exhausted, you have to close if you can't get trees elsewhere. Eventually, that culture has got to change up there, and a timber company that drew from one timbershed might have to invest in the transportation equipment to draw out of timbersheds over an entire half of a State, or two States.

I believe you have on your witness list Mr. Ed Seeger, who is counsel for the Boyd Lumber Corp., and he will be testifying about the problems that one small operator has had in moving into other timbersheds to keep his operation going, to keep it financially healthy; the problems he has faced because of the open bidding situation and being kept out.

So I think what you have here is just a shift in the way of doing business. Perhaps it may be more healthy in the long run. I am not

sure that it is healthy for those small companies drawing from one timbershed to be constantly bidding to keep everybody out of there, and as a result, being very marginal operations, operations which do not generate the profits to be able to plough into utilizing that timber that they are cutting in the most efficient manner, so that they can generate a healthy economy.

Change has got to come, and I think we are in the process of seeing it come, whether we like it or not. And I think this sealed bidding situation is going to help for a more balanced change to come about up there in the Northwest.

I am frankly concerned about the Forest Service backing off to the extent that it has, from the interim regulations that were put out last fall, in terms of the percentages of open bidding and sealed bidding and the definitions of the dependent community and so forth.

Senator MELCHER. Well, I think the purpose of the 1976 act and the preceding acts have been to sell timber on the basis of sustained yield. And while I am not sure what you mean by timbershed, I think the intent of Congress is clear that we want timber sales to be based on sound management practices for timber harvesting within a unit of the national forests.

So, what we are saying is, "Yes, become stable," because that is the way we want to harvest timber.

Also in the act, as you recall, we carried with it the requirement—or rather, the authorization—I hope it becomes a requirement—for \$200 million per year to be spent for better timber stands through thinning and other practices, and also for reforestation.

So what we hope we are leading to is stability, and we think that is good for our national forests, and in this respect, if we are successful, I think we will see stability of these mills. I hope we do, to the extent that they are dependent on national forest sales.

Mr. BARLOW. I am in strong support of all of that.

Senator MELCHER. Well, then, it boils down to whether or not we should believe in people that say that they are better able to survive if it is oral bidding.

We are—at least I am—pretty open on this bill. I want to see the situation corrected. If the Forest Service wants to modify section 14(e) and take out the constraints their solicitors have advised them that are in the language, as it was passed, so they can—let us see—arrange the sales to avoid collusion, first of all; second, maintain the opportunity for the communities that are dependent upon one or two mills to remain viable communities; and third, to meet the test of public interest; that is, getting a fair price, a fair, competitive price out of timber sales—if they can arrange that language to do those things, I certainly think it behooves Congress to pass it, because we do have a problem here with many small operators and many communities. And I am not sure that revised list of 182 even is a half or a fourth of the communities that are involved that are very dependent upon these sales from national forests.

Now, if they can revise that language to do those three things, I hope you will be supportive of it.

Mr. BARLOW. I would like to see the language. I would also like to see a little time go by, while we operate under the final regulations.

Senator MELCHER. I want to say this; that having been active in

the House in developing that bill, and having followed it through every sentence, every period, in the conference, where we had the firm understanding that we were trying to meet those three criteria in this section, and the support of every environmental group as far as I knew at the time on that language, I hope that if we revise the language to do just exactly that, that we continue to have the support of environmental groups, because I do not think we should ever be at odds on those points, and I think they are exactly what we were striving to do.

Mr. BARLOW. We will see. We would like to see that 14(e) go ahead for a little while.

Senator MELCHER. Well, you know, as we passed it, and as everybody agreed, 14(e) was to do those three things. Now we are advised by the Solicitors in Agriculture, that no, indeed, 14(e) places some constraints on the Forest Service where they cannot rely on just meeting those three criteria, as they should have at all times relied; that there are some constraints in 14(e) that puts a pattern requiring more sealed bids than they would ordinarily use in arriving at meeting those three criteria.

Mr. BARLOW. It is going to impose some constraints, to be sure, but I think they are constraints that in the long run are going to have payoffs for the industry that continues up there, small mills particularly, which is going to have to move around from one—I use the term timbershed meaning the area that a mill draws from, that national forest which a mill draws from—to other national forests, as cuts are reduced, as allowable cut computations come down.

Senator MELCHER. Well, then, I guess we have a confrontation, because in some instances, these small—what we are seeking to do is to stabilize the timber harvesting in an area, and keeping in mind that these small communities want to survive. We do not want to degrade the national forests, but we do want to have the opportunity to sensibly and prudently manage the forests in such a way that there is a sustained yield in an area.

Mr. BARLOW. Well, what if we have the situation coming up that as a result of the National Forest Management Act and the Forest Service's own inventories that they have been working on for the last 5 or 10 years, you start to see a market fall-off in the amount of timber that is sold out of particular national forests up there, and all of a sudden, the mill in that particular area is hurting badly. And yet, it is boxed in by an open bidding situation in surrounding areas. It can't go into these other areas to bid, because it knows it is going to be closed out.

Then it will close, and I do not think that is a healthy situation.

Senator MELCHER. Well, it does not seem likely in the area that I am familiar with. The annual harvests are so much below the allowable cuts that it would seem to us that under prudent management, the sustained yield will indeed take place in the national forests that I am familiar with in western Montana. If the situation changes, it is something that we have not been able to, or cannot foresee at this time.

Mr. BARLOW. But were none of those mills that you were speaking about at the beginning that were closed down, or have closed down, or have been abandoned over time, none of those have been the result

of overcutting in national forests or forest areas, exhausting the supplies in those areas, and there being no timber left, the mills having to shut?

Senator MELCHER. I cannot speak with any degree of knowledge on exactly the set of circumstances that they closed out. I suspect that the people that were in the business could very concisely tell us why they closed out—because of market conditions; probably that, more than the case of how much timber was available.

But nevertheless, in the forests that I know in western Montana, which the sales for the past several years have been well below the allowable cut, it seems to us that the management we call for in the 1976 act will result in the sustained yield type of operations within those national forests, if we are going to provide the opportunity for the mills that are dependent—and most of them are—dependent on national forest sales to continue in business.

They are fewer in number. They have gone through this period of adjustment. And it looks to us that they will stay in business.

I am still not so familiar with the trade that I can really speak to what you have described as the timbershed, but all of the mills that I know do, of course, use trucks, do have to go some distance to get the logs, and they for the most part are capable of drawing from one or, generally, more than one, national forest so located.

When you are really confronted with a problem as we seem to be with 14(e), I have never felt it essential that we allow a section in the law to continue in operation to see how bad it might be.

We are told by these mill operators that they do not know of any collusion, they do not think there has been collusion in their area; that oral bidding does give them the little extra leeway to make their bids higher. You know, you do not lower your bids; you make them higher. And they say it is important to them.

We thought we were giving that type of flexibility to the Forest Service when we adopted 14(e) in conference. We had the support of them all. I think there was a bit of a question mark in some of the lawyers that were advising timber groups, that maybe 14(e) was more restrictive than what those of us on the conference thought it was, and that Chief McGuire thought it was—and indeed, that is the way their Department attorneys have told them, that it was more restrictive than they had thought, than we had thought, and they say they want a correction to get at the point that I have earlier stated, which seemed to me to be very much in the public interest and in the whole tone and thrust of the 1976 act. I see no reason not to modify it with language that arrives at just exactly what we thought we were doing in that conference last fall.

Mr. BARLOW. Well, they may say there is no collusion going on up there in the Northwest, but the fact of the grand juries sitting and the number of cases that are in the air and moving toward some type of conclusion seem to belie that. And I do not know of any investigations that the Justice Department has been involved in down in the Southeast, where you have a history of closed bidding.

So that would seem to indicate that sealed bids do help avoid collusion. Also, in terms of bidding patterns, we did a study that we released last year that showed in a number of regions that there is a pattern of bids coming in just above the appraisal price, whereas, in other regions, it can fluctuate way high above the appraised price,

which would not be a healthy economic situation for the U.S. Government to be in, especially when they are not recovering their costs even on the appraised price.

Senator MELCHER. Well, there are two things, to respond to your statement. Senator Church and I—he from Idaho and myself from Montana—to our knowledge, there are no grand jury investigations going on, on any collusion on any bids. That is where we draw our information. And further, I applaud Justice Department's effort to safeguard the public interest in these investigations. But I do not think that we should do an injustice to those people who might be being investigated by saying that just because the grand jury is being presented some evidence that any collusion does in fact exist.

We should not prejudice them. But nevertheless, Senator Church and myself are beset by communities and small mill operators who state they know of no collusion, and who seem to be very sincere and determined that their best interests from the sake of competitiveness is preserved if they have a chance for oral bidding.

To the extent that their assertions seem to have merit, I think that we should give it consideration.

Mr. BARLOW. I understand. It is a trying time.

Thank you.

Senator MELCHER. Thank you very much, Tom.

Now, we have a series of witnesses that are in the business, and I would like all of you to approach the witness table at this time.

John Hall, Jerry McChesney, Ed Seeger, Gerhart Bendix, Leonard Netzorg, Tim Mueller, Robert Robertson, James O'Donnell, and Erwin Kulosa.

Please find a chair that is convenient and satisfactory to you. Do all of you have written testimony?

Mr. NETZORG. I do not.

Senator MELCHER. And you are——

Mr. NETZORG. Leonard Netzorg. I came in on rather short notice.

Senator MELCHER. All the rest of you have written material.

Now, will each of you identify yourselves and where you are sitting, so our reporter can know who you are?

Mr. HALL. John Hall.

Mr. McCHESNEY. Jerry McChesney.

Mr. CRAIG. George Craig.

Mr. BENDIX. Gerhart Bendix.

Mr. O'DONNELL. Jim O'Donnell.

Mr. KULOSA. Erwin Kulosa.

Mr. SMITH. Don Smith. Mr. Chairman, my name is not on the written list, but it should have been there.

Senator MELCHER. Don Smith, and who do you represent, Don?

Mr. SMITH. Potlatch Corp.

Senator MELCHER. OK. And do you have written testimony?

Mr. SMITH. Yes, sir.

Senator MELCHER. And the committee has that?

Mr. SMITH. No, I did not give it to you, but I have it.

Senator MELCHER. Would you give it to us now?

Mr. SMITH. Yes.

Mr. MUELLER. Tim Mueller.

Mr. SEEGER. Edwin Seeger.

Mr. NETZORG. Leonard Netzorg.

Mr. ROBERTSON. Bob Robertson.

Senator MELCHER. Well, Leonard, since you do not have any written testimony, you get to go first.

**STATEMENT OF LEONARD NETZORG, COUNSEL, WESTERN FOREST INDUSTRIES ASSOCIATION, PORTLAND, OREG.**

Mr. NETZORG. Thank you, Mr. Chairman.

I would like to address myself primarily to the position that has been taken by the Justice Department in its proposal that national forest timber be sold at sealed bidding to prevent collusion.

The Justice Department has the duty to prosecute collusion wherever it is found. Collusion in bidding for Federal timber is a felony, and it ought to be prosecuted as such.

On the other hand, the analogy I would draw to the Department's position is the problem you have in the District of Columbia, here muggings and street assaults occur primarily during the hours of darkness. It would be possible, I think, to eliminate a great deal of the muggings and assaults if we barred all people from using the streets during the hours of darkness.

That would cure, presumably, one evil and create a series of others. That is the situation we find here. There has been a tendency in this whole thing to look upon every mill owner as an avaricious person who is somehow engaged in a contest with the Justice Department.

I have yet to hear anybody mention rural slums instantly created by sealed bidding or the instant creation of rural poverty. Eradication of those conditions is one of the missions of the Department of Agriculture.

We have just had a colloquy involving the matter of costs, for example. Senator Church quoted extensively this morning from the statement of my client, Mr. Sohn. Mr. Sohn put a huge investment into that elaborate laser scanning and computerized sawing of logs, in order to get more wood onto the market out of the same number of trees.

I should tell you that initially, the new operation was not as efficient as it should have been, because we were beset with delegations from all over the world, coming to view this new marvel.

I cannot conceive that Mr. Sohn would have assembled the capital for that improvement in utilization or invested in it if he had been told that from now on his timber supply would be available to him only with one blind cut of the cards. That is what sealed bidding is.

If we are going to get better utilization and more wood out of the same trees, then it seems to me we have to make this industry attractive for the investment of further capital. And we are not going to do that, Senator, if we get to the situation where the bidding for the vital raw material must be blind.

The Justice Department talked also about the customary pattern of the Government in using sealed bids. That is not universally true with the Government. I do not think that the Government, for example, orders fighter planes by sealed bids. The Government in that situation is a sole buyer. When the Government is involved in the monopoly—or the monopsony—situation, it does not use the sealed bid procedure.

For example, a pencil manufacturer would like to sell pencils to the Government. But if he fails to sell pencils to the Government, he has 200 million other people to sell pencils to on a domestic market.

The sawmill, on the other hand, sits in one place. It can reach out approximately 75 miles for its log supply. The Government is the monopolistic seller of those logs. There is no other legal source of timber for him in the West.

In the South, where sealed bidding prevails, the supply of timber from the national forests is relatively minor. There is testimony on the statistics in the House hearings on this. I believe the Federal timber ran from 15 to 20 percent of the total supply. In the West, however, the kinds of persons I represent must rely on the national forests for 80 to 100 percent of the timber they must have. They must get that timber or collapse.

If the problem is to get more money out of the timber for the Government, as Justice suggests, then we could just as well take the Bonneville-Grand Coulee energy, package it in 100-kilowatt packages, and offer it to housewives this spring and this fall at sealed bidding. We would see who wants to stay in his home and who must abandon his home. Surely it would make a lot of money for the Government.

But the Government should not be guilty of that type of gouging, it seems to me, where it has something in the nature of monopoly. And the morals of gouging in monopoly situations do not change simply because it is governmental rather than private gouging.

The Justice Department has talked also about the problem of the dominant mill, that may drive everybody else out. I do not think that can happen as long as the small business program persists.

The smaller mills cannot do that to each other. It takes a very large operation, with mills in other places that can make up for losses incurred in the preclusive bidding. Such preclusive acts are stopped because of the small business set-aside program.

One other matter that was raised today is the assertion that a sealed bid filed by a mill will state a bid at the point where the mill will get the reasonable profit with which it will be satisfied.

If we revert to Mr. Sohn's testimony, he explained that shortly after his big investment went into his mill, he was hit with a notice that the timber supply in the area was going to be sharply curtailed. Simultaneously with that, sealed bidding was installed. That, he said, will spell disaster. It certainly does not encourage any more capital infusion into this industry; it does not get the utilization that we need, and there we are. Mr. Sohn, on a sealed bid, has to bid at a survival rate, at a colossal loss to survive, he hopes to be one of the survivors. He has no chance to protect himself. He has no idea what he must bid. But to protect that investment, under sealed bidding, he must bid into a loss position in order to get timber.

The Government should not force that to happen. We ought not to structure this thing so that we are creating rural poverty. McCall, Idaho, I suppose—if the mills close there—is going to be an example of a force set in motion by the Government that directly brings about the very thing that the Government is seeking to avoid, rural poverty and the destabilization of communities.

I do not know whether anybody has mentioned the 1944 statute, where Congress has said, that in the interest of stabilizing and maintaining of our Western communities, both the Forest Service and the

Interior Department may even negotiate sales of timber, 16 U.S.C. §§ 583-583i. We do not like negotiated sales.

We think that communities can survive in a competitive situation if we give them a fair competitive crack at it. That we need. But if the lawyers at Agriculture find constraints against oral bidding, then I think that in the interest of our rural communities, we have got to get rid of those constraints. Protection of our communities requires oral bidding.

Thank you, Mr. Chairman.

Senator MELCHER. Thank you very much, Leonard.

Now, all of your written testimony will be made part of the record including Don Smith's who is not on our witness list.

Now, I want to establish a couple of things first, maybe a little bit out of order. But several of you are representing yourselves primarily, and your own business, but some of you do represent some others in an association.

For instance, Mr. McChesney, you represent yourself and a mill that employs 330 people, who are all co-owners of that mill.

Mr. MCCHESENEY. That is correct.

Senator MELCHER. And you testify that you believe sealed bidding, as is being practiced right now, today, is hampering your operation. Is that right?

Mr. MCCHESENEY. Sealed bidding is going to do us in, in time. It is not going to be felt for a number of years, but in the next 2 or 3 years, it is going to take its toll on all small businesses.

Senator MELCHER. Tim Mueller, you represent yourself and the Bennett Lumber Co., and your mill employs how many people?

Mr. MUELLER. About 165, Mr. Chairman.

Senator MELCHER. And is in a community of about 350 people?

Mr. MUELLER. Yes.

Senator MELCHER. Would you look and see whether Princeton, Idaho, is on that list?

Mr. GILTMER [perusing document]. No, sir.

Senator MELCHER. Princeton, Idaho, is not on the list. And this is what I fear, that even though they have an expanded list, that many communities such as yours are still not included on their list that they are going to give consideration under 14(e) for the use of oral bids.

Now I am going to ask each of you to briefly comment on any particular point you would like to stress in your testimony or from what you have heard at the hearing.

First of all, John Hall.

#### **STATEMENT OF JOHN HALL, VICE PRESIDENT, RESOURCE & ENVIRONMENT, NATIONAL FOREST PRODUCTS ASSOCIATION\***

Mr. HALL. Thank you, Mr. Chairman.

There is, as you recognize, a strong demand for timber nationwide. For national forest timber the allowable harvest is about 15 billion board feet. The Resources Planning Act of 1974 calls for timber sales in 1978 of about 13 billion. We are hopeful that the Congress will provide funding for at least 11½ billion board feet this year.

However there is a continuing downtrend in the availability of timber from the national forests. That downtrend, unless changed,

\*See p. 69 for the prepared statement of Mr. Hall.

will result in severe loss of employment opportunity and business opportunity for our industry.

We are hopeful through the Resources Planning Act and the ability of the Congress that the Forest Service will maintain and increase that flow of timber under economic and environmentally sound conditions.

Current law requires that the Forest Service appraise and sell timber at not less than the appraised value. It does not address itself to obtaining the maximum amount of money from that timber or of achieving the last nickel from the purchaser for that timber.

Mr. Netzorg suggested ways in which timber might be sold if the final nickel were the objective. The bidding process and the sale method determines what the individual purchaser will pay in the form of a "scarcity premium" above that which the Government has appraised as the market value for its timber.

The bidding process really determines how much additional a purchaser is willing to pay over and above the Government's fair price.

The 1976 National Forest Management Act did not enlarge the Forest Service's authority. The Forest Service already had authority to alter bidding methods to meet a variety of objectives. The Forest Service, though, interpreted the 1976 act as mandating a specific set of bidding procedures, and that interpretation of the 1976 act introduced even more uncertainty into an industry which is highly fraught with uncertainty.

The result is that some companies will be winners and some will be losers under the new, changed bidding conditions. Some mills will do better, perhaps, others will do worse at the bidding table.

Some mills are going to go out of business regardless of the bidding procedure, if there is no increase in the timber availability. But they may be different mills than those which would go out of business under previous bidding procedures.

As a result, the capital assets of our entire Western industry are up for reevaluation, depending upon a company's ability to bid under the new system.

The justification for this, we believe, is minimal. Two indictments in 70 years, and 10 investigations out of the last 17 years seem to be minimal Justice Department review of a business which creates about a half a billion dollars a year in income. To change the entire system based on that evidence, is premature.

We urge the committee to adopt the legislation as presented, especially section 9.

Appended to my testimony are two items: An extensive 1966 forest industry report to the Office of Management and Budget building upon an earlier one to the General Accounting Office, which rebuts many of the statements made by Mr. Barlow and Mr. Krebs, in their references to the earlier GAO study.

Senator MELCHER. May I identify that GAO study as "GAO Study of 1965, Questionable Aspects of the Oral Auction Bidding for Federal Timber Sold at Certain Locations in the Pacific Northwest."

Mr. HALL. The case for oral auction bidding, made by the several companies here today, was also stated well by Senator Packwood in his remarks in the September 30 Congressional Record, which is also appended to my statement.

In short, we support the legislation and urge its adoption by this committee and the full committee.

Thank you.

Senator MELCHER. Mr. McChesney, do you care to make additional comments?

Mr. McCHESNEY. Yes, sir.

**STATEMENT OF JERRY McCHESNEY, PRESIDENT, FORT VANCOUVER PLYWOOD, VANCOUVER, WASH., REPRESENTING AMERICAN PLYWOOD ASSOCIATION\***

Mr. McCHESNEY. Thank you, Mr. Chairman.

I am Jerry McChesney, president of Fort Vancouver Plywood, and I also am speaking on behalf of APA, which is American Plywood Association.

We were faced, after the Forestry Act of 1976, with having to go on the assumption that we would have to lay all our money on the table at a one-time shot.

And as a small owner-operator, we just cannot afford to do this. We much prefer the oral auction, and take our competitors head on. Anybody that comes in from the outside, we would like to meet their price and beat it, if at all possible, because we feel in the area that, that timber is being sold, we can utilize all material to a much better use than what, transporting it many miles, they could do.

We bring in all wood that is 5 inches and over, to utilize through our mill. Also, we require about 40 million board feet of timber a year, just to operate our particular mill.

Now, there are 14 worker-owner mills in the Pacific Northwest, who employ some 2,000 owners, who do nothing but work in that mill as a blue collar worker. They have their life savings, and that is what they are interested in protecting.

We have been fortunate enough to be the successful bidder on three timber sales under the sealed bidding. Two were very small, 50,000 feet and 70,000 feet, which were salvage sales, and one about 6 million feet. Of that sale, we left \$90,000 on the table.

There are people in the Pacific Northwest who are leaving a half million dollars at a timber sale. Now, this will not be felt, like I stated before, for 2 or 3 years, possibly. But in that length of time, the mortality is going to start hitting, if something is not done in the very near future.

We would certainly urge the Congress to repeal 14(e).

Thank you.

Senator MELCHER. Thank you, Mr. McChesney.

Now, Mr. Ed Seeger, counsel for Boyd Lumber Corp., from Sedro-Woolley, Wash. You have a different opinion.\*

**STATEMENT OF EDWIN H. SEEGER, COUNSEL, BOYD LUMBER CORP., SEDRO-WOOLLEY, WASH.\*\***

Mr. SEEGER. Yes, Mr. Chairman.

\*See p. 104 for the prepared statement of Mr. McChesney.

\*\*See p. 105 for the prepared statement of Mr. Seeger.

Boyd is also a small company, with slightly over 200 employees, located on the west side of the Cascades. On that side of the Cascades, the State of Washington sells timber by sealed bidding, and the world has not come to an end.

Senator MELCHER. Has it always done that?

Mr. SEEGER. It has been doing it for some years, I do not know for how long, but quite some time.

Senator MELCHER. So you were not disturbed one way or the other with the enactment of the 1976 act. It did not do anything in this regard to your operation?

Mr. SEEGER. Well, there was also Federal timber sold on the west side of the Cascades by oral auction bidding, and that is now going by sealed bidding, and Boyd was happy to see that.

Boyd's problem is on the east side of the Cascades, where it would like to engage in competition. That is a community that is pretty much dominated by Crown Zellerbach, with one other small timber company present. Beginning in 1971, the president of Boyd Lumber over the course of 5 years attended between 15 to 25 timber sales in that community without ever purchasing a stick of timber.

What would occur is that when he was absent, the timber would generally go off at the minimum price. When he was present, he would find himself bid up and up and up, beyond what he thought was the reasonable price of the timber. He finally became discouraged and retired from the scene.

And the result is that that community continues to be dominated by a very large lumber company that a small company, such as Boyd, simply cannot compete with, if you are facing a situation where one company can pay whatever it wants to drive the other one out.

As soon as sealed bidding came in, Boyd saw its first opportunity to compete on the east side of the Cascades. It won two sealed bids in that period; it bought a piece of land. It is not interested in taking the timber out; rather, it is interested in engaging in local competition, which would mean more competition in a community which has practically none today.

Now, the Forest Service has shown, from the very time that the 1976 act, section 14(e) was adopted, a willingness to bend over backwards, as far as we can see, to take care of the needs of dependent communities.

There may be some criticism that it was slow in starting, but I do not think anybody can say that the Forest Service is not aware of that problem. And it has said today that it is willing to go to 75 or 100 percent oral bidding in communities that really can show a need for it.

So the problem we face is that if you leave 14(e) as it is now, it seems pretty clear that the dependent community problem can be solved.

If you repeal section 14(e), Boyd has not got a prayer of competing on the other side of the Cascades, and what you have done is to strike a blow for a major timber company to continue controlling an area in circumstances where competition is needed and ought to be permitted.

I might also say that—

Senator MELCHER. I want to interrupt you right there, for the purposes of our record. If 14(e) is repealed, the law previous to that would be in effect, which permits the Forest Service to use either sealed or oral bidding, and which they apparently use in the area where Boyd is now located, in the western section.

Mr. SEEGER. No; in the area where Boyd is located, they have used oral auction bidding.

Senator MELCHER. I mean, permits the Forest Service to use sealed bids on the western slopes of the Cascades, where Boyd is, and where you say that has been the practice. So it does not seem to me that if 14(e) is repealed that we are taking that authority away from the Forest Service.

Mr. SEEGER. Well, you are not taking the authority away but the Forest Service was asleep during that 5-year period when Boyd was trying to get into that area, despite his having talked to the Forest Service time and time again about the problem.

Senator MELCHER. How often did these timber sales occur?

Mr. SEEGER. I do not know the volume of it. As I said, it was between 15 and 25—it requires 5 hours' drive each way to the sale, so there is just no way a small operator is going to be able to do any more than that against somebody who can bid him out every time he comes in.

Senator MELCHER. Whereas, if it were sealed bids, he would do the same amount of work, but—

Mr. SEEGER. He would get the sale.

Senator MELCHER. He would send a letter and then see what the outcome was, and save himself 10 hours of driving?

Mr. SEEGER. That is right, in circumstances where Crown would not know what he is going to bid, and the result is he has been getting sales.

But the Forest Service has not been alert to this problem, and section 14(e) has been a prod to the Forest Service to wake it up to the need for sealed bidding.

Now, if you leave this section in, the Forest Service has already said today they will go up 100 percent, if necessary, to take care of local communities. If you kick it out, we are out of luck, and I just do not see the justice of getting rid of that section.

Senator MELCHER. If we kick it out, does not the circumstance that you describe, where the president of Boyd showed up, and the price for the sales was higher—don't you think that has any bearing on what the Forest Service does?

Mr. SEEGER. I think it will be kicked out in circumstances where Congressmen have shown a preference for oral as opposed to sealed bidding, and it will go right back to oral bidding, where it has always been. That is the whole purpose of getting rid of 14(e).

Senator MELCHER. Can you tell us why there is a difference of opinion between the operators who are east of the Cascades and those who are west of the Cascades, on this particular section?

Mr. SEEGER. There is much more vigorous competition, far more timber available, on the west side of the Cascades. The problem, I think, arises in the smaller, so-called dependent communities.

I hate to hear the word "collusion" used over and over again, because we are talking about anticompetitive practices generally. And for the small owner in the dependent community, it is nice to be able to take timber at the minimum price as often as possible. He does not like the idea, as the gentleman said earlier, of bidding above the minimum price, which he has to do under sealed bidding, and leaving money on the table.

It is a problem for him, but the problem is that if he is permitted to continue bidding at the minimum price, there never will be any competition, even though the area might support it, as is the case on the east side of the Cascades.

There is not as much as on the west side, but our client believes there is timber available to support more than one company.

Senator MELCHER. There really is a difference, then, in the intermountain area, on how these timber sales should be conducted, is that right?

Mr. SEEGER. Well, I think the Forest Service's reaction to this is to take a look recently for areas where there is not that much timber available, or there is not that much competition, to call on dependent communities to put up a fairly high percentage of timber at oral auction.

We wish that would not happen. We wish they would go to 100-percent sealed bidding and then say if a community needs 75 percent of the timber in a tributary area processed locally, just say 75 percent will be processed locally, as a set-aside. But clearly, that is not to be. We raised that point with the Forest Service over and over again, as a way of taking care of the local community, and I think, frankly, taking care of the problem of leaving money on the table.

But we have never heard anybody from the Forest Service say to us, "You are wrong." They always keep coming back to the idea of changing the mix.

Senator MELCHER. Thank you, Mr. Seeger.

Gerhart Bendix, do you have anything you want to add to your written testimony?

Mr. BENDIX. Yes, sir.

#### STATEMENT OF GERHART BENDIX, PRESIDENT, WESTERN TIMBER ASSOCIATION, YREKA, CALIF.

Mr. BENDIX. I am Gerhart Bendix, president of Western Timber Association, San Francisco, Calif., and also secretary-treasurer of Hi-Ridge Lumber Co., Yreka, Calif.

Hi-Ridge Lumber has operated a sawmill in Siskiyou County, Calif., since 1953. Our entire log supply is purchased at national forest timber sales. We have 80 employees on a steady, year around basis, and our logging, hauling and roadbuilding contractors employ another 100 persons.

Oral auction timber sales were customary prior to the enactment of the 1976 Forest Management Act. This method permitted our company to maintain the supply of timber upon which our survival has been dependent since 1953.

It is essential to have a backlog of such sales under contract as extensive roads have to be built to harvest the timber.

In order to provide steady employment and to service our customers' needs, there must be an assurance of a log supply.

Oral auctions have permitted us to meet our competition in the open, and we have through the years been able to keep a supply of needed timber within a reasonable distance from our plant. Unlike a contractor in the construction industry, a sawmill is rooted to a location and cannot readily pick up and move.

Timber in our area is in short supply. We either purchase the timber, or we are forced to close our doors and liquidate.

Investment in better and more efficient machinery and processes can only be made when a raw material supply can be secured. And I would like to add here something that is not in my testimony, that early last year, before there was any inkling of the sealed bidding method coming into this, we went out and we contracted for a laser beam scanning and computer-controlled sawing setup for our saw-mill, that was installed in December, after the enactment of these new regulations. And we are very upset about perhaps not being able to continue to operate.

Northern California is an area of extreme competition for timber, with substantial overbids over the Forest Service appraised, or upset price. There is no record to indicate that sealed bidding results in higher returns to the Government.

And we have attached to our testimony a representative list of sales on the Klamath National Forest from July 1973 to April of 1976.\* And in comparing the bid ratio, oral auction, advertised versus sold, the ratio was an overbid of 2.386 over the advertised price on oral auction.

There were far fewer sealed bid sales advertised. The ratio there in the same period of time was a ratio of 1.618 percent overbid on sealed bid auctions.

Since December of 1976, when the first sales under the interim regulations were offered, through this date, March 31, every sale was by sealed bid; 42 percent of the total volume sold was purchased by first-time buyers on the Klamath National Forest. These logs will be hauled to distant destinations and will be lost to the local economy, because nearly all of these purchasers have plants outside the area normally supplied from the Klamath.

Yreka and Siskiyou County are heavily dependent on the timber industry, and the local mills provide steady employment for this area. There are no other industries.

The board of supervisors of Siskiyou County, as well as the Northern California County Supervisors Association, have forwarded resolutions to the Secretary of Agriculture, urging oral auction sales.

Mr. Chairman, on behalf of the membership of Western Timber Association, and on behalf of our company, I respectfully urge passage of S. 1360, which would remove from the National Forest Management Act of 1976 the subsection 14(e).

I am deeply appreciative of the opportunity to make this statement. Thank you very much.

Senator MELCHER. Thank you very much, Mr. Bendix.

Now, Mr. Craig, do you have additional comments you would like to make, other than your testimony?

Mr. CRAIG. Yes, sir.

**STATEMENT OF GEORGE CRAIG, EXECUTIVE VICE PRESIDENT,  
WESTERN TIMBER ASSOCIATION, SAN FRANCISCO, CALIF.**

Mr. CRAIG. As Mr. Bendix indicated, our association represents firms in California that are dependent on Government timber, and a small majority of our membership are small businesses, but we are here speaking on the part of small and large business in California.

\* Retained in committee files.

I should say that there are one or two who favor sealed bids, but by far, the great majority want oral auction.

It has been indicated today that the Government will go to 100-percent oral auction bidding, if there is an indicated need. The problem here is that they will put up the stop sign after the fatality occurs.

They must have damage before they respond. I would like to note also that Congressman Krebs made reference to Prof. Walter Mead as an authority who favors sealed bidding. Congressman Krebs is referring to an early report made by Professor Mead, after some study. But, after further study, he wrote an article that was in "Natural Resources Journal" of April 1967, in which he draws a comparison between bidding for Federal timber and bidding for oil drilling rights, and he establishes fully the justification for using oral auction bidding for timber. There are quotations from his report in my statement.\*

Another point that I think is important is that in the material that Mead presented, he noted among other things the dependence of our industry on a single raw material resource.

And I think that Mr. Sims of the Justice Department, must have been somewhat similar to Professor Mead when he first began to get into this problem. He does not recognize the unusual circumstances in which Government timber is sold.

Operators have a very limited opportunity. It is not as if they could go every day into the market and seek their needed material. They have very limited opportunities, and it is a Russian roulette situation.

Also attached to my statement are resolutions from county boards of supervisors in California, and it seems to me, Mr. Chairman, that these people do represent an expression of public interest. They are knowledgeable people, familiar with the situations in their communities, and they generally favor a return to the procedures of the past.

Also we have attached to our statement a map and a listing of 51 communities, which were rather hurriedly prepared when the regulations were under development. They are not complete, but they indicate the large number of communities that we feel should be given consideration, and most of them have not.

There are a number of other points. We fully agree with Senator Church, that violators of the law should be prosecuted. And, as has been pointed out over all the years of Forest Service timber sale practice, there have only been two cases taken to court. In the first one, Judge Kilkenny, of the Federal district court in Oregon, threw the case out and said, quote: "My opinion is that the most that can be said is that the Government's case presents a background of conjecture and suspicion, which does not rise to the dignity of substantial evidence."

He also said that the fact that in certain instances the defendants did not bid against each other is, quote, ". . . just as consistent with innocence as it is with guilt, if not more so," end of quote.

As has been mentioned here, in the second case the ninth circuit did let stand the decision that the law was violated. In our view, this is evidence that the Justice Department has the tools—in that case, it was oral auction bidding—and that they are capable of enforcing the antitrust laws, even in the context of oral auction.

\*See p. 107 for the prepared statement of Mr. Craig.

And we do respectfully suggest that the whole industry should not be penalized because there have been some wrongdoings.

There are other matters, such as the point you made regarding efficiency. We are having timber sales bought by firms at opposite ends of the northern part of the State, and they will be hauling logs past each other, to no advantage to society.

In general, we do strongly support this bill. I think it is interesting to hear Mr. Barlow oppose it now. On the House side, he made a lot of statements about the need for looking at timber pricing.

Well, let us do that. Let us have Mr. Barlow explain, as an expert in medieval history, how timber should be appraised and offered. And we also wish to have the committee of the nature that has been proposed; we think is highly desirable. As you have indicated, there should be some representatives of the people affected.

We do appreciate the chance to present these views.

Senator MELCHER. Thank you very much, Mr. Craig.

Tim Mueller?

#### STATEMENT OF TIM MUELLER, VICE PRESIDENT, BENNETT LUMBER CO., PRINCETON, IDAHO

Mr. MUELLER. Yes, I have a few brief comments, Mr. Chairman.\*

I would like to say that 3 months ago, [our company would not have supported legislation of this type, primarily because we were extremely satisfied with the outcome of the National Forest Management Act, and any legislative fiddling with or changing portions of that act, we felt, would not be to speak in a kind manner in the way that act was handled.

We were very appreciative of the work that you, Senator, and this committee put in to solving the Monongahela problem.

We also would not have supported this legislation 3 months ago, because we, as everyone else, interpreted section 14(e) to mean that sealed bidding would be employed where there was evidence of collusion.

And we felt the Forest Service's heavy-handed approach to employ 100 percent sealed bidding was only their misinterpretation of the law and that, through pressure from congressional representatives and staff members of industry, they would come to a different conclusion or a different interpretation.

After 5 months, with continued reaffirmation by congressional people, by industry and such, we have not gotten the Forest Service to alter their position only but slightly.

And unfortunately, I come today to speak, to support changing section 14(e) under this new legislation.

As mentioned, Mr. Chairman, our company is a small company, started about 35 years ago, by one man who had emigrated from Canada. In the interest of free competition and free spirit, he started with oral auctions in an area that he continues to operate in and has for 35 years under oral auction.

For the first time in our experience, we feel greatly threatened by the employment of sealed bids, because we, as mentioned many times today, will lose the chance to meet our competition openly at the bidding table.

\*See p. 116 for the prepared statement of Mr. Mueller.

We operate with approximately at any one time five other operators in our area, who bid constantly against each other for the timber. Three of those five are considered and defined by the SBA as being large business.

I think it has to be pointed out to this committee that under sealed bidding, there definitely is more risk involved to the purchaser of timber than there would be under oral bidding.

And, I think it is very prevalent to note that those that can assume more risk and have better economic prowess would be large business.

We feel extremely threatened, Mr. Chairman, by the large business in our area and by large businesses in Oregon, who now can compete inland for our resource with the advent of the slackwater to our Lewiston port.

We feel that sealed bidding will enhance the chance for large business to outbid us at the bidding table, if they so decide, and redistribute the resource wealth to increase their production at other sites.

I think that if this committee is to look only at community dependence, public interest and the spirit of free competition—and I would conjure up the last remarks as the true spirit of my testimony—under sealed bidding, if one can only bid once for the timber, he will usually bid higher, to assure procurement of that bid. This inserts greater economic risk into each bid when offered by sealed method, and who can assume greater economic risk than a large company, with more economic prowess, as I mentioned.

As the smaller companies yield to these economic mightier, fierce competition will spark, and those who lose their resource base will seek recourse in other areas.

As time progresses, the economically stronger, we feel, will survive, and the smaller entities will perish. In the long run, sealed bidding will prune the competition that now exists and move our industry closer to that of a monopoly.

This result would be antagonistic of the free, competitive spirit, and certainly, adverse to the public interest, as the smaller western sawmills perish, and the communities such as Princeton, Idaho perish, with them.

I think it is, in closing, Mr. Chairman, right to note that the present administration was campaigned into office in part by recognizing that more and more governmental regulations has given the American businessman less and less predictability with respect to future capital expenditures.

The public interest is served best when the private business sector invests healthily in capital expenditures, insuring future productivity and thus, a viable economy and jobs to the working classes.

Sealed bidding has greatly dampened the incentive in our office to provide future investment in capital expenditures for plant and equipment, because we are not sure, Mr. Chairman, that we can sustain our resource base if we are intrepidated on by the larger and economic more mighty.

All predictability has escaped our business with respect to the future.

I would urge that this committee give continued appreciation to this problem, and that we employ oral auction as quickly as we can through this legislative process.

Thank you, Mr. Chairman.

Senator MELCHER. Thank you, Mr. Mueller.

Now, I want to correct the record. When we asked if Princeton was included in this list of the 180-some communities presented by the Assistant Secretary, Mr. Cutler, this morning, the answer was that it was not. However, in reviewing that list, Palouse community area is included, and a notation is made that that does include Princeton. So I just wanted the record to be straight on that.

Mr. MUELLER. Mr. Chairman, may I make a remark on that particular aspect?

Senator MELCHER. Yes.

Mr. MUELLER. I think it is significant to note that we have in the Palouse area, the Palouse ranger district, approximately three timber sales every year. These timber sales usually are in the area of around 40 million board feet in aggregate.

Our mill needs to be successful bidders on about 30 million out of that 40 million board feet annually. Therefore, if we lose one timber sale, we will be in jeopardy to supply logs to our mill.

And I think that you should note that, even though we are a dependent community that we are not guaranteed of having 100 percent oral auction in the Palouse area; even 25 percent sealed bid would be detrimental to our cause, if we were to lose the resource that represents that 25 percent under sealed bidding.

Senator MELCHER. Thank you.

Now, Mr. Robertson, do you have any additional remarks you want to make to the testimony you have submitted?

**STATEMENT OF ROBERT ROBERTSON, EXECUTIVE VICE PRESIDENT,  
NATIONAL ASSOCIATION OF INDEPENDENT LUMBERMEN**

Mr. ROBERTSON. I think the points that I have made in my testimony and the attached statements which are part of it, from Mr. Bryce Griffis of the Southeastern Lumber Manufacturers Association, and Mr. Arnold Ewing, of the Northwest Timber Association, pretty well speak for themselves.\*

I would just like to make one point. We have heard lots of comments about the need to return to oral bidding in the Northwest for the benefit of small business. But I think it is safe to say on this score that we join with big business in attempting to rectify this ill.

I sat through three appeals hearings last week, levied by the Public Timber Purchasers Group, which represents big business, arguing about small business shares on the national forests, and their concerns about community stability where they have a mill that may be the only one in the area are just as real as the small business concerns in this area.

So there really is not any appreciable division of interest between large and small business over this question of the absolute necessity for community stability, and for the Congress seeking the highest good for all of the people, including all of us who are part owners of this renewable natural resource to return to oral bidding in the Northwest; whereas, our Southeastern brothers, in areas where they are dependent on Federal timber only to the degree of 12 to 20 percent, feel that their traditional method of sealed bidding is best for them.

\*See p. 118 for the prepared statement of Mr. Robertson with attached statements of Mr. Griffis and Mr. Ewing.

But, as is indicated in Mr. Griffis' statement, appended to mine, they are fully cognizant of the problems that their brothers in the Northwest face in this area and in the Far West, and are fully supportive of the return to oral bidding in that portion of the country.

Senator MELCHER. Thank you, Mr. Robertson.  
Mr. O'Donnell?

**STATEMENT OF JAMES O'DONNELL, EXECUTIVE VICE PRESIDENT,  
NORTHWEST PINE ASSOCIATION, SPOKANE, WASH.**

Mr. O'DONNELL. Yes, Senator Melcher. You have my prepared statement.\*

Senator MELCHER. Yes.

Mr. O'DONNELL. I wanted to make some comments in regard to Mr. Seeger's comments on the Boyd situation. I happen to represent people east of the Cascades, in Washington and Oregon, who have to contend with folks coming over from the west side of the Cascades, under sealed bid, and buying the timber, like Mr. Seeger explained.

The situation up in that area is there is about 100 million feet of allowable cut in the Okanogan National Forest and in that country, there is about 235 million feet of installed capacity in three mills; the Crown-Zellerbach mill, the Landreth Lumber Co., and the Zozel Co., up at Oroville—and these are all communities, Oroville, Tonasket, and Omak, they are communities that are almost totally dependent on Federal timber and totally dependent on the forest products industry.

In the case of Okanogan County, I put together a map earlier during this particular controversy that showed that the county was 91 percent, in the manufacturing area, dependent on the timber industry for jobs. The unemployment rate, even with that kind of employment, is in excess of 10 percent in Okanogan County, and during the winter months, it exceeds 20 percent, because the other basic part of the economy is agriculture.

Mr. Boyd's company did in fact buy at least three timber sales that I know of now; one of them, a large Indian sale from the Colville reservation. And in fact, he was talking about building a mill over there.

The problem is that—and I like Mr. Boyd, and I like his operation, and I have been to his operation in Sedro-Wooley—he is on the west side, and he has other opportunities to buy timber west of his mill, over on the Olympic Peninsula. He has opportunities for export.

The people in Okanogan County do not have those same opportunities, unless they truck their finished products a considerable distance.

The fact that if he does build a mill—and he is small business, incidentally, and there is 27 percent share of small business in that area, so Mr. Zozel and Mr. Landreth and Mr. Boyd all have an equal opportunity to compete on that section of the national forest timber without competing against the giant corporations—the fact is that Mr. Boyd has bought at least one sale that was an SBA set-aside, as well.

If Mr. Boyd is successful in stopping this major company from manufacturing and having a business in the town of Omak, obviously, the whole picture of who has been doing what in that sawmill and

\*See p. 121 for the prepared statement of Mr. O'Donnell.

plywood plant is going to change. I think it has to be looked at that way, the people who have invested their time and their seniority and so forth, in a mill that is there. If that mill is closed down because outside competition comes in under sealed bids and takes that timber away from that mill, the people that work in that mill, those folks who have got seniority and so forth, are not necessarily going to do the same job if Mr. Boyd builds a new mill there.

And I understand he is going to build a mill that just is going to take four sides off a log and truck it to the west side, and manufacture and plane it over there.

Those are the kinds of cases that exist and that we are afraid of. Mr. Sims talked about uncertainties. There are enough uncertainties in this business without the added ones of sealed bidding.

Right now, the 100 million allowable cut is being held up because of an appeal, by the preservationists, on the land use plans. So the U.S. Forest Service have taken 45 million feet out of the allowable cut in that area this year. Those plants are worried about their timber supply immediately, because of that fact, and the sealed bid thing just compounds it more.

I agree with Senator Church and his analysis this morning, on the effects of the way the Forest Service has interpreted the act. I think that they have lots of leeway, and I think your conference reports show that they could have allowed for oral auction in those areas that did not have obvious collusion.

Those are all my remarks, Senator.

Senator MELCHER. Thank you very much, Mr. O'Donnell.

Mr. Kulosa?

#### STATEMENT OF ERWIN KULOSA, REPRESENTING FEDERAL TIMBER PURCHASERS ASSOCIATION, ALBUQUERQUE, N. MEX.

Mr. KULOSA. Thank you, Mr. Chairman.

After all these gentlemen have had their say, there is not much more that I can add. However, I would like to point out a few things that are not evident.

As my statement states,\* we have over 30 forest products manufacturing companies in our association which run the length of the Rocky Mountains and Southwest. More than three-quarters of these companies are small businesses.

While my statement points out that our board of directors unanimously approved oral bidding and opposed sealed bidding, not one member favors sealed bidding. They are all for oral bidding.

Some remarks that were made earlier, I think, deserve a little amplification. It was said that the Forest Service sells timber at the appraised rate. Well, that is true, but it is also the fair market value.

In the Rocky Mountains, and especially the Southwest, 95 percent of the timber is from national forest land. This makes national forest land, for most mills, the "only store in town" from which to buy timber. We have a number of mills who are down to one or two timber sales, and as has been pointed out earlier, the loss of a single sale could be disastrous to a mill. We have some mills with only about 2 months of timber under contract. Thus, the loss of a single sale would mean shutting down the mill.

\*See p. 122 for the prepared statement of Mr. Kulosa.

We are quite concerned if S. 1360 would do no more than repeal section 14(e) of the National Forest Management Act of 1976, because we are not confident that the Forest Service would return to the historical bidding procedures that have prevailed in the past. The Forest Service seems to have exhibited a little more zeal for sealed bidding than we believe is justified.

Therefore, we would like Congress to direct the Forest Service to return to the historical bidding procedures that have prevailed in each area.

I believe that concludes my additional remarks, Mr. Chairman. Thank you very much.

Senator MELCHER. Thank you, Mr. Kulosa.

Don Smith, we have your written testimony now.

#### **STATEMENT OF DON SMITH, REPRESENTING POTLATCH CORPORATION, LEWISTON, IDAHO**

Mr. SMITH. I would like to make a few additional comments beyond the written testimony.\* I am making these from the point of view of both a logging manager and a forest economist.

I have a Ph. D. in economics and forestry, and I have heard a number of things this morning that cannot be defended by good economics.

I do represent a large company, compared with many that are here. Potlatch employs about 4,500 people in Idaho alone, and pays salaries and benefits in excess of \$89 million every year.

However, we certainly join with small business in this support of Senate bill 1360. You might wonder why we do, because we agree that small business has more to lose from sealed bidding than we do.

We get about half of our timber from our own land. No matter what the stumpage market, we can always obtain 50 percent of our supply. So the risk factor that has been introduced by sealed bidding is not as great for us as it is for some small businesses.

We are not going out of business in 1 year because of losing one or two sales. But on the other side of the coin, we do get 50 percent of the volume that sustains our operation from Federal lands, and the risk that might put someone else out of business would cause us to throw people out of work.

We are genuinely concerned about the people who work for us. They are loyal and work hard, and we would not like to lay any of them off because we lacked timber to supply our total operation. We do not have enough timber under contract to operate fully beyond the next 18 months.

The fact is that big business is affected by the same risk pressures caused by sealed bidding that affect small businesses, but to a lesser degree.

But this risk factor comes on top of a time when the risk of timber purchasing has increased from other causes. The Forest Service is prescribing more restrictive harvesting techniques, such as longer line skidding. A few years ago, line skidding distances were typically 400 to 600 feet, and the distance increased to 800 and 1,000 feet. Most recently from talking with Forest Service representatives of the

\*See p. 124 for the prepared statement of Mr. Smith.

Clearwater National Forest in the last 2 weeks some sales in 1977 and beyond will require skids of 2,500 to 5,000 feet.

From a logging manager standpoint, this has increased the risk of losing money on a sale several times over what it used to be.

So, when you add that risk to the risk of sealed bidding, the situation is becoming serious.

The competition for oral or sealed bid timber in our area is heavy. We are always met at the table by competition. Sales are put up in small enough quantities so that every individual sale can be met by a small business operator.

Although some sales do occasionally go at the appraised price, and some deficit sales are sold, the record will show that on the average, timber sales in our region go for far more than the appraised value.

As far as competition in the industry as a whole, we do not have to have an econometric study to show that net profits to companies that process Federal timber are not high; but I am certain they are not. I do not think anyone could consider profits from processing timber excessive if compared with any other industry in the United States.

So to talk about squeezing another nickel out of an industry that is showing no signs of excessive profits seems to me a little out of line.

A great deal has been made of the attempted use of oral bidding as a barrier to entry in the market. Preclusive bidding, from an economist's standpoint, appears to be an excellent way to lose money. We are not talking about a barrier to entry to the bidding table. On any sale that the Forest Service puts up, anyone with capital to back him can bid; and he is free to bid as often as he wants.

If someone determines that they are going to drive out the competition by bidding a maximum bid on every single sale, you can see where it will lead.

The smallest competitor can simply show up at the oral bid table at every sale and cause this person who is defending his backyard to drive the price up, and then he can walk out and leave that person to eat those prices.

I think it is fair to say that sealed bidding will increase the concentration of the forest industry. There is no doubt it increases the risk, and the risk burden will bear heavier on smaller companies than it does the larger ones, and concentration will increase. Many small companies will go out of business, but Potlatch will stay in business longer than they will.

I suppose, as a representative of Potlatch, I should favor an increase in concentration, because Potlatch could stand to gain. But we are also good community members. We coexist very nicely with our smaller competition. We exchange logs with them on a regular basis, because we each have imbalances in species and log sizes.

Many persons assume that a log is a log. Well, being from a timber country, Senator, you know that timber sales are extremely variable. There will be a number of species and sizes on every sale. Mills tend to specialize in logs of a certain species, quality, and size.

Even though Potlatch is an integrated operation, and we have facilities to process every single log that comes off a sale, we still come up with log quantity imbalances. If we were the only operator in our area, we would have a more serious balance problem than we do in coexisting with our competition.

Thank you, sir.

Senator MELCHER. Thank you very much, Mr. Smith.

I want to thank all of you for being excellent witnesses. We have a hearing record now, and we will see what the wishes of the committee are on the bill.

Thank you very much. This concludes the hearing.

[Whereupon, at 1:35 p.m., the hearing was adjourned, subject to call of the Chair.]

## APPENDIX

STATEMENT OF HON. JOHN KREBS, REPRESENTATIVE IN CONGRESS FROM THE 17TH DISTRICT OF CALIFORNIA

Mr. Chairman, members of the Subcommittee, I want to thank you for allowing me the opportunity to appear before you today to give you my perspective on S. 1360, a bill which proposes to establish an advisory committee on timber sales procedures and to repeal the sealed bidding provision which is found in Section 14(e) of the National Forest Management Act of 1976, P.L. 94-588.

I would like to make it clear, at the outset, that I am strongly opposed to passage of this bill.

The part of the bill that concerns me the most is Section 9, which contains a repealer of the sealed bidding section of the National Forest Management Act of 1976. I have been involved with the sealed bidding controversy for close to a year now and am firmly convinced that repeal of the sealed bidding requirement would be, at best, premature. In order to explain my position thoroughly, it is necessary for me to sketch a short history of the provision in question.

As I am sure you gentlemen are aware, it is traditional for most government contracts to be let by sealed bids. The U.S.D.A.'s Forest Service was no exception to this rule for many years and, up until the 1940's, most Forest Service timber sales were let by that method. However, since that time, most sales in the Pacific Northwest have been let by oral auction. In the East, the South, and the Lake States, on the other hand, sealed bidding is uniformly utilized. In the Rocky Mountain States, approximately one-half of the sales are by sealed bid and one-half by oral bid.

In the areas where sealed bidding has been the sole bidding method, there have been no problems with respect to antitrust activities. However, in the Pacific Northwest, where oral auction is the predominant method, there have been strong indications of collusion in connection with bid-rigging. In fact, earlier this month, the 9th Circuit Court of Appeals upheld the Oregon conviction, on bid-rigging charges, of Champion International Corporation, in the case of *United States v. Champion International Corp.*, (D. Ore. 1974). The Justice Department informs me that on the basis of information available to it, there is good reason to believe that the practice of collusive bidding is not limited to a few isolated instances. As of February 3, 1977, the Justice Department was engaged in several major investigations of possible collusive bidding on Federal forests located in Northern California, Arizona, New Mexico, Oregon and Washington. I have attached two letters from the Justice Department which set forth the firm conviction of Department officials that sealed bidding could substantially cut down on collusive activities and ostensibly encourage open and healthy competition in bidding for Federal timber.

Several investigations have been conducted into the bidding situation in the Pacific Northwest. In 1956, the House Committee on Government Operations and the Senate Committee on Interior issued a report on Federal timber sales policies which recommended that more sealed bidding be used in order to enhance competition and to insure the Federal government a fair return for its timber. The problem in the Pacific Northwest became so severe that, in February of 1965, the General Accounting Office issued a report, No. B-125053, recommending more sealed bidding be used in that region. Furthermore, Professor Walter J. Mead, the leading authority on oligopsony—control by a few buyers—in the timber industry in the Pacific Northwest, in various studies, arrives at basically the same conclusion.

Certainly, it is theoretically possible to collude under both the sealed and the oral bidding systems; however, it is far more difficult under sealed bidding because there is always an unknown factor—that is to say, an individual outside the circle of would-be colluders may always send in his bid without those would-be colluders being aware of it. Another advantage of the sealed bidding system is that it elim-

inates totally the possibility of "preclusive bidding," a situation wherein a group of bidders will predetermine the sales on which they will bid, and if anyone from outside their group attempts to bid on that timber, they will bid as high as necessary to outbid that individual, in order to make it clear to him that he will never be allowed an opportunity to purchase timber in "their" area. Although the price which the Federal government receives for its timber is quite high in these "preclusive" bidding situations, nonetheless the behavior in those situations indicates a form of collusion.

The intent of Section 14(e) of Public Law 94-588 is to prevent such collusive, preclusive behavior from occurring. There have been laws on the books for many years to punish antitrust activities, but the problem has been that it is extremely difficult to establish hard evidence of collusion. In fact, the Assistant Attorney General of the Antitrust Division of the Justice Department has informed me that, "It has generally been our experience that collusive bidding is one of the more difficult antitrust violations to discover and prove in court. Unless there is an informer or other direct evidence of an agreement, which is particularly hard to obtain in a tightly-knit industry such as the timber industry, it is very difficult to show that the absence of competitive bids is due to concerted behavior."

Therefore, I decided last year to propose an amendment which would require an increased use of sealed bidding; sealed bidding, under that amendment, would have been required on all small sales. My amendment was expanded upon in the Conference Committee and was incorporated into the National Forest Management Act of 1976, which requires "sealed bidding on all sales, except where the Secretary determines otherwise by regulation".

Regretfully, the Forest Service regulations implementing the sealed bidding section of the Act have become increasingly lax with each new draft. The final regulations, which have not even been published formally, provide that in the case of the so-called "dependent communities" which rely on National Forest timber for their economic survival, 75 percent oral bidding will be allowed and 25 percent sealed bidding will be allowed. The reasoning behind the provision is that dependent communities must obtain timber from the National Forests in order to survive, and oral auction provides them the opportunity to do so by allowing them a chance to out-bid their competitors on sales which they desperately need. This is a reasonable argument on its face. However, there is little reason to believe that National Forest timber will be more valuable to those outside the dependent communities under the sealed bidding process than it was under the oral bidding process. If companies outside the dependent communities were prepared to make exorbitantly high sealed bids, they would be just as ready to go to the limit in oral auction and would have done so in the past. Thus, I feel that this is an unrealistic fear.

When the interim regulations originally went into effect, sealed bidding was used, almost exclusively, for a short period, in areas where oral auction bidding had previously been in effect. At that time, certain segments of the timber industry expressed the fear that widespread use of sealed bidding would cause significant economic hardship by allowing outsiders to deprive mills dependent on National Forest timber of the opportunity to protect their supply of lumber. However, based upon a survey, conducted by the Justice Department, of timber sales during those first months of the interim regulations, Assistant Attorney General Baker, in the attached letter dated April 26, 1977, makes it abundantly clear that these fears were groundless. Representing, as I do, an area where wood products manufacturing is an important industry, I am just as concerned as anyone else about possible detrimental effects of timber legislation. However, I have seen no evidence of detrimental effects on the industry since enactment of the sealed bidding requirement; I have only seen evidence of detrimental effects on the U.S. Treasury prior to its enactment.

Nonetheless, I do see the need to protect the truly dependent communities. However, under the currently proposed Forest Service regulations, there need be only one firm engaged in wood products manufacturing in the "dependent community", only 10 percent or more of the work force need be employed in wood products manufacturing, and only 30 percent or more of the timber must have been obtained from National Forests in the last five years. It is my understanding that such a definition would qualify all communities of the Pacific Northwest, with the exception of ten, as dependent communities. Needless to say, I take great issue with such a loose definition of a dependent community.

It has been alleged that the interim regulations, which were of a six-month duration, contained a definition of "dependent communities" which was entirely too restrictive. However, it must be remembered that the interim regulations

were just that—interim. The classification of a large number of communities as non-dependent was based on the fact that many of the mills in those communities, although they might, in the long run, be heavily dependent on timber from the National Forest, at that time had a one or two year supply of lumber on hand.

However much I may disagree with the Forest Service regulations, that is an administrative matter, and private citizens who disagree with the manner in which the Forest Service is administering the intent of the Congress, nonetheless have legal recourse at the present time. But, if the repealer is enacted, I am quite certain there will never again be another sealed bid in the Pacific Northwest.

I strongly believe it is premature to repeal a section of law for which final regulations have not been published and thus have not been given a chance to prove, or disprove, their workability. On that basis alone, I would urge a vote against repealing Section 14(e). I would also note that John C. White, Deputy Secretary of the Department of Agriculture, in a letter dated May 5, 1977, addressed to Chairman Foley of the House Committee on Agriculture, states as follows:

“We feel that the repeal of Subsection 14(e) may be premature. We are reluctant to see the Act opened to amendment at this time.”

With respect to the advisory committee proposed in S. 1360, I would note that existing law gives authority to the Forest Service to set up a committee of this type. Thus, the Department of Agriculture, in early April, in testimony before the Subcommittee on Forests on the House Committee on Agriculture regarding the House counterpart bill recommended that it not be enacted.

I heartily second that recommendation.

Attachments:

DEPARTMENT OF JUSTICE,  
Washington, D.C., February 3, 1977.

Hon. JOHN KREBS,  
House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN KREBS: This is in response to your letter of February 2, 1977, requesting information concerning collusive bidding practices in the sale of timber. Specifically, you request our opinion as to the extent of collusive bidding on federal timber; the number of investigations of such practices undertaken by the Department in the last twenty-five years, including the number of investigations currently pending; the number of investigations which have resulted in litigation; the number of grand jury investigations being undertaken apart from those instituted by the Department; and our views as to whether it is difficult to obtain hard evidence of collusive bidding.

On the basis of information available to the Department, there is good reason to believe that the practice of collusive bidding exists in sales of federal timber. Moreover, the number of investigations that we have recently conducted or are in the process of conducting into such behavior suggests that we are not dealing with isolated, rare situations.

At present, the Department is engaged in three major investigations of possible collusive bidding involving various federal forests located in Northern California, Arizona and New Mexico, and Oregon and Washington. Several different grand juries have been and are continuing to inquire into these matters.

Available records do not permit us to go back a full twenty-five years, as you have requested. However, over the last fifteen years the Department has undertaken, including those currently pending, at least ten separately identifiable investigations of alleged collusive bidding on the sale of federal timber. To date, two of these have resulted in litigation. In *United States v. Cascadia Lumber*, Cr. 64-173 (D. Ore. 1964), the trial court granted the defendants' motion for acquittal after the completion of the government's case. In *United States v. Champion International Corp.*, Cr. 74-698 (D. Ore. 1974), five corporations and two individuals were convicted of collusive bidding in violation of the Sherman Act. One corporation and two individual defendants were acquitted. The defendants who were found guilty have appealed, and that appeal is still pending. We have no knowledge of other criminal proceedings involving collusive bidding on federal timber apart from those instituted by the Department.

It has generally been our experience that collusive bidding is one of the more difficult antitrust violations to discover and prove in court. Unless there is an informer or other direct evidence of an agreement, which is particularly hard to obtain in a tightly-knit industry such as the timber industry, it is very difficult to show that the absence of competitive bids is due to concerted behavior. In this connection, we have found that when bidding is done in the open rather than by a

sealed bidding process, it is both easier to coordinate and to enforce a conspiratorial agreement and also more difficult to prove that an absence of competitive bidding is due to collusion among the actual or potential bidders.

I hope this is responsive to your specific questions.

Sincerely yours,

DONALD I. BAKER,  
Assistant Attorney General,  
Antitrust Division.

U.S. DEPARTMENT OF JUSTICE,  
Washington, D.C., Apr. 26, 1977.

Hon. BOB BERGLAND,  
Secretary, Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: By letter to the Attorney General dated March 17, 1977, you inquired as to the experience of the Department of Justice with suspected collusion in bidding for forest service timber. You asked that in responding to your letter, we include information as to the following:

Based on information available in your Department, how many investigations of suspected collusive bidding have been completed, and are underway, how many actions have been filed, how many convictions have been obtained, and what, in your opinion, is the extent of collusive bidding for National Forest timber?

Do your investigations indicate that there may be collusion in circumstances in which there is insufficient evidence to obtain a conviction?

In your opinion, would the use of sealed-bidding procedures be helpful in reducing to probability of collusion?

You indicated that such information would be useful in the current proceeding to promulgate timber bidding regulations to implement the provisions of Section 14(e) of the National Forest Management Act. By letter dated March 23, 1977, I responded preliminarily to your inquiries.

We have now completed our responses to your inquiries, and hope our views as to how our experience may be relevant to your proposed regulations will be helpful.

In the context of National Forest timber sales, we understand collusion to mean an agreement or understanding, or an exchange of information or assurances, among potential bidders for the purpose of, or having the effect of, lowering the price paid for Forest Service timber or preselecting the winning bidder. As part of the new National Forest Management Act, Congress included a section designed to prevent collusion in National Forest timber sales.

Section 14(e) of the National Forest Management Act of 1976 (Pub. L. 94-588) provides as follows:

"(e) The Secretary of Agriculture shall take such action as he may deem appropriate to obviate collusive practices in bidding for trees, portions of trees or forest products from National Forest System lands, including but not limited to—

"(1) establishing adequate monitoring systems to promptly identify patterns of noncompetitive bidding;

"(2) requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation; and

"(3) requiring that a report of instances of such collusive practices or patterns of noncompetitive bidding be submitted to the Attorney General of the United States with any and all supporting data."

Since at least 1950, the United States Forest Service has sold most National Forest timber in the Western United States by a procedure utilizing oral auction bidding. Section 14(e) of the new Act, quoted above, now requires "sealed bidding on all sales except where the Secretary determines otherwise by regulation." On November 4, 1976, shortly after passage of the Act, interim regulations were adopted which permitted the Regional Foresters to use oral auction selling upon determining "that the stability of local dependent communities could be adversely affected by sealed bidding for all sales." (41 Fed. Reg. 48539). Proposed permanent regulations to replace the interim regulations were published on February 23, 1977.

#### INVESTIGATIONS OF COLLUSIVE BIDDING

Since 1960 the Department of Justice has investigated situations in at least ten areas where collusion was suspected or alleged among purchasers of National Forest timber. In some of these areas collusion was believed to have involved several firms and numerous timber sales during periods lasting as much as ten years. Six areas are currently being investigated for possible timber bidding collusion. It is noteworthy that each of these investigations has concerned an area where oral bidding was the predominant method of selling timber.

Only two criminal cases involving collusive bidding on National Forest timber sales have been brought, both in the District of Oregon. In the first, *United States v. Cascadia Lumber*, Cr. 64-13, a Grand Jury indictment was dismissed in 1964 by the Court for insufficient evidence after presentation of the Government's case at trial. In the second, *United States v. Champion Int'l Corp.*, Cr. 74-698, the Grand Jury indicted ten individual and corporate defendants. After a lengthy trial in 1975, the Court convicted seven defendants and acquitted three. This case is presently on appeal to the Ninth Circuit Court of Appeals. A companion civil case was also filed, seeking recovery of the damages caused to the Government by the collusive bidding of the defendants.

#### DIFFICULTIES ASSOCIATED WITH PROSECUTING BID RIGGING

It has been the experience of the Department of Justice that collusive bidding is one of the more difficult antitrust violations to discover and prove in court. Unless there is an informer or other direct evidence of an agreement, it is very difficult to show that the absence of competitive bids is due to concerted behavior. Direct evidence is very difficult to obtain in a tightly-knit industry such as the timber industry. Thus, the Government may have to rely exclusively upon circumstantial evidence consisting of the bidding results alone, which may be "explained away" by the defendants.

The oral auctions employed in the past by the Forest Service have compounded the difficulty in proving collusion on National Forest timber sales. Oral bidding makes it both easier to coordinate and enforce a conspiratorial agreement and more difficult to prove its existence in court, because less need be agreed upon in advance of the auction by the participants in such an agreement.

In the past, oral bidding has permitted some timber buyers to dominate timber sales in certain areas, precluding other, perhaps more efficient, firms from taking timber. The oral auction procedure facilitates the establishment of such areas by making legal intimidation possible through emotional, selectively high or retaliatory bidding behavior by certain firms. A firm may establish its dominance in a particular market by means of a collusive arrangement or through historical buying patterns. The dominant firm indicates through its bidding its intention to purchase any timber offered by the Forest Service in certain areas. When timber sales are offered within that area, the company bids to whatever level is necessary to purchase the timber. This practice dissuades bidding by other firms, which soon learn the futility of attempting to purchase timber in the dominant firm's "territory." The result is that many, if not most, of the timber offered in such an area is sold without bidding challenge, at the minimum price the Forest Service will accept. Purchasing some sales at minimum gives the dominant firm the economic base to bid as high as necessary, even above its projected economic breakeven point, on sales where bidding challenges are offered. This preclusive bidding raises a significant barrier to entry in the forest products industry and stifles innovation and efficiency by perpetuating the status quo. In addition, the Government frequently receives less than a competitive price for its timber.

Several firms may come to dominate Forest Service timber sales in an area as a result of historical buying patterns under an oral auction system, then find it necessary to enter a collusive arrangement in order to maintain that pattern in the face of a dwindling supply of timber or increasing bidding challenges by nonhistorical purchasers. When this happens, the circumstantial evidence of an agreement is undercut because no previous competitive pattern can be used to contrast with the bidding behavior during the alleged conspiracy period.

#### SEALED BIDDING AS A MEANS OF OBTAINING COLLUSION

Sealed bidding has two purposes—to insure a fair opportunity among the bidders and a fair price to the agency contracting by that method. Sealed bidding is standard procedure in federal government procurement.<sup>1</sup> It has long been the predominant method of sale of National Forest timber east of the Rockies and is widely used by state and private sellers of timber.

We believe that sealed bidding under Section 14(e) will very effectively obviate collusion on National Forest timber sales. Because each bidder has only one bid and the bids of others are secret, each bidder must bid at a level which corresponds to his interest in a given sale. To implement a collusive arrangement under sealed bidding, a bidder would have to arrange the actual amounts bid by every likely active bidder, whereas under oral bidding the few dominant firms can control the

<sup>1</sup> 41 U.S.C. § 251 ff.

bidding by merely knowing the general needs and interests of the other dominant firms. Even where a group of bidders allocated a series of sealed bid sales among themselves by agreement, one winning bid by a nonconspiring firm on an important sale would completely upset the allocation scheme.

Under sealed bidding, National Forest timber will sell at prices more near its true economic value, rather than frequently at the minimum price and occasionally at a very high (preclusive) price, as has been observed in some areas over periods lasting many years. When firms consistently purchase timber near the actual value they assign it, the more efficient firms will be the more successful bidders. Thus, sealed bidding encourages and rewards innovation and efficiency. To the extent that oral bidding perpetuates an inefficient status quo by insulating established operations from the competition of new entrants or more innovative outside firms, it operates against the public's interest in maintaining markets with low entry barriers.

#### PROTECTING THE ECONOMIC STABILITY OF DEPENDENT COMMUNITIES

In determining whether the public interest justifies departures from the sealed bid norm in order to protect the economic stability of dependent communities, we suggest consideration of the following:

Present-day notions of "community" should be based on transportation realities. Because of the construction of extensive road networks into most National Forests and the development of ever more efficient means of transportation, most timber sales are economically feasible raw material supplies for numerous mills. Furthermore, mills have proliferated since the turn of the century, when the community stability policy of the Forest Service was established. We think it is no longer necessary for the Forest Service to attempt to guarantee the existence of a timber purchasing "constituency" in order to provide a flow of wood products from the National Forests to the nation. The constituency already exists in a well-developed forest products industry; the elements of this constituency need not be located as near the raw material as in the past. Particularly with the available timber supply shrinking, there will normally be no want of potential buyers for stands of trees.

Excess timber milling capacity exists in many areas. Since the available raw material is decreasing, adjustment in particular communities is inevitable. This adjustment should be guided by natural economic forces rather than by efforts to maintain the status quo in each community through bidding systems that permit the preclusion of more efficient operations.

The proposed regulations permit the use of oral auctions merely upon a determination that a particular community is "dependent," i.e., that it draws 30 percent of more of its timber raw material from National Forest lands. We believe that the public interest should not be found to justify the protection of the economic stability of certain communities unless their stability is actually threatened<sup>2</sup> as measured by two factors combining: (1) an inadequate timber inventory (considering all sources) available to the local mills, and (2) significant timber purchases by nonlocal, nonhistorical purchasers, provided that the stability of the communities where such purchasers are located is not itself threatened. In circumstances where the public interest might otherwise justify exception to the sealed bid norm, sealed bidding should nevertheless be maintained in areas which exhibit consistently low levels of bidding.

We believe that measures more consistent with competition and open markets than oral bidding should be considered in attempting to deal with problems of stability in dependent communities. One such measure might be limiting the size of Forest Service sales. Sales containing as much as one-fourth of an area's annual allowable cut are not uncommon today. A sale that large may represent a year's inventory for some of the local mills. Reducing sale size would make each sale less crucial to the various purchasers. Another, although less desirable, measure would be to require manufacture of logs within a certain radius of the sale.

We believe that values of competition and open markets should weigh heavily in any assessment of the public interest with regard to timber selling methods. Absent unique and compelling specific situations, United States Government timber should be sold by the method which best guarantees that this vital raw material will be most equitably available to those interested and that the Government will receive the most competitive price for timber.<sup>2</sup>

<sup>2</sup> It is not only the federal government's revenues that are at stake, but those of local governmental units as well. Twenty-five percent of the gross receipts from sale of Forest Service timber must by law be returned to the states involved for disbursal among the local counties to be used for schools and road construction. 16 U.S.C. § 500.

## EXPERIENCE WITH SEALED BIDDING UNDER THE INTERIM REGULATIONS

Sealed bidding was implemented nearly exclusively in areas previously selling by oral auction when interim regulations under Section 14(e) were implemented on November 4, 1976. Many in the timber industry claimed that widespread sealed bidding in areas formerly employing the oral auction system would cause substantial economic displacement by permitting "outsiders" to deprive mills dependent on Forest Service timber of an opportunity to "protect" their timber supply when challenged at the bidding table and by increasing the bid prices necessary to obtain National Forest timber to a level not economically justified. Based upon our survey of National Forest timber sales bidding during the first several months of the interim regulations, these fears appear groundless.

During the first two months of exclusively sealed bidding under the interim regulations, the Forest Service in its Region 5 (California) and Region 6 (Oregon and Washington) sold about one-quarter billion board feet of timber at 66 sealed bid sales. The total minimum bids for this timber amounted to about \$17.5 million and the total winning bids amounted to about \$29.5 million. The average "over-bid" by the winning bidders on these sales was about \$51 per thousand board feet and the "bid ratio"<sup>3</sup> about 1.69 on a volume-weighted basis. Both of these aggregate sale price figures are generally consistent with results of oral auction sales in these two regions as a whole during the past several years. On the other hand, in several timber buying markets in Regions 5 and 6 that had exhibited an historical lack of bidding competition, resulting in most timber in those areas being sold at lower than normal prices, the bidding patterns have been more comparable to nearby competitive markets. Thus, in those areas the Government has obtained more revenue, while the companies operating there have been placed on a raw material cost basis that is more equitable vis-a-vis competitors in other areas.

The Department conducted a telephone survey of timber management officials at each National Forest throughout Regions 5 and 6. From November 4, 1976 through mid-March of this year, Region 6 forests held about 220 timber sales. Of these, only fourteen, or less than 10 percent, were purchased by firms which were neither local to nor historical purchasers in the districts in which each sale was offered. Only two other sales went to nonlocal but historical purchasers. Thus, in nearly five months of exclusively sealed bidding in the largest timber producing region in the National Forest system, virtually all sales were purchased by local firms. In Region 5 during the last two months of 1976, five of fourteen sales were awarded to nonlocal, nonhistorical purchasers. On three of the five sales, local purchasers did not bid above the minimum; all five were small sales.

The bid results of sealed bid sales in Regions 5 and 6 under the interim regulations can best be described as normal in comparison to the observed results under oral bidding during the recent past. This fact underscores the need under permanent Section 14(e) regulations to require a showing of an actual threat to the stability of dependent communities before the Forest Service should consider alternatives to the sealed bidding method.

I hope our experience and views will be of assistance to the Department in its rulemaking deliberations. You may wish to make this response available to other interested parties which may or may not share our views.

Sincerely yours,

DONALD I. BAKER,  
Assistant Attorney General,  
Antitrust Division.

[The following press release was submitted by Senator Church, see p. 15.]

WASHINGTON, January 28.—Idaho Senators Frank Church and Jim McClure met today with Forest Service Chief John McGuire to discuss sealed bid regulations for National Forest timber sales.

The National Forest Management Act of 1976 contains a section to guard against possible anti-trust violations during timber sales. That section gives the Secretary of Agriculture the authority to require sealed bidding at Forest Service

<sup>3</sup> The bid ratio is a somewhat crude measure of the level of sale competitiveness commonly used by the Forest Service and is derived by dividing the bid price by the minimum, or appraised, price.

timber sale auctions in order to guard against "collusive practices." However, the Secretary has the discretion to use other bidding methods—such as oral auction—if he determines that a local community is "dependent" upon National Forest timber for its economic stability.

When interim regulations were issued, however, the Forest Service found only three communities in the Northern Region of the United States to be "economically dependent," two in Idaho and one in South Dakota.

"This is not what Congress had in mind when it wrote this section of the law," Church and McClure told McGuire, "and we are very concerned that current Forest Service regulations based on data from the Missoula Regional Office identify only three communities in the entire Northern Region as being 'dependent' on National Forest timber for their economic stability."

"Although your agency has identified Elk City and Riggins as being 'dependent communities,' and one town in South Dakota," Church and McClure said, "there are in fact a great many communities in the Northern Region whose existence depends on a continuous flow of National Forest timber."

"The intent of Congress," Church said, "is not followed in your regulations. The intent was that traditional methods of bidding for National Forest timber were to continue, except that the Secretary was given the flexibility to use a variety of methods, including sealed bids, where there was reason to believe collusion was taking place."

Church said that he made it clear to Chief McGuire that many operators throughout the Northwest strongly urge that traditional bidding practices be restored.

"Timber purchasers," Church said, "need the opportunity to meet their competition at the bidding table to assure their mills will have enough material to continue operations and provide the jobs upon which local economic stability depends."

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[The following material was submitted by Mr. Cutler. See p. 21.]

The following is an update on Dependent Community Determination. This issue adds Region-4 data. Total dependent communities to date=183.

#### REGION 1

Idaho (11): Bonners Ferry (includes Moyie Springs, Naples); Clearwater Community Area (includes Pierce, Weippe, Kooskia, Kamiah); Coeur d' Alene (includes Enaville, Cataldo, Post Falls, Chilco); Elk City; Grangeville; Lewiston-Clarkston Community Area (includes Lewiston, Idaho and Clarkston, Washington). Note that the Lewiston-Clarkston Area draws their timber supplies from the Clearwater Community Area and also from Region 6; Palouse Community Area (includes Princeton, Potlatch, Juliaetta); Priest River (includes Nordman, Albeni Falls, Priest Lake Area); Riggins; St. Maries (includes Plummer, Santa, Fernwood, Jim's Spur); and Sandpoint (includes Kootenai, Colburn, Laclede).

Montana (8): Eureka (includes Fortine); Libby (includes Troy); Lincoln; Seeley Lake; Superior; Thompson Falls (includes Plains, Trout Creek); Townsend; and White Sulphur Springs.

South Dakota: Camp Cook.

#### REGION 2

Colorado (13): Bayfield; Dolores; Durango; Eagle; Kremmling; Mancos; Middle Park Area; Norwood; Pagosa Springs; Saguache; South Fork; Walden; and Yampa.

South Dakota (6): Custer; Hill City; Piedmont; Spearfish; Sturgis; Whitewood.

Wyoming (8): Centennial; Dubois; Encampment-Saratoga; Fox Park; Hulett; Manderson; Newcastle; and Sheridan.

New Mexico: Chama.

#### REGION 3

Arizona (5): Fredonia; Heber-Overgaard; McNary; Nutrioso; and Springerville-Eager.

New Mexico (3): Chama; Cuba; and Reserve.

## REGION 4

Utah (5): Escalante; Fairview; Kamas; Lapoint; and Panguitch.  
 Wyoming (4): Afton; Dubois; Mountain View; and Paradox.  
 Idaho (8): Cascade; Council; Fairfield; Horseshoe Bend; Midvale; New Meadows; St. Anthony; and Salmon.

## REGION 5

California (29): Auberry; Big Valley; Burney; Camptonville; Chester; Covelo; Crescent-Mills; Dinsmore-Alder Point; Elk Creek; Forest Hill; Gasquet-Smith River; Greenville; Happy Camp; Hayfork; Hoopa-Salyer-Burnt; Hyampom; Jackson; Johnsondale; Loyaltan-Slattey-Sloat; Little Valley; Nevada City-Grass Valley; North Fork; Potter Valley; Quincy-Sloat; Ranch-Willow Creek; Sonora; Susanville; Weed; and Yreka.

## REGION 6

Oregon (55): Albany; Ashland; Baker; Bend-Redmond; Boring; Brookings; Brownsville; Burns; Cascade Locks; Cascadia; Cave Junction; Central Point; Chiloquin; Coburg; Cottage Grove; Creswell; Elgin; Estacada; Eugene; Gilchrist; Goshen; Halsey; Hepner-Kinzua; Hines; Hood River; Idanha; Jasper-Saginaw; Joseph; Klamath Falls; La Grande; Lakeview (protected by S. Y. U.); Lebanon; Lyons; Malin; Mapleton; Maupin; Medford; Mill City; Modoc Point; Molalla; Paisley; Philomath; Pilot Rock; Prineville; Roseburg; Sandy; Scio; Springfield; Stayton; Sweet Home; Tygh Valley; Union; White City; Willamina; and Wordon.

Washington (21): Aberdeen (S. Y. U.); Bingen; Carson; Cook; Darrington; Granite Falls; Hoquiam; Ione; Morton; Naches; Newport; Omak; Packwood; Port Angeles (S. Y. U.); Randle; Republic; Stevenson; Twisp; Tieton; White Salmon; and Willard.

## REGION 8

Arkansas (7): Glenwood; Hatfield; Hatton; Norman; Ola; Plainview; and Waldron.

Texas (3): Huntsville; Kennard; and San Augustine.

## REGION 9

Minnesota (4): Cass Lake; Cook; Deer River; and Marcell.

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STATEMENT OF JOE SIMS, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

I am pleased to be here this morning to present the views of the Department of Justice on S. 1360. This bill would establish within the Department of Agriculture an Advisory Committee on Timber Sales Procedures and would repeal section 14(e) of the National Forest Management Act of 1976.

The Advisory Committee would study procedures by which the Forest Service sells timber, and provide recommendations for procedures which would be in the long term public interest. Stated goals are community stability, recognition of location diversity, climate and species, stable return to the Federal Government, and diversity in sizes, types, and locations of operations and facilities which process timber.

The need to create this Advisory Committee is unclear. It is our understanding that the Secretary of Agriculture already possesses whatever authority he may need to seek advice on timber sales procedures.<sup>1</sup> In a time when the thrust of government activity is to reduce the number of such units, it would be anomalous to create additional, formal governmental units unnecessarily.

Moreover, we are concerned about the specific goals which would guide the

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<sup>1</sup> See statement of Hon. Bob Bergland before the Subcommittee on Forests, Committee on Agriculture, House of Representatives, on H.R. 5863, April 5, 1977.

proposed Advisory Committee's recommendations. They appear to be heavily oriented toward the status quo, and while supposedly consistent with the "public interest," fail to specifically include the important factor of competition. Sales of timber, like sales of other natural resources controlled by the Government, are dependent on a fully competitive market. Existing and pending legislation relating to Government sale or lease of other natural resources demands strong attention to competitive considerations<sup>2</sup> and we think such considerations should be primary in Governmental decisionmaking regarding timber sales.

Let me now turn to section 9 of the bill, which would repeal section 14(e) of the act. Section 14(e) requires the Secretary to use sealed bidding in order to obviate collusive practices except where he determines to do otherwise by regulation. It was added to the act in response to recognition of the competitive dangers inherent in oral bidding procedures. S. 1360 would repeal it, even before it has been effectively applied and its intended procompetitive effects measured.

Thus, S. 1360 presents a number of important competitive issues. These cover the existence of collusion in bidding for Forest Service timber, the extent to which would-be competitors for the purchase of such timber are deterred by historically dominant firms in given areas, whether oral bidding procedures create or exacerbate these problems and whether sealed bidding techniques may provide solutions, or at least alleviate anticompetitive effects.

The Department of Justice has acquired some experience in this area through a number of investigations of possible antitrust violations.

Since 1960 we have investigated situations in at least ten areas where collusion was suspected or alleged among purchasers of National Forest timber. In some of these areas, collusion was believed to have involved several firms and numerous timber sales during periods lasting as long as ten years. Six areas are currently being investigated for possible timber bidding collusion. Since these investigations are being carried out by several different grand juries, I am not at liberty to discuss them in detail. However, they cover various federal forests in Northern California, Oregon, Washington, Arizona, and New Mexico. It is noteworthy that over the years, our investigations have concerned areas where oral bidding was the predominant method of selling timber.

Two criminal cases involving collusive bidding on National Forest timber sales have been brought, both in the District of Oregon. In the first, *United States v. Cascadia Lumber*, Cr. 64-13, a Grand Jury indictment was dismissed in 1964 for insufficient evidence after presentation of the Government's case at trial. In the second, *United States v. Champion Int'l Corp.*, Cr. 74-698, the Grand Jury indicted ten individual and corporate defendants. After a lengthy trial in 1975, the Court convicted seven defendants and acquitted three. These convictions have very recently been unanimously affirmed by the Ninth Circuit Court of Appeals. A companion civil case has also been filed, seeking recovery of the damages caused to the Government by the collusive bidding of the defendants.

Collusive bidding is one of the more difficult antitrust violations to discover and prove in court. Unless there is an informer or other direct evidence of an agreement, it is very difficult to show that the absence of competitive bids is due to concerted behavior. Direct evidence is very difficult to obtain, especially in a tightly-knit industry such as the timber industry. Thus, the Government may have to rely exclusively upon circumstantial evidence consisting of the bidding results alone, which may be "explained away" by the defendants.

The oral auctions employed in the past by the Forest Service have compounded the difficulty in proving collusion on National Forest timber sales. Oral bidding makes it easier to coordinate and easier to enforce a collusive bidding agreement, because less need be agreed upon in advance of the auction by the participants in such an agreement. The conspirators need do little more than generally allocate a sale to one of their number, and leave the details to the flexible oral procedure. Since there is little need for detailed plans and policing procedures, there is little trail left for us to follow.

In the past, oral bidding has permitted some timber buyers to dominate timber sales in certain areas, precluding other, perhaps more efficient, firms from taking timber. This may occur even without collusion. The oral auction procedure facilitates this by making legal intimidation possible through emotional, selectively high or retaliatory bidding behavior by certain firms.

A firm may become dominant in a particular area by means of a collusive arrangement or through historical buying patterns. The dominant firm indicates

<sup>2</sup> See, e.g., the proposed "Outer Continental Shelf Lands Act Amendments of 1977," H.R. 1614 (95th Cong., 1st Sess.); the Naval Petroleum Reserves Act of 1976, Public Law No. 94-258; and the Federal Coal Leasing Amendments Act of 1975, Public Law No. 94-377.

through its bidding its intention to purchase any timber offered by the Forest Service in certain areas. When timber sales are offered within that area, the company bids to whatever level is necessary to purchase the timber. This practice dissuades bidding by other firms, which soon learn the futility of attempting to purchase timber in the dominant firm's "territory." The result is that many, if not most, of the timber offered in such an area is sold without bidding challenge, at the minimum price the Forest Service will accept. Purchasing some sales at minimum gives the dominant firm the economic base to bid as high as necessary, even above its projected economic breakeven point, on sales where bidding challenges are offered. This preclusive bidding raises a significant barrier to entry in the forest products industry and stifles innovation and efficiency by perpetuating the status quo. In addition, the Government frequently receives less than a competitive price for its timber. These problems are not new—they were identified by the Comptroller General in his 1965 Report on bidding.<sup>3</sup>

Several firms may come to dominate Forest Service timber sales in an area as a result of historical buying patterns under an oral auction system, then find it necessary to enter a collusive arrangement in order to maintain that pattern in the face of a dwindling supply of timber or increasing bidding challenges by non-historical purchasers. When this happens, circumstantial evidence of an agreement is hard to establish because no previous competitive pattern can be used to contrast with the bidding behavior during the alleged conspiracy period.

With these problems in mind, one may look to sealed bidding as a possible solution. Sealed bidding has two purposes—to insure a fair opportunity among the bidders and a fair price to the agency contracting by that method. Sealed bidding is the standard procedure in federal government procurement.<sup>4</sup> It has long been the predominant method of sale of National Forest timber east of the Rockies and is widely used by state and private sellers of timber.

We believe that sealed bidding will very effectively lessen collusion on National Forest timber sales. Because each bidder has only one bid and the bids of others are secret, each bidder must bid at a level which corresponds to his interest in a given sale. To implement a collusive arrangement under sealed bidding, a bidder would have to arrange the actual amounts bid by every likely active bidder, whereas under oral bidding the few dominant firms can control the bidding by merely knowing the general needs and interests of the other dominant firms. Even where a group of bidders allocated a series of sealed bid sales among themselves by agreement, one winning bid by a nonconspiring firm on an important sale would completely upset the allocation scheme. Efforts to make a conspiracy foolproof would have to be substantial—and thus more difficult to hide. The threat of severe antitrust penalties would thus become a real one.

We believe that sealed bidding will have benefits beyond forestalling collusion. Under sealed bidding, National Forest timber will sell at prices more near its true economic value, rather than frequently at the minimum price and occasionally at a very high (preclusive) price, as has been observed in some areas over periods lasting many years. When firms consistently purchase timber near the actual value they assign to it, the more efficient firms will be the more successful bidders. Thus, sealed bidding encourages and rewards innovation and efficiency. To the extent that oral bidding perpetuates an inefficient status quo by insulating established operations from the competition of new entrants or more innovative outside firms, it operates against the public interest.

We believe that values of competition and open markets should weigh heavily in any assessment of the public interest with regard to timber selling methods. Absent unique and compelling specific situations, United States Government timber, as other limited natural resources, should be sold by the method which best guarantees that this vital raw material will be available to all interested and that the government will receive the most competitive price for timber.

We think that sealed bidding techniques generally satisfy this requirement. The current statutory recognition of this fact, which incorporates sufficient flexibility to deviate from sealed bidding procedures when such would be in the public interest, is thus in our view entirely appropriate. We see no need for its alteration, particularly at a time when its intended salutary effects have really yet to be measured.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions the Subcommittee may have.

<sup>3</sup> Report by the Comptroller General to the Congress of the United States, "Questionable Aspects of Oral Auction Bidding For Federal Timber Sold at Certain Locations in the Pacific Northwest," February 1965.

<sup>4</sup> 41 U.S.C. § 251 ff.

STATEMENT OF THOMAS BARLOW, STAFF MEMBER, NATURAL RESOURCES  
DEFENSE COUNCIL

My name is Thomas Barlow and I represent the Natural Resources Defense Council. Last year I served as coordinator of the Coalition to Save Our National Forests, a group of environmental and conservation organizations that supported a different legislative approach to the fashioning of Forest Service authorities than both the timber industry and the Forest Service desired. The legislative approach that we urged Congress to take was that because experience indicated to us that the Forest Service has been responsive to timber industry pressures to mismanage the National Forests, Congress should set standards in law for wise resource management of the National Forests in the public interest. The Forest Service and industry argued on the other hand that the Forest Service should be furnished general guidelines by Congress and the broadest latitude to interpret these guidelines; that the public interest would be amply protected by such an approach; that the Forest Service has never caved to industry pressure and never will. Suffice it to say that Congress was persuaded by the Forest Service and the timber industry; theirs was the legislative approach that the Congress took in the creation of the National Forest Management Act of 1976.

So now we come to the first test before Congress of how the Forest Service will be exercising the latitude accorded it in the area of sales procedures, specifically whether open or sealed bidding procedures are going to be used. What do we find? In short, we find the Forest Service caving in to industry, a situation we and Congress were told has never happened in the past, a situation we were told would never occur in the future. In a sense this is a technical subject that is not really an environmental or conservation issue. It is a taxpayer issue because the U.S. taxpayer foots the Forest Service's bills and looks to the Forest Service to secure income to offset these expenses. To the extent that the Forest Service allows situations to arise where collusion and price fixing occur, a situation the suspicion of which is more widespread than the Forest Service and industry would have us believe as evidenced by the number of Grand Juries sitting in the Far West, the U.S. taxpayer is being harmed by the Forest Service approach. But what is most disturbing to us is the precedent this sets for the Forest Service to cave to industry in the construing of other sections of the Act where wording provides latitude for agency judgment. Are our environmental and conservation concerns going to suffer in ways that they have never suffered before, assuming that the Forest Service has an unblemished record with regard to resisting industry pressures in the past as it claims?

Let me say that I am sensitive to the special needs of any small company in situations where it can be forced out by predatory practices of large corporations. However, sealed bids are standard practice in the East and South where small and large companies are thriving. Further the Forest Service utilized sealed bids uniformly from the passage of the Organic Act in 1897 to the late 1940's and early 1950's and then adopted the current open bid procedure arbitrarily in the Pacific Northwest only. Where is the record of small company hardship which might have led to this change?

A Congressional report (H.R. 2960) in 1956 and GAO reports in 1965 pointed to the problem of collusion in open bid situations and called for increased use of sealed bids. What was the Forest Service response?

To the argument that firms outside an area will capture timber to the detriment of local economies we would point out that federal regulations permit the turning down of any high bid, open or sealed, where the Forest Service determines that the local economy will suffer an unacceptable loss (36 CFR 221.10(a)(6) and (c)).

As to bidder situations, we would note that a single bidder in an open bid situation will very probably bid just a little above the stumpage rate rather than a higher price he might be prepared to pay in a competitive situation. The loss of income to the treasury that would result in such instances can be ameliorated if the single bidder has to submit to sealed bid procedures not knowing in fact whether he will be the only participant.

Generally, we feel that open bidding encourages a cluster of bids just above the stumpage rate which might indicate collusion with consequent losses to the government. Occasionally open bidding can become an intense ego situation with exorbitant bids thrown forth in a show of pride or "face" which when it occurs might indeed earn the government more money but certainly does not help the local mill economies or serve community economic stability when profit margins disappear. And preclusive bidding to smother small or large company competi-

tion can occur in open bid situations. This is not a healthy timber industry situation when it occurs. Finally, we would point out that transportation costs in this high cost energy period would moderate the atavism of outside timber operators to travel afar to pull down sales. For these reasons we see little reason for the Forest Service to bow to industry pressure and utilize the open bid system in any National Forest.

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STATEMENT OF JOHN F. HALL, VICE PRESIDENT, FORESTRY AFFAIRS, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. Chairman and members of the committee, I am John F. Hall, Vice President—Forestry Affairs with the National Forest Products Association. NFPA is a federation of 26 regional, product and species associations and several direct member companies. Our membership includes the growers, manufacturers and wholesalers of solid wood products throughout the United States. NFPA represents purchasers of National Forest timber whose operations range in size from quite small to very large.

Approximately one-third of our nation's softwood timber supply comes from Federal lands. The bulk of that land is National Forest land administered by the Forest Service. In many parts of the country, industry and communities are totally reliant upon federal timber for their raw material. In large areas of the West particularly, the Forest Service is a virtual monopoly owner and seller of timber. Forest Service policies affecting the amount of timber harvested, as well as the way in which it is sold, can and do have a profound effect on the economic stability of local dependent communities.

THE EFFECT OF THE NATIONAL FOREST MANAGEMENT ACT OF 1976 ON FOREST SERVICE BIDDING POLICY

One of the most controversial provisions of the National Forest Management Act of 1976 is Section 14(e), which deals with bidding on National Forest timber sales. It was during deliberations on the NFMA in the House that concern was raised over alleged collusive bidding on National Forest timber sales. No evidence was presented that such bidding is now, or ever has been common or widespread. In fact, all available evidence indicates that it is exceedingly rare. There have been convictions in only one case ever for collusive bidding on National timber sales. In spite of this, language was adopted by the Agriculture Committee and amended in Conference giving direction on the timber sale bidding issue.

Section 14(e) directs the Secretary to "take such action as he may deem appropriate to obviate collusive practices in bidding for" National Forest timber, including "requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation." The Conferees were rightfully very concerned about the possible impact of sealed bidding on local communities highly dependent upon National Forest timber. Because of this, the Conference Report and clarifying floor colloquy appears to give the Secretary broad discretion to use oral bidding in situations where it is necessary for the protection of the economic stability of dependent communities or where there are other considerations which indicate the advisability in the public interest to do so.

In initially implementing this provision, the Forest Service virtually eliminated oral auction bidding on National Forest timber sales, even in dependent community situations—a result that could hardly have been anticipated by Congress when it adopted this provision. Deficiencies in the way in which the Forest Service has interpreted and implemented this provision will be discussed later in this testimony. First, the rationale for the use of oral bidding in the West will be discussed.

THE CASE FOR ORAL AUCTION BIDDING

The virtual elimination of oral auction bidding alarmed Western industry and community leaders, as well as labor. This is because oral auction bidding has a long history of satisfactory application in Western National Forests—and for good reason. These reasons were well summarized by Congressman Symms and Senator Packwood who made comments in support of oral bidding procedures on the House and Senate Floors during consideration of the Conference Committee report on September 30, 1976.

Senator Packwood commented:

"In many areas of Oregon there is only one lumbermill in a town. The town depends upon the mill for employment. When the mill owner knows that he is going to be short of timber, he will go out and bid to the sky, if necessary, to keep that mill going. And so long as the bidding is open, he knows how high he has to go. But when the bids are sealed, that owner may put in what he regards as a very high bid, but if for some reason somebody bids higher, that owner does not get the timber and the mill shuts down.

"What you end up with is a mill out of timber and a town out of jobs solely because sealed bids rather than open bids are used." (Congressional Record, September 30, 1976 p. S 17278.)

In addition, Mr. Symms said in part:

"Oral auction procedures are presently the main method of bidding on national forest timber sales in most areas of the West. This practice has a long history in this area because many mills are totally dependent on national forest timber. They have no alternative source of supply. Since every timber sale the Forest Service offers in many areas is often life or death to these plants and local dependent communities, it is important that they be aware of and be able to respond to bidding competition. Such an opportunity is not available when sealed bidding procedures are used. The opposite situation exists in the East and South where national forest timber makes up only 10 percent or less of the timber supply and sealed bidding is preferred.

"It was a primary intent of the conferees that a major change from oral auction to sealed bidding procedures would be made in a particular area when collusive bidding is suspected. The conferees had no intent that provisions for sealed bidding will in any way undermine or jeopardize the stability of local dependent communities. Therefore, in areas where there are not alternate sources of timber supply, the Secretary should by regulation provide that, unless reasonable evidence indicates that collusion may be occurring, oral auction bidding or a mix of bidding methods will be the preferred and predominant method." (Congressional Record, September 30, 1976 p. H. 12020.)

The fact that sealed bidding methods are used by the government, contracts should not be a basis for concluding that it is in the public interest to use sealed bidding to sell federal timber in the West. The characteristics of industries bidding upon federal procurement contracts, oil and gas leases, and other similar contracts are fundamentally different from the forest products industry in the West.

Walter J. Mead, professor of economics at the University of California, Santa Barbara, in a paper, "National Resource Disposal Policy—Oral Auction Versus Sealed Bids" (Natural Resource Journal, Vol. 7, No. 2, April 1967), discussed the characteristics of buyer industries which indicate the desirability of utilizing oral bidding methods. Although we have reason to disagree with some of the statistical methods used by Professor Mead (see Appendix II of Appendix B), we strongly endorse his conclusion (p. 223-4):

"The basic characteristics of buyer industries may constrain the public policy choice of bidding method. Thus, an industry that has an existing heavy fixed investment, uses raw materials that are relatively immobile economically, must acquire several successive leases or sales in the life of its fixed plant, is dependent on a single raw material source, must plan its purchases subject to severely limited financing, and requires that specific rather than random sales be obtained, will probably insist on the oral bidding method. Oral bidding is more suitable under these circumstances (or even a few of them) since it permits a buyer to react to challenges from other bidders and to protect his resource position."

Most of the above are characteristics of the forest products industry, particularly those heavily dependent upon National Forest timber. The desirability of maintaining oral auction as the normal bidding method in these situations is clear.

Attached as Appendix A to this testimony is an excerpt from the above referenced paper in which Professor Mead discusses in more detail differences in the characteristics of the timber and oil and gas industries which lead to differences in preferred bidding methods.

#### WHY THE PUBLIC INTEREST IS SERVED BY THE USE OF ORAL BIDDING IN WESTERN NATIONAL FORESTS

In many communities in the West the timber industry is vital to the health and prosperity of the local economy. In most of these communities demand for available supplies of timber is high and it is important to the stability of the local economy that prospective purchasers be aware of, and be able to effectively respond to, bidding competition. National Forest timber is often a very substantial component of the local supply situation.

The government is assured equitable treatment by its appraisal system based on Forest Service audit of individual operator's records and by its sales terms that maximize competition. There is no public problem posed by the use of oral bidding. The public interest would be optimized if oral bidding were used when National Forest timber is important.

The public interest is served best when a needed and important basic resource in short supply is permitted to flow to processing facilities with a minimum of inefficiencies and as equitably as possible. Uncertainty causes inefficiency and sealed bidding increases uncertainty. This would not be as critical if there was an abundant timber supply, but there is not.

Society gains when there is an opportunity for a raw material in short supply to move into use in the most efficient manner. This is more likely to happen when competitors can meet openly, as with oral auctions.

One inefficient result of the use of sealed bids is that prudent dependent purchasers must bear the increased expense of more carefully evaluating offerings closer to other operators' plants on the chance that they may have to attempt to buy such timber if they lose a needed sale near their own plant.

Efficiency is enhanced under oral auction where the scarcity premium extracted from timber purchasers in overbids is no more than what is needed to be awarded the offering. Unnecessary bidding away of the margin for profit and risk reduces capital formation needed for installing facilities required to improve utilization of the public's timber. The government ultimately gains from installation of new facilities because the value of utilization improvements flow substantially to the timber owner (in this case the Federal Treasury) as a residual value. Society also gains from investments made for improved utilization since resources previously left in the woods can now be used to make useful products. Improved utilization usually reduces the total cost of administration and protection of National Forest lands by removing material which contributes to increased fire hazard or must be disposed of before tree planting can take place. Improved efficiency also reduces costpush inflation of product prices.

For a more thorough discussion of the characteristics of the Western timber industry and the solid rationale for the use of oral auction methods in this region, see attached Appendix B "Memorandum of the Forest Products Industry to the Bureau of the Budget Relating to Federal Forest Management Objectives and Timber Selling Methods"—December 1966.

#### WHAT CONGRESS INTENDED—THE CONCERN OVER COLLUSION

Amidst all the controversy surrounding the Forest Service change to sealed bidding in response to Section 14(e), it is easy to lose sight of the fact that the factor which led to adoption of this provision was concern that bidders on National Forest timber sales were colluding to limit competition for those sales. Congress purposefully gave the Secretary broad authority to deal with the problem by requiring that he "take such action as he may deem appropriate to obviate collusive practices in bidding" on National Forest timber, including but not limited to: (1) Establishing a monitoring system to identify patterns of noncompetitive bidding; (2) Requiring sealed bidding on all sales except where he determines otherwise by regulation, and (3) Requiring a report of alleged collusive practices to the Attorney General.

It is fair to say that Congress expected the Forest Service to use common sense in any actions it takes on the bidding issue. An appropriate test should be whether there is reason to expect that collusion may be occurring and that any widespread conversion to sealed bidding will reduce the risk of collusive bidding, while at the same time not damaging the public interest or working an undue hardship on innocent individuals. Unfortunately, the Forest Service has interpreted Section 14(e) to require sweeping changes in existing bidding policy without any demonstration that collusion is present.

In only one case have there been convictions for collusive bidding on federal timber since the antitrust laws were passed at the turn of the century. As indicated by a February 3, 1977 letter to Rep. John Krebs from the Antitrust Division of the Justice Department (Congressional Record, March 21, 1977, E1612), three investigations are currently going on. In addition, the letter indicates that Justice has undertaken ten investigations in the last fifteen years. Thirteen investigations in fifteen years of an industry annually buying thousands of individual timber sales which generate over half a billion dollars in value per year does not impress one as being an industry subject to widespread collusion.

Investigations into alleged collusion should continue. If such investigations indicate that there may be illegal bidding, the parties involved should be taken to court. However, broad government action should not be aimed ineffectually at a few suspect people with resulting injury to many innocent people and dependent communities.

#### FOREST SERVICE IMPLEMENTATION OF SECTION 14(E)

On November 4, 1976, the Secretary of Agriculture promulgated interim regulations for the sale of National Forest timber. These regulations, and the administrative instructions interpreting them, virtually eliminated all oral auction bidding on western National Forests—a result that was clearly not anticipated by Congress. Additional instructions from Forest Service Chief John McGuire to the field on December 17 resulted in minor use of oral bidding under very restricted situations. On February 23 the Forest Service requested public comment on proposed final bidding regulations. These proposed regulations were instituted on a temporary basis beginning in early April. Although the proposed regulations are a significant improvement over the interim regulations, they are still far from perfect since they appear to be contrary to the concerns of Congress to take special precautions to protect the economic stability of local dependent communities. These proposed regulations would provide that, even in communities which the Forest Service determines to be substantially dependent upon National Forest timber, the agency will strive to create a mix of oral and sealed bidding amounting to 50-50 on a volume basis. Here again, the Forest Service is proposing to use a significant amount of sealed bidding in all situations, regardless of whether collusive bidding practices are suspected.

Although it is not outside the Secretary's authority to require a 50-50 mix of oral and sealed bidding in dependent communities, it is inappropriate and against the public interest to do so. Putting in jeopardy such a substantial percentage of the local timber supply actually flies in the face of Congressional concerns over the protection of these dependent communities.

The National Forest Products Association, in several submissions to the Forest Service, has proposed that oral auction bidding be utilized for the larger sales whose loss would be critical to the local industry. However, use of sealed bidding should be permitted for the smaller sales of 1 million board feet and less. None of these proposals has been accepted by the Forest Service.

#### THE FOREST INDUSTRY STRONGLY ENDORSES S. 1360

The Forest Service has continued to interpret Section 14(e), and the legislative history surrounding it, as requiring the use of a substantial amount of sealed bidding, even when no evidence of collusive bidding practices exists. In view of this interpretation, we strongly endorse early passage of S. 1360.

In testimony of April 5, 1977, before the Forests Subcommittee of the House Agriculture Committee, Secretary of Agriculture Bob Bergland stated that the Administration would have no objection if Section 14(e) were stricken from the National Forest Management Act. Mr. Bergland testified that there is already adequate authority to deal with collusive practices in bidding on National Forest timber. We strongly concur with this position.

In addition to Section 14(e), S. 1360 would set up a seventeen-member advisory committee to be appointed by the Secretary of Agriculture. The study commission established by S. 1360 would report by January 1, 1979, on National Forest timber sales procedure, including but not limited to "a study of the methods and conditions of sale including among other things the means by which such timber is put up for sale, appraised, bid upon, and the factors affecting pricing of such timber."

That would be a very broad charge and one which would be difficult to accomplish within the time set for this review. More specific direction should be given to the study commission. The commission should focus its work on the concerns which have led to its creation. This would include the impact of the method of bidding on community stability objectives, the frequency of illegal practices in bidding for federal timber and the development of reasonable methods to discourage such practices. These methods should not penalize innocent purchasers or jeopardize other legitimate public policy objectives, such as protecting economic stability of local dependent communities.

Other aspects of timber sale appraisal and sale preparation are highly complicated. These other issues would divert time and attention away from resolving the question as to the frequency of irregular activities and what actions, if any, in addition to current legal sanctions are appropriate.

The National Forest Products Association strongly endorses passage of S. 1360.

## APPENDIX A

NATURAL RESOURCE DISPOSAL POLICY—ORAL AUCTION VERSUS SEALED BIDS  
(By Walter J. Mead, *Natural Resource Journal*, Volume 7, April 1967, pages 219-223)

*Industry Characteristics Leading to Opposing Preferences*

An analysis of the characteristics of the timber and the oil and gas industries which lead to the foregoing preferences may be useful in selecting optimum bidding methods for other situations. For example, in the near future a set of sales policies must be determined for disposal of oil shale resources. We may, therefore, ask what characteristics of the timber and oil and gas resource-based industries account for the observed preferences?

First, in the timber industry, fixed investments in milling facilities exist prior to sales, whereas in oil and gas a successful bid leads to subsequent investment in facilities, that is, drilling rigs, platforms, pipelines, and the like. Where investments in facilities exist prior to the sale, the buyer needs a means of insuring access to specific raw materials in specific locations. Oral auction provides this means through the opportunity to cast reaction bids. If a specific oil or gas lease is not obtained, the consequences are normally not significant. An exception may occur where a lease holder desires an adjoining "offset" lease to develop his holdings.

Second, in the timber case, the severed resource is highly immobile and therefore cannot be transported over a wide area. Logs are of great weight per unit of value, hence, a mill cannot import logs by truck or rail from a great distance if it fails to obtain a nearby sale. Crude oil, on the other hand, is easily and inexpensively transported to refineries from oil wells all over the world. Where the severed resource is immobile, it is of great importance that a specific nearby sale be obtained and the oral auction method thereby becomes more suitable.

Third, in the timber case, the individual sale usually is small relative to optimum mill capacity and, therefore, additional sales must be obtained frequently. The upper limit of the optimum size Douglas fir region lumber mill is about 60 million board feet per year.<sup>1</sup> The average sale size for national forest timber sales in this region is about 4.5 million board feet.<sup>2</sup> Therefore, an efficient mill, dependent entirely on public timber, would need to obtain about thirteen sales per year. In contrast, a successful oil field on a public lease may have a life of one-quarter century or more. Where sales must be obtained repeatedly in order for a processing facility to survive, the oral method of bidding is preferred.

Fourth, in the Douglas fir region, some firms are highly dependent on a single source of raw material and failure to obtain input from this source creates an acute log shortage for such firms. The shortage in turn may effect the related dependent community. The Chief of the Forest Service Management Division in the Pacific Northwest testified that "The primary reason that we have used oral auction bidding rather than sealed-bidding . . . [since] the late 1940's, was . . . to give the local community an opportunity to protect themselves to a maximum extent."<sup>3</sup> Where several sources of raw material exist, failure in one area is less significant. The oil and gas industry has many alternative sources. The use of sealed bid procedures in the national forest timber markets in the East is explained by Agriculture Secretary Freeman as follows:

"The key difference between the situation in the Eastern United States and the Pacific Northwest is the degree of dependence of established mills on purchase of National Forest timber. In the East, there are typically alternate sources of timber supply. In the Pacific Northwest, many mills close to the National Forest have virtually no other source of raw material."<sup>4</sup>

Thus, specific resource dependency leads to a preference for oral auction bidding.

Fifth, the sealed bid method of selling introduces planning uncertainty. If a prospective buyer is limited by his financial ability in acquiring additional resources and therefore desires to commit himself to the purchase of one of ten simultaneous sealed bid offerings, he is unable to present offers after his success or failure is known on one or more of the ten. As a matter of sealed bidding strategy,

<sup>1</sup> Mead, "Competition and Oligopsony in the Douglas Fir Lumber Industry," 93 (1966).

<sup>2</sup> *Id.*, at 197.

<sup>3</sup> O and C Advisory Board, Committee on Bidding Procedures for Federal Timber, Minutes 123, Portland, Oreg., Nov. 23, 1965.

<sup>4</sup> Letter from Orville L. Freeman, Secretary of Agriculture, to the Honorable William L. Dawson, Chairman, Committee on Government Operations, U.S. House of Representatives, June 10, 1965.

a bidder desiring any one of ten simultaneous sales may increase his probability of success by making a very high bid on one sale, medium bids on several, or low bids on all ten. Depending on the reasoning of other bidders, he may be unsuccessful in any of the above strategies. Or, in the second or third strategy he may find himself successful in more than one and by the third strategy, all ten sales and thereby be placed in an over-committed position. Under the present simultaneous (non-serial) offering system, if sales are conducted exclusively by sealed bidding, a bidder of limited means cannot insure himself that he will not become over-committed to purchase more than one desired sale. Buyers in an industry such as timber, composed of relatively small firms would, thus, be handicapped by sealed bidding. The oil and gas industry is a large scale industry including firms with world-wide operations and vast financial resources.<sup>5</sup> The planning problem resulting from non-serial<sup>6</sup> sealed bid sales poses problems for any industry, but they are particularly great for small buyers. Thus, the planning problem and inadequate financing lead to a preference for oral bidding in a small firm industry.

Sixth, where prior existing fixed processing facilities are specialized and require specific species or grades of a given raw material, it becomes important to be able to obtain specific sales. Lumber and veneer-plywood mills are tending toward increase specialization. In oil and gas resources, not only is there no such specialization, but the bidder has no information about the quality of the hidden resource, and very little about its presence. Specific needs lead to the oral auction preference.

Seventh, oral bidding requires more decision making on-the-scene than does sealed bidding, and therefore requires that a higher level of talent be present at the auction. Lumber and veneer-plywood operations are relatively small and the owner-operator usually is present and bids at oral sales. In the oil and gas case where firms are relatively large, it is not practical to have the firm represented at auctions by the president, a vice-president, or other high ranking officers qualified to commit hundreds of thousands and in some cases millions of dollars. Sealed bid decisions can be made in regional offices and the company can be represented at sales by lesser officials. Hence, sealed bidding is more suitable for the large firm situation and oral bidding for small.

Eighth, the problem of the "free rider" is a problem for serious bidders under oral bidding conditions in both industries. In preparing to bid, the responsible firms in the timber market invest funds in cruising timber and estimating logging costs. In the oil and gas resources market, responsible bidding requires geophysical and geological surveys. In the case of submerged lands, these costs are relatively large. The identity of firms carrying on pre-sale explorations is normally known to others, though the findings are not. The free rider is one who does no exploratory work. He may use the funds saved to bid up those who do. He assumes that those who do resource surveys act wisely.<sup>7</sup> Where exploratory costs are relatively large, as in the case of oil and gas submerged lands, sealed-bidding is normally preferred.

#### APPENDIX B—MEMORANDUM OF THE FOREST INDUSTRY TO THE BUREAU OF THE BUDGET RELATING TO FEDERAL FOREST MANAGEMENT OBJECTIVES AND TIMBER SELLING METHODS

##### I. INTRODUCTION

For nearly 75 years great areas of federal forests have been set aside by the Congress "to furnish a continuous supply of timber for the use and necessities of the citizens of the U.S."

Because of its large timber holdings in the West, the United States government is the major supplier of raw material for the important forest products industry. Western national forests contain 67 percent of the commercial sawtimber of that region. The national forests are administered by the Forest Service in the Department of Agriculture. Additional large quantities of western timber are under the administration of other agencies, such as the Bureau of Land Management of the Department of the Interior. In comparison, less than nine percent of the commercial sawtimber in the South is in the national forests.

<sup>5</sup> This industry includes also a large number of small firms and individuals, but most of them are not operators.

<sup>6</sup> Serial sealed bid sales would not necessarily solve the planning problem. If timber sales were spaced one day apart, sales would be required daily with a consequent social cost in man hours.

<sup>7</sup> A bidder who engages in successful exploratory work may attempt to disguise his interest in the land by employing an unknown person to do the oral bidding on previously arranged signals.

Sale of government timber is authorized by various acts of Congress. These laws require that the timber normally will be appraised, advertised and sold at not less than the appraised value. Timber appraisals are complex and detailed analyses, involving the sampling of the quality of the timber. The appraisers usually assume that the timber will be hauled to the nearest processing plant, otherwise the appraised operating costs are based on averages for efficient operators. Anticipated realization values are based on product market prices adjusted for timber quality.

#### *Bidding and negotiation*

Sales of government timber are usually made by competitive bidding after advertisement for 30 days. A few sales are negotiated under special circumstances. Bidding may be by oral auction after submission of an initial bid in writing, or sealed bids only may be requested. Under guidelines issued by its Washington office, the Forest Service leaves the choice of bidding method to the regional foresters. In the South, where there usually are alternative sources of timber supply, federal timber is sold by sealed bidding, and there is less competition than in the West where oral auction is common.

Government foresters exercise full control over the selection of timber to be harvested. The timber is sold under detailed contracts which fully protect the interests of the government. Most of the government timber harvested in the West is measured by government employees and paid for according to that measurement.

#### *Different objectives*

This report attempts to show how federal timber-management objectives differ from the traditional objectives of the average buyer or seller in other lines of endeavor. Maximizing dollar return has not been specified as an objective of federal timber management. To maximize charges where the government is the primary source of limited timber would not yield "fair market value". The federal government, as a timber grower and seller, does have the objective of getting a fair price. It also has other ground rules and objectives that can be classified as follows:

1. *Statutory requirements.*—Since the end of the last century the Congress has enacted laws specifying that the federal timber management agencies practice forestry for improvement of the forests, offer timber for sale at a fair price and recognize and contribute to the economic stability of local communities and dependent industries.

2. *Economic requirements.*—Federal timber constitutes one-third of the nation's supply and three-fourths of the western states supply. This is a powerful economic control over much of the forest products industry and over vast areas and numerous communities that are dependent on federal timber. Possession of this economic power carries with it a responsibility for its careful exercise.

3. *Forestry requirements.*—A forest is a living resource requiring constant silvicultural management, protection and development in order for it to provide the products and benefits that the public, as owners, demand. Timber harvesting is the tool or vehicle that federal timber managers use to make forests produce the desired benefits of full utilization and a healthy forest.

#### *Many public benefits*

The forest products industry is comprised of some 35,000 individual firms. As described on pages 13 through 15 and in Appendix IV most western timber processors are dependent on federal timber for their existence. For them there is no alternate supply of raw material.

Although federal timber sales yield hundreds of millions of dollars to the Treasury many other public benefits have accrued from timber harvesting. Stagnant stands of old-growth timber have been replaced by young forests capable of using the growth potential of the land to produce wood for the future of our growing nation. Part of the timber receipts finance intensive forestry to improve growth and quality of the timber. The states annually receive many millions of dollars from timber receipts for roads and schools. Many hundreds of miles of permanent roads are annually added to the transportation system of the federal forests. Recreation sites are developed and water projects facilitated by timber harvesting.

Basic support for the economy in large parts of the nation is the primary contribution of the government timber. It is essential to many communities as the well-spring from which flows employment opportunities, business for local suppliers, materials for construction, taxes to support local government, business for the transportation industry, opportunities for capital investment, etc. Where there is no alternative source of supply, government timber-sale policy does have a major impact on community stability.

### *Other factors*

A person removed from the federal timber management scene might logically review the performance of federal timber sellers from the standpoint of their record of maximizing dollar returns for timber sold. The simplest approach would be to compare the appraised rates or minimum rates at which the timber is offered with prices set by competition. The success of a purchasing agent is normally measured by his ability to buy the specified materials or services as needed at the lowest possible prices. The success of a sales manager would be measured by his performance in selling products for a maximum return. Success of government timber sales should be measured in terms of healthy communities, industry, and forests.

People with the responsibility for review of administrative actions of government agencies—the General Accounting Office, the Bureau of the Budget and members of Congress—have wondered if timber prices might be maximized by shifting from oral auction procedures to greater use of sealed bidding in the West. The material which follows is intended to give a better understanding of the many factors to be considered.

## II. TIMBER MANAGEMENT OBJECTIVES

When the people of the United States, acting through the Congress, established the national forests beginning 1891, they were planning for the future of a growing country. Forests are essential to civilization and enjoy the unique feature of renewability through forestry. They are a permanent source of essential products for shelter, clothing, fuel and paper, and provide a significant opportunity for employment and recreation.

In 1897, the Congress, acting as the Board of Directors for the citizen-stockholders who own the national forests, decreed that the forests should be managed "to furnish a continuous supply of timber for the use and necessities of the citizens of the United States."

Similarly, for Department of the Interior lands, the Act of August 28, 1937, directed that the revested Oregon and California Railroad and Coos Bay Wagon Road grant lands valuable for timber should be managed:

"For permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal (sic) of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities (sic) . . . provided that . . . not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on the normal market."

Community and industry stability was reemphasized as an objective of public timber management in the 1944 Sustained Yield Forest Management Act, covering both Forest Service and Bureau of Land Management lands:

"To promote the stability of forest industries, of employment, of communities, and of taxable forest wealth, through continuous supplies of timber; . . . to provide for a continuous and ample supply of forest products; and . . . to secure the benefits of forests in maintenance of water supply, regulation of stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife . . ." (16 U.S.C. 583).

To provide a continuous supply of timber requires the practice of forestry, which includes harvesting, protecting, regrowing and harvesting again. The conversion of unmanaged non-productive natural forests to intensively managed forests with their regular flow of products and services is accomplished through timber harvesting.

### *The harvest cycle*

The full potential growth and benefits of a forest are not reached until the initial harvest cycle has been completed. It may take 60 to 100 years to reach the second harvest cycle. This is the tree farming concept now widely practiced throughout the United States. It's just like agriculture, except foresters must plan, establish, tend, and protect their timber crops over decades, instead of years. This is how successive timber crops are grown to fulfill the objective of furnishing a continuous supply of timber for the use and necessities of the citizens of the United States.

Congress set the forestry wheels in motion on the national forests when it amended the Organic Act (June 4, 1897) decreeing:

"For the purpose of preserving the living and growing timber and promoting the younger growth on national forests, the Secretary of Agriculture . . . may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such national forests as may be compatible with the utilization of the forest thereon, and may sell the same for not less than the appraised value. . . ." (16 U.S.C. 476)

The Secretary of the Interior is similarly authorized:

"Under such rules and regulations as he may prescribe [to] . . . dispose of . . . vegetative materials (including . . . timber or other forest products) on public lands of the United States . . . and on revested Oregon and California Railroad and Coos Bay Wagon Road grant lands. (30 U.S.C. 601).

"The Secretary shall dispose of . . . [timber] to the highest responsible qualified bidder after formal advertising and such other public notice as he deems appropriate. "(30 U.S.C. 602)

Regulations of Secretary of the Interior provide (43 CFR 5402.1) that "all timber . . . to be sold shall be appraised and in no case shall be sold at less than the appraised value."

#### *For a continuous supply*

The national forests have been protected against fire and trespass for nearly 70 years. The conversion from unmanaged to managed federal forests began with a timber sale in the Black Hills National Forest in 1898. Ever since, the Forest Service has moved steadily through sale and harvest of timber toward fulfillment of the Congressional objective ". . . a continuous supply of timber for the use and necessity of citizens of the United States". But the government does not practice forestry on the federal forests solely by itself. Much of the actual practice of forestry is carried out by the timber operators who buy, harvest, protect, replace, and process federal timber. It takes an harmonious partnership of government and industry to make forestry effective on federal lands.

In fulfilling the objective to manage the federal forests, they must be inventoried and an annual harvest determined in accordance with the ability of the land to grow timber. Management plans must be developed to set forth goals and time tables for implementing the practice of forestry. A protection system must be established. A road or transportation system must be developed to start a regular conversion of mature and decadent timber to the series of timber age classes necessary for continuous production. These management planning functions are all performed by federal foresters. When it is time to start the timber cropping process, the timber is offered for sale in accordance with these plans. At this time the timber operator begins to play his part in the fulfillment of the statutory objectives of . . . "promoting the younger growth" . . . through harvest and utilization of the . . . "dead, matured or large growth" . . . which in turn helps . . . "furnish a continuous supply of timber for the use and necessities of citizens of the United States."

#### *Responsibilities and risks*

After an operator has purchased a federal timber sale, he builds the roads required. He thus makes the forest accessible for protection against fire, insects and disease and for reforestation and other forestry activities essential to perpetuation of the timber resource. During the sale the operator has responsibility for protection of the sale area and vicinity against fire, for protection of the soil through erosion prevention, and for preventing damage to trees to be left for future growth and seed supply.

The operator has many responsibilities and risks in performing these forestry acts on the land. He risks many uncertainties—accuracy of quantities and quality of timber he has purchased; vagaries of the weather which may make his contract obligation of timber harvesting, fire and erosion protection measures more difficult and costly; and the chance that road costs may be higher than anticipated. Another uncertainty is the market on which he may sell the products of the timber harvest and over which he has no control.

The Secretary of Agriculture's 1963 Timber Appraisal Review Committee summarized this relationship as follows:

"The relationship between the national forests and the wood-using industry is in some respects unique. It cannot be characterized as a one-way street with all benefits flowing in one direction. There is a mutual interdependence that cannot

be ignored since the sound management of the national-forest timber resource depends to a large degree upon the wood-using industry. This is indirectly recognized in the Forest Service Manual which says regarding commercial timber sales: "This is the form of use which involves by far the greatest volume of timber. It furnishes opportunity for accomplishing the major purposes of national forest administration, such as maintaining and improving the forest and the productive capacity of the land." (FSM 2411.51)

The government has a responsibility to avoid unnecessary costs for timber purchasers. Undue costs, such as those created under sealed bidding, ultimately affect the purchasers' capacity to perform their anticipated role in meeting the objectives of national forest management.

Before considering the accuracy of the claim that sealed bid sales would assure a higher return than oral auction sales of government timber, it would be well to set out in some detail the facts respecting supply and demand for timber, the government's dominant position as a seller of timber in much of the West.

### III. SUPPLY AND DEMAND

The supply-demand relationships relative to government timber are most unusual. The industry resembles agriculture in its great number of individual producing units. However, government control completely of so much of the raw material of a major industry has no parallel in the United States. The problems of this unique situation are compounded by other characteristics of the industry and the timber it processes.

#### *Stumpage market area limitations*

The physical limitations on potential marketing areas for standing timber are an important factor in determining supply and demand. In much of the west where logs must be hauled by truck to the mill facility, there may be only a few potential buyers for a specific tract of timber. Logs are so heavy to transport that trucking costs can rapidly diminish timber values. Competitive manufacturing facilities in today's wood industry are rarely mobile. The lumber, plywood and pulp plant necessary to make a competitive product in today's market requires a large investment that takes many years to amortize.

Plants located on cheaper transportation routes have a greater area within which it is economic to buy stumpage. For instance, logs can be towed on the rivers or tidewater in rafts at a fraction of the cost of trucking. Some plants are favorably located in valley communities with freeways extending into several different timber areas from which log hauling costs are economic.

Economic haul areas for trucking on forest area roads may be limited to 50 miles or less in many areas. Some areas with cheap haul opportunities in the northwest make timber purchase economic 150 miles away from the mill. With differed grades and species of sawlogs costing from \$25 to \$70 per thousand board feet at the mill and trucking costs on different classes of roads running from 20¢ to 40¢ per thousand board feet per mile, the effect of transportation on timber supply becomes obvious. Road construction costs which is a timber harvesting cost allowance may cost up to \$30 per thousand board feet. To get some sales the operator is forced to undertake a road construction job that overshadows the timber processing operation in terms of cost, risk, manpower and equipment.

#### *Competition for Federal timber*

For most of the federal timber there is more than one potential purchaser even though the timber is appraised to the manufacturing location where it has the most value. Most purchasers of federal timber have no alternative source of logs. Very few have an alternative supply that would allow economic operation. In many areas the installed mill capacity exceeds log supply. The mills generally have a high degree of flexibility to expand production by going to overtime or extra shift operations. On the other hand intermittent shutdowns will soon make an operation uneconomic.

Because of fixed costs that continue whether a plant operates or shuts down, because skilled employees will be lost, and because there is no alternative source of timber in most federal timber areas, the purchaser of federal timber often characterizes his raw material choices as "buy or die." While the end products are sold in a free and highly competitive market, the purchaser must compete with other dependent operators for raw material in a market dominated or controlled by one seller, the federal government. It is under no financial pressure to sell, but its timber customers must buy.

There is nothing that the individual sawmill operator can do about the trend of lumber prices. Unlike the federal government selling timber, the lumber or plywood manufacturer must sell under nationwide competitive conditions that approach classic free market conditions. The consumer of forest products has a multitude of suppliers from which to choose. He also has a multitude of different products that will satisfy his needs, some of which are substitutes for wood.

#### *Timber supply*

Both the Forest Service and Bureau of Land Management have policies of intent to offer regularly for sale the full allowable cut—that is, the annual growth or yield of the forest. In recent years there have been increases in the sustained yield harvest from some areas due to intensified forestry and to increasing levels of wood utilization. Generally, however, the allowable cut of a forest remains fixed and each agency tries to maintain an even flow of timber harvest from their forests. For many reasons, timber offerings sometimes fall below the allowable cut. Seldom is it exceeded.

Failure to offer the allowable cut shuts off the economic blood essential for federal timber dependent communities and will normally cause an increase in up-bidding. Holding back on offerings allows extraction of a greater scarcity premium. Timber supply is relatively unresponsive to markets for forest products.

A minimum of two or three years assured supply of timber is needed on which to base the planning and operation of an economic and competitive size sawmill, but many mills are operating with less than one year's log supply or even six months in national forest areas. With such a limited timber supply, capital is not readily available for refinement of products or improvement efficiency.

Lumber and plywood sales are primarily tied to demands of the nationwide home building industry. The volume of federal timber offered is relatively inflexible—the supply does not increase with demand, regardless of how high the market price rises or how high timber is bid.

Local timber demand for a particular mill or for a particular sale of stumpage may be radically different than nationwide forest product demand. There is no similarity between the operation of the lumber manufacturer's federal stumpage market and the operation of a flour mill's wheat market. Unlike wheat, each timber offering is unique. There is a broad range of manufacturing and product sales alternatives. Potential purchasers will vary as to need and ability to buy a specific offering at a specific time. Some potential purchasers investigate each timber offering thoroughly. Others bid entirely on the basis of the advertisement.

#### *Obscure factors involved*

Without the understanding and evaluation of these and a host of other factors, many of which competitors don't divulge, conclusions drawn from bidding experience will be erroneous and misleading. For example, if a purchaser believes there actually is less timber on the sale area than the advertised amount for a particular species, he may make an excessive bid for that species. Since the bids are on a per thousand board-foot basis, his total overbid (which determines the successful bidder) will appear to be greater than it actually is (since the purchaser usually pays only for timber cut) and will give a distorted impression of overbidding.

There may be overbids to offset excess "Purchaser Credit," the allowance for road costs that will not be met because of Forest Service insistence on the payment of "Base Rates" in cash. Such overbids may result in no actual increase in the cost to the purchaser. Bidding may also reflect the purchaser's recognition of the effects of escalation, where in some instances, the overbid will not actually mean an increase in payments.

A wide variety of other obscure factors may be involved in specific overbids. As another example, the purchaser may overbid by species to indicate the relative value of logs he may wish to buy or sell.

Federal timber sale programs have been somewhat irregular for a variety of reasons. However, since 1962 there has been a strong effort to improve this condition. The Congress, too, has come to realize that spasmodic offerings result in an unstable supply of federal timber for dependent purchasers and communities who have no assurance that the full allowable cut will be regularly offered in all competitive areas.

Operators depending on normal supplies of government timber are always under pressure to buy the limited timber that is offered, to meet fixed costs, minimizing losses, and maintain employment. If there is only one processing plant dependent on the federal timber offerings the operator must accept the federal agencies' appraised prices or shut down, with loss of jobs and its obvious effect on the community.

A number of firms dependent on federal timber have been closed or have merged with firms having private timber. Nevertheless, it is futile to attempt to use an analysis of closures, sales or mergers to indicate the appropriate bidding procedure for sale of government timber. Lumber and plywood manufacturers are constantly facing additional economic problems. Imports of Canadian lumber, log and chip exports to Japan, flood damage to roads, salvage of windthrown and beetle killed timber, competition from substitute materials, freight rates and car shortages, and a sharp cost-price squeeze are all important factors influencing the economic health of individual companies, their employees and communities.

Economic conditions and other circumstances have tended to place forest areas in the government's Depressed Area classification. Alternative sources of employment are often lacking because of the location and concentration of timber resources in certain states and regions. In many areas, where federal lands are the primary source of timber, the economy is largely dependent on that timber, and other employment opportunities are either limited or nonexistent.

The present depressed market for forest products, coming on the heels of the sharpest (and shortest lived) booms, dramatizes some of the inherent instability of the industry. Federal timber sales practices which fail to allow for these changes actually accentuate the instability.

#### *Overbidding*

Over the years overbidding—bidding above the appraised price—has been the cause of much criticism of government timber appraisals and sale methods. Critics say that high overbidding indicates the timber was appraised below fair market value and the appraisal system is defective. On sales with little or no overbidding, critics say that competition was restrained, therefore the government did not receive the full fair market value. Some critics, who look at bidding statistics without an understanding of sale conditions, advance both arguments at the same time. The raw overbid statistics show the ratio of the high bid to the appraised price. These data are widely publicized and provide an easy way for one not familiar with the business to measure timber sale results. The problem of using these statistics lies in the interpretation of the meaning and reasons behind the overbids within a market area and among different market areas. Bidding patterns cannot be understood without a thorough knowledge of the timber sold and available as well as the bidder's operations and needs.

As discussed earlier, federal timber is appraised and offered for sale at not less than the appraised price. This appraised price is calculated for the "operator of average efficiency", and includes a "normal" margin for profit. Therefore, the theoretical "average operator" can bid above the appraised price up to the full profit allowance, when the competitive situation demands it, and still "break even". The theoretical "above average" operator, one who is more efficient or has a more specialized or diversified operation or market than the average, has a greater margin available for bidding purposes.

In areas where the demand exceeds the supply of timber available, an operator may often be under compulsion to buy in order to continue operations. As a result he will bid up an individual sale to a price that exceeds the possible return from the sale, but which provides the needed timber to continue operations. In this way he avoids a greater loss that would be caused by a curtailment or complete shut down of the operation. Another timber tract at a lower cost may be used to average out the stumpage costs.

#### *Reasons for overbidding*

There are many reasons for high overbidding in highly competitive areas other than the timber value. More often than not, valid conclusions as to the accuracy of the appraised price cannot be drawn from bidding data alone. Overbidding is only one of the gauges of the supply-demand situation in the local area for the individual sale offering.

The volume and length of sale, the sale requirements, including road construction, possible operating seasons, time of sale offering, time of offering in relation to other sale offerings, and the specific details of the sale such as species, quality, defect and size of included timber are all factors that influence the possible demand for any particular timber sale.

#### *Advertised price*

The demand is, of course, related to the advertised price as well as the supply. Some offerings receive no bids at advertised rates and are not sold until readvertised at lower rates. In other instances, all but one bidder may be eliminated because of the advertised rates, below which no one may bid.

While the advertised rates are the lowest prices for purchase of a timber offering, they also are the appraised rates which are acceptable to the government under the law. The overbid is a bonus that the successful bidder gives to the government to get the timber for more than the appraised price. Its significance is that it serves to separate the timber buyer from those who do not buy. It cannot be considered as indicative of the value of the timber to the industry as a whole.

Where the supply is largely controlled by the seller, the setting of the advertised price requires great care. Some considerations relative to this concentration of power are reviewed in the following section of this report.

#### IV. FEDERAL DOMINANCE OF TIMBER SUPPLY

The Congress, the Executive Branch and the courts have given much attention to the prevention of monopoly action by private individuals. While the problem is somewhat different, the government's control over timber supplies in much of the nation also has the potential for harmful abuse of the dependent industry.

##### *Potential abuse of monopoly power*

The Attorney General's National Committee to Study the Antitrust Laws, in its report of March 31, 1955, pointed out that the essence of monopoly power resides in power over prices and terms with freedom to pursue the advantage. While the monopoly power discussed here is in federal rather than private hands, the government, as the nation's largest proprietor of timber, essentially meets those criteria. The Committee wrote:

"The essence of full monopoly power resides in being the sole source of a product, so that the buyer must meet the seller's terms or go without. The essence of competition is to free the buyer from this power by access to alternative sources of the product. The same considerations apply where the problem is a buyer's monopoly. The basic economic aspect of monopoly is the seller's power over the terms on which he trades. All the factors and elements which constitute this idea are summed up by the convenient short-hand reference to monopoly power as power over price or power to exclude competitors. Monopoly power in this sense implies the monopoly seller's relative freedom from pressure to reduce costs, to develop new products, or otherwise to innovate, and to diffuse the benefits among customers. The existence of monopoly power, lodged in private hands which are free to pursue their own advantage, is generally condemned by economists, aside from the question whether such power is used "reasonably" or "progressively". It is an unsafe power to lodge in private hands, making the monopolist a judge in his own case."

Unlike the forest products manufacturer, in selling his products, the federal government has complete power over the terms and prices of the timber it sells. This power is delegated through the Secretaries of Agriculture and the Interior to the Forest Service and the Bureau of Land Management. There is concern that the General Accounting Office, the Bureau of the Budget, the Congress, or others are inadvertently forcing these agencies to extract a "scarcity premium" where there is no alternate source of timber supply. The federal monopoly of timber is precisely the same in economic effect as any other monopoly. Because these agencies are engaging in proprietary activities that govern the livelihoods of residents of vast areas, their timber selling practices should studiously avoid abusing the monopoly position and be governed by principles of fairness.

It should be recognized that the federal government has a responsibility in the areas of monopoly power not to force the dependent industry to pay more than a fair price for its timber to the direct detriment of those dependent on national forest timber supplies for a livelihood. Neither should the agencies be encouraged to seek a scarcity premium.

Buying under circumstances where the agencies are urged to exact the highest possible price for timber makes for unprofitable operations by manufacturers, for adverse effects on employees and dependent communities, and precludes retention of earnings or the "seed money" for future jobs, research expansion and growth. It serves to destroy the economic stability of timber-based communities.

##### *Government is dominant timber seller*

The dominant selling position of the Forest Service was acknowledged by that agency in both its 1959 and 1963 testimony before the House Appropriations Committee:

"The Forest Service is by far the largest single supplier of raw material for the nation's forest products industry. Many mills, both large and small, are primarily or wholly dependent on continuing or increasing purchases of national forest timber. Alternate sources for purchase of timber for major segments of the lumber and plywood industry in the Pacific Northwest have now been exhausted. This almost complete dependence on purchase of national forest timber for continued operations makes the conduct of the national forest timber sales program more significant than ever. . . ."

"Many mills must purchase timber to keep operating. The national forests are the one place where they can buy it. The job of selling it must be done by the Forest Service. This will keep mills going, provide jobs, and stimulate the general economy." (Interior Appropriations Hearings, Fiscal Year 1964, House, page 1343.)

The Bureau of Land Management also acknowledged its position of dominance in some areas in both House and Senate Appropriations hearings. It testified:

"Rapidly dwindling supplies of available timber from other than Federal sources is focusing attention on the 157,700,000 acres of public domain forest lands in the Western States and Alaska, and the more than 2 million acres of O & C lands in western Oregon, which are under the exclusive jurisdiction of the Bureau of Land Management. . . ."

"Demands for timber from these lands are increasing proportionately. BLM forest lands are managed for sustained-yield forest production to provide a permanent source of timber supply, protect watersheds, regulate streamflow, promote the stability of local communities and the timber industry, and for recreational and other multiple resource purposes." (Interior Appropriations Hearings, Fiscal Year 1962, House, page 60; Senate, page 47.)

"BLM forest activities in western Oregon are of major national significance. While the BLM administers 8.5 percent of the total commercial forest land in the Douglas-fir region (2,176,538 acres), in fiscal year 1963 it offered 21.8 percent of the total lumber production from all ownerships in that area (1.7 billion board feet). The volume of timber harvested from BLM lands in western Oregon provides about 63,000 man-years of employment every year. Contribution to the gross national product is estimated to approximate \$750 million." (House Interior Appropriations Hearings, fiscal year 1965, page 222.)

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"There is a growing reliance on the part of the timber industry and local communities for timber sales from the public lands. This dependency requires the regular and predictable offering of timber volumes annually to provide industry and local economies reasonable stability. It therefore is incumbent upon the Bureau to determine the full allowable cut and to make it available to the installed capacity of industry." (Senate Interior Appropriations Hearings, fiscal year 1965 page 70.)

The above are statements by top government forestry officials from both the Forest Service and the Bureau of Land Management.

#### *Forest Service exercises monopoly power*

The National Forest lands alone hold 46 percent of the nation's sawtimber. Another 10 percent is owned by other public agencies. In the Pacific Coast and Rocky Mountain areas about three-fourths of the timber is in government ownership. The government timber selling agencies, therefore, exercise a power over the timber economy of these areas that is far greater than would likely be permitted to a private entity without restraints under U.S. antitrust laws.

All federal timber is sold under relatively short-term arrangements. The Forest Service and the Bureau of Land Management, in the areas where they dominate timber supply, will rarely have more than one or two years of the allowable cut under contract at any time, despite the fact that they sell one-third of the total softwood timber harvested in the United States each year. The trend in both agencies has been to make smaller volume sales of shorter duration so that even the smaller dependent operations must purchase a number of sales each year or operate intermittently or close down. Some integrated forest products plants may harvest from numerous federal timber sales a year, as shown in Appendix IV.

The amount of private timber available on the open market, particularly in the West, is significant. This has resulted as private timber owners with manufacturing facilities have intensified forest management on their own tree farms in order to supply as much as possible of their own raw material needs. Of the 27 percent of the total forest land in the 12-state Western Pine Region that is privately owned, most is either under contract to a manufacturer or in manufacturing

ownerships under long-term forest management. This means that many of the mills in the region where the federal government controls the timber supply are on an unstable and desperate hand-to-mouth basis for raw materials. There are a few exceptions where the Forest Service has made long-term sales—up to 50 years—in order to establish a pulp mill in an undeveloped area where there is no private timber on which a manufacturer could base an investment in conversion facilities.

#### *Supply fully controlled*

Another feature of the government monopoly position is its unilateral control of the supply of public timber reaching the market. Since World War II, the Congress, the Forest Service, the Bureau of Land Management and the timber industry have all recognized the need to sell more public timber—up to the full amount indicated in the sustained yield management program. Timber appraisals and selling practices directly influence the ability of the agencies and the industry to move the volume of timber that should be harvested to utilize the resource properly under good forestry.

Failure to offer the allowable cut, on many national forests, results in a loss forever of the growth potential in the neglected area, and a corresponding loss in jobs, county receipts, and support of dependent communities. Timber sale policy should have as one of its objectives the regular harvest of the full allowable cut and full realization of the timber growth potential. The alternative, when markets are available, is loss of growth, reduction in essential commodities, lessened job opportunities, products, loss of wealth and consequent decline in community stability.

Acting for the sovereign, and as resource managers, the federal forest agencies use their power unilaterally to control the size of offerings, length of sales, bidding procedures, time of offering, mode of measurement and other sale characteristics that have a vital effect on the sale value and bid rates. The seller's dominant power over these practices is in sharp contrast with the position of the many small dependent buyers in the market for federal timber.

#### V. APPRAISED VALUE

The government's method of timber appraisal and the form of the government's timber-sale contracts are of considerable importance, where a monopoly share of the timber supply is controlled by the government.

#### *Unique Federal timber sale contracts*

Another highly uncommon characteristic of the federal timber selling business is the contract itself. Although called a "sale" the contract has become more and more a "service" contract to be performed by the operator. He must often design, locate, build and maintain elaborate and expensive roads for the government. The road costs often amount to a major share of the consideration. Road costs often exceed the stumpage return to the government. The operator must provide protection against fire. He has to build fences and cattle guards. He must dispose of right-of-way debris in increasingly costly ways. On all sales he can log only by methods approved by the agency. He must take extensive steps to minimize soil erosion. He is responsible for surveying the federal property boundaries and guaranteeing the validity of title to the federal timber he buys. Each of these "service" requirements represent additional costs and risks to the operator.

Moreover, innumerable sale contract provisions have left many decisions unilaterally to the agency, including even reservation of the right, in contract rate redeterminations, to "change the rules." The Forest Service Handbook concedes as much when it states:

"This is an unusual type of contractual relationship. It places on the Forest Service a strong moral and practical obligation to exercise its unilateral powers in an equitable manner." (§ 2423.81)

A new form of contract has been developed through cooperation between the Forest Service and the forest industry. Its use is just now beginning. It avoids many of the formerly "unilateral" decisions on operational procedures.

#### *Risks under contract*

The extraordinary risks assumed by timber purchasers under federal timber-sale contracts result in unknown additional costs. These risks result from such assumptions as the following:

The government has title to the timber (the government gives no warranty of title);

The government's allowances for road costs are accurate (there is no representation of accuracy);

The advertised volume of offered timber is accurate (there is no assurance the purchaser will get that amount);

There will be no disastrous natural event, such as the 1962 Columbus Day windstorms that hit the Pacific Northwest (there is no provision for the recovery of development costs or the replacement of government timber lost).

The 1964 Christmas floods on the Pacific Coast dramatized these unique and wholly unpredictable risks by demonstrating that the federal timber-sale purchaser has been the only type of government contractor that must insure against destructive natural catastrophies on road building projects. Congress passed special relief legislation to reduce purchasers' financial losses for roads under construction that were damaged in this flood and the new contract and recent regulations governing national forest timber alleviate this problem for the future.

#### *Unusual appraisal practices*

Perhaps most important of the many features making federal timber sale transactions unusual are the statutory requirements that the timber be offered for sale at not less than an appraised value. (16 U.S.C. 475; 30 U.S.C. 601, 602.) The fixing of minimum selling prices established by appraisals has long had a great impact on sales of federal timber.

The theoretical objective of federal timber appraisals is to attain full residual value as in a free market. For half a century, the Forest Service, in applying the "not less than appraised value" formula, has taken the position that its intent is to determine "existing market value" which it says "is sometimes called 'fair value.'" (Forest Service Handbook, 2423.12)

Historically, "fair market value" has meant the price arrived at by a willing buyer and a willing seller where neither party is acting under compulsion to deal. Apparently this fact has not been recognized by the General Accounting Office and other reviewers of federal timber sale transactions.

#### *Transaction evidence theory*

Before World War II, transaction evidence was not used in the appraisal process. Appraisals were based on detailed analyses of individual operations, with the allowance for profit and risk being based on either the historically used "investment" or the "overturn" appraisal methods which do not consider transaction evidence. Following the War, which started an era of increasing dependence on federal timber, lumber and plywood industries enjoyed a unique and unprecedented seller's lumber and plywood market. Appraised stumpage prices were overbid in some areas to an extent not theretofore experienced.

Some Forest Service officials, some Members of Congress, and particularly the General Accounting Office<sup>1</sup> began to suggest that federal timber was being sold below its value. There was little appreciation of the seller's dominant position, the competitive and speculative features of the market for federal timber, the unique nature of federal timber sale transactions and purchaser obligations, and the compelling community and employment dependency which places purchasers under severe compulsion to buy at any price.

Oblivious to the mandates of the Congress in establishing the purposes of the federal forests and the authorizations for selling timber, these suggestions urged new, rigid policies for appraising, managing and selling federal timber in order to extract maximum stumpage prices. The Forest Service was encouraged to appraise national forest timber by relying increasingly on its own transaction evidence including desperation bids in establishment of the margin for profit and risk.

As the Forest Service adopted these suggestions and based its appraisals on other Forest Service sales, its appraisals became less and less responsive to actual lumber and plywood market conditions. Profitable conversion at Forest Service appraisal prices became admittedly and purposely doubtful without a future market rise. Timber in many areas was sold by the Forest Service on a basis of speculation on future prices justified only by its own transaction evidence under monopoly conditions and by speculative forecasts that the market could only go up.

<sup>1</sup> See GAO Report No. 1-17338, dated Mar. 31, 1953.

*Strange appraisal method*

This evolved into a strange appraisal method which produced stumpage rates as a residual value, while using transaction evidence to set profit ratios. In turn, the abnormal results of this appraisal method compelled that the consequences be minimized by some equally odd practices such as the "quartile system," "escalation deficit credits," and "rolling-quarter base indices," all of which further complicated the business of timber pricing.

In February, 1962, the industry proposed to the Secretary of Agriculture that the following regulation regarding appraisal be promulgated:

"The Forest Service shall take cognizance of the dominant position of the government as the principal seller of timber in large areas of the United States and the lack of a normal market in those areas where there is no alternative source of supply. The economic well-being and future of numerous communities depend on fairly priced raw materials from the national forests. The Forest Service shall avoid taking advantage of its dominant position in the setting of rates for timber.

"Appraised rates for national forest timber shall be residual values for entire sale offerings as determined by subtracting from product values the sums of operating costs and margins for profit and risk. Product values shall be based on current market experience. Costs shall be those of an operator of average efficiency and related to the conditions of the local terrain and timber. The profit margins shall be based on government reports of profit experience in competing building materials industries with due allowances for differences in risk.

This proposal was premised on, and sought recognition of, these basic facts: first, that with one larger seller and many small dependent buyers without alternative sources of timber, there is seldom a normal willing-buyer and willing-seller relationship; and second, that the economic well-being in timber processing communities, including full employment, thriving local trade and the maintenance of an adequate tax base, depend on the continuous availability of timber at prices allowing a fair return to the purchaser.

In response to this proposal, a Timber Appraisal Review Committee was established by the Forest Service at the direction of the Secretary of Agriculture in December 1962. That Committee filed its report, entitled "A General Review of U.S. Forest Service Timber Appraisal Policies and Procedures," on June 1, 1963. The Committee's far reaching report made numerous recommendations amplifying the points herein. Among these recommendations to correct the fundamental difficulties in appraisal practices, it was suggested that the Forest Service should:

Issue a national forest timber sales policy;

Simplify its appraisal procedures;

Calculate the appraised price by the Residual Approach, using selling values, costs and a margin for profit and risk typical of an operator of average efficiency with sufficient profit to maintain economic stability, to perform necessary research and development, and to be attractive to equity capital;

Separate profit from risk, the profit margin to provide economic stability, research and development, and attract equity capital;

Appraise timber as if the main roads are in place and the buyer should be given full credit towards the estimated road costs against the stumpage price as the timber is removed;

Use free log markets where they exist;

Initiate a thorough economic study of profit and risk ratios; and

Refrain from adjusting the risk ratio in anticipation of possible future changes in the price levels of the end product, etc.

Some of these recommendations of the Appraisal Review Committee have been adopted and others are under consideration for adoption.

The fact remains, however, that both Forest Service and Bureau of Land Management appraisal practices serve to make the sale transaction a highly unusual one in that by setting the minimum price, the appraisal has a great effect on determining who can purchase national forest timber.

#### VI. COMPETITION IN FEDERAL TIMBER SALES

Industry favors full opportunity for all qualified operators to compete for government timber. One of the claimed benefits of sealed as compared to oral bidding is that such sales maximize the opportunity for all potential purchasers to participate thus fostering competition. This premise is false. Reliance on it could be disruptive of the orderly and constructive operation of truly competitive forces.

### *Many factors affect number of bidders*

Three recent reviews of bidding procedures (two by the General Accounting Office and one by Dr. Walter Mead) are all deficient because they failed to recognize all of the factors affecting bidding practices. Comments on these reports are given in the Appendix.

The October, 1965 GAO study requested by Senator Morse indicates that all sale size categories taken together show an average of 2.9 bidders for each oral auction sale and 3.1 bidders for sealed bid sales. The report further indicates that the average number of bidders for sales over 5 million board feet did not vary significantly for sealed bid sales and oral auction sales. For sales of less than 5 million board feet, there was a significant difference; sealed bid sales attracted an average of 3.3 bidders, while oral auction sales had an average of 2.8 bidders.

Qualification for oral auction sales is no different than it is for sealed bid sales. Sealed bid sales either inherently attracted more bidders or, in aggregate, happened to be sufficiently different in character to make them (for any one of a myriad of reasons) more desirable sales. The GAO report makes no attempt, however, to develop any facts which would show whether sealed bid sales were more attractive because of physical characteristics of the sale itself or because of the bidding method by which the sale was offered.

The Mead Report indicates that one-bidder sales (of which the GAO says there were more in the oral auction than sealed bid category) were "characteristically small sales, averaging only 2,852 thousand board feet per sale. This information suggests that some of these sales (i.e., single bid sales) are very small and consequently are not attractive to many bidders. "It seems likely therefore, that sealed bid sales for volumes less than 5 million board feet have simply been more often desirable type sales than oral auction sales of comparable size. Sales may be desirable because of the timber species, type or quality, proximity to existing transportation facilities, lack of need for large financial capabilities or skills required to build expensive access roads, ease of logging, the length of the logging season or the fact that a sale is a "set-aside" on which only qualified small businesses can bid. Thus, the method of bidding designated is not necessarily the significant fact explaining why sealed bid sales attracted somewhat more bidders.

### *A closer look*

It is likely that closer investigation would also have shown the same factors to be the reason why 31 percent of oral auction sales of less than 5 million board feet received only one bid compared with 21 percent of sealed bid sales under 5 million board feet which received only one bid. A further explanation for sales occurring at the appraised price may lie in the fact that appraisals are too high to permit all but the potential bidder located closest to the sale to operate it with any expectation of a reasonable profit, or that a high appraisal price coupled with adequate timber supplies held by prospective bidders served to discourage any possible interest in the offering. An appraisal may be too high because of underestimates of logging, road building and processing costs or because of overestimates of volumes, grades, potential end products or the selling price of the end product.

Furthermore, it is often highly relevant to know whether at the time a given sale is made any of the potential purchasers in the area are occupied in harvesting a similar sale. Thus, the time lapsed since a preceding comparable sale can be of considerable significance. Furthermore, the whole concept of sustained yield, after all, predicates a steady flow of timber annually to be processed by efficient milling facilities dependent upon the sustained source. In short, the sustained yield concept assumes sales at or a little above appraised value.

It can only be concluded that the evidence to date is simply insufficient for proving that sealed bid sales per se encourage greater bidder participation from those situated within reasonable competitive range. Indications are, in fact, that when all the possible variables are taken into account that other factors than the method of sale control how many bidders participate.

### *Distance affects bidding*

There is, however, undoubtedly one situation in which sealed bid sales can attract one or more additional buyers, where oral auction sales do not present the attraction. A timber purchaser can from time to time bid on timber at places outside the usual area of his operations. The logical purchasers located nearer to the sale area cannot afford in individually making up their bids to increase their normally determined prices on the chance that they may encounter outside

competition on this particular sale. The outsider, having studied the past bidding practices of the likely competition and having become familiar with their timber supply sources, current log inventories and future needs, can often snatch away a sale unexpectedly. At oral auction, his only advantage—surprise—is missing. Thus, sealed bid sales in the area next door may be favored by an occasional timber purchaser who at the same time would prefer to have oral auction sales in his own back yard.

Figures given in the October, 1965 GAO study made for Senator Morse indicate that bidders located more than 40 miles from the sale area successfully bid in 13.8 percent of all sealed bid sales, whereas on oral auction sales only 6.8 percent of the successful bidders have their operations more than 40 miles away. When a distant bidder goes outside his usual area of operation, the tendency is to encourage retaliatory use of the same practice by those victimized. In the long run then, timber purchasers in both areas end up paying a premium artificially extracted by combining a bidding method with timber shortage. The result is a weakening of all purchasers' abilities to fulfill the obligations of the sale and to compete in the sale of the manufactured products, both against manufacturers of the same products from other areas and with manufacturers of substitute products, all to the detriment of their employees, their home communities, and the consuming public.

Of course, if the overriding objective is to obtain the highest price possible on every timber sale, then sealed bidding in areas adjacent to timber shortage areas will probably encourage distant bidders to come in. Oral auction sales would be as likely to bring a higher price once the distant bidder evinced interest, but sealed bidding would give the distant bidder more incentive for evincing interest in an area where he is at a disadvantage because of the distance in log haul.

#### *Preclusion minimized by sealed bidding?*

It is also asserted in favor of sealed bid sales that in oral auction sales preclusive bidding occurs with regularity. Preclusive bidding occurs when a firm bids upon a sale at oral auction in order to prevent another firm, often located outside the local area, from taking the sale. The practice is implied to be all the more reprehensible when, in a series of sales, one or perhaps several firms in turn bid up the sale so that the "outsider" is precluded from taking the sale. Criticism of oral auction sales as tending to encourage preclusive bidding is inconsistent with the claim that such sales do not assure recovery of the highest possible price for the government. The effect of allegedly preclusive sales would be to give a return to the seller higher than could otherwise be anticipated on the basis solely of the fair market value of the timber being sold.

But more to the point, the condemnation of oral auction sales as sometimes tending to be preclusive overlooks the fact that the sale of any commodity in quantities less than the demand for the commodity is necessarily and unavoidably preclusive. Somebody who wants the commodity in such a situation doesn't get it. As has already been pointed out, many of the areas in which government timber sales are made are highly dependent upon said sales to supply existing mill capacity. Where existing capacity exceeds the annual allowable cut, some of that capacity must necessarily remain idle. It is the function of competition, furthering public interest in the lowest possible prices for the end product, to determine on the basis of efficiency which particular units are idled.

In such an economic life and death situation, it is imperative that the participants be as fully informed as possible. One cannot be fully informed concerning the competition in a sealed bid situation. A participant can be damaged by underbidding or by bidding considerably in excess of what the next highest bidder offers. The unavoidable preclusive effects of sales made under scarcity conditions should not operate at random as they would in the case of sealed bidding, but should be determined in an atmosphere where each purchaser can make the necessary hard decisions with a knowledge of all pertinent factors. Preclusive effects are not eliminated by the bidding method employed; there is going to be preclusion in any event as a necessary concomitant of competition.

#### *Lack of substantial overbidding*

Where there are few potential buyers, there may not be substantial overbidding. So long as each operator can meet his own foreseeable needs, he does not compete strenuously with his neighbor for the available supply, knowing that there is enough for both and knowing that any other policy would simply invite retaliation.

Such bidding practices are neither illegal nor undesirable. The situation represents a highly desirable economic balance of supply and demand. As has already been mentioned, the sustained yield concept contemplates working circles in which the timber supply is approximately in balance with the existing processing capacity. When these circumstances exist, the seller's assurance of a fair price lies in not selling the timber for less than its appraised value. Competition may not be cutthroat and there may be no excitement as each successive sale comes on the market, but the presence of the producing facilities nonetheless is the competitive yardstick by which the timber is appraised. Neither bidding method in such a balanced state of affairs is apt to have significantly different results; timber would be bought by either method at or a little above appraised prices.

Nor would the public interest be served by attempting to encourage installation of additional processing capacity in the area; this would only upset the desirable balance between supply and demand. In fact, this very balance is artificially achieved by the one cooperative sustained yield unit established under the Sustained Yield Forest Management Act in the vicinity of Shelton, Washington.

#### *Prevention of excessive bidding*

One of the anomalies of recent GAO reports is that at the same time oral auction bid procedures are criticized as not generating a high enough price for government timber, oral auction procedures are also criticized as sometimes generating excessive prices. Just as sealed bidding is advanced as a cure for allegedly too low prices, so is it also espoused as being the remedy for occasional "excessive" prices. The February, 1965 GAO report, urging higher prices for the government, gave attention to preventing the possibility of the eventual elimination of some potential purchasers as a consequence of continuing preclusive bidding by their competitors. The report made no distinction between predatory preclusion and economic preclusion.

In urging sealed bidding as a preventive for the thinly substantiated situation with which the report was principally concerned, it was said,

"Under sealed bidding procedures, the identity of all operators who may be interested in a particular sale and the nature of the competition that will develop on the offering would not be known with certainty by each bidder. Thus, it seems that there would be a greater incentive for bidders to exercise cool business judgment in submitting a bid."

The truth of the matter is that sealed bidding procedure does not at all permit the exercise of "cool business judgment" in any circumstances. Its distinguishing characteristic, in fact, is that it is a gamble, a stab in the dark, whereas the oral auction method removes the artificially imposed restriction concerning the nature and extent of competition. "Cool business judgment" can't be exercised at all without knowledge of all pertinent facts, among which are the nature and extent of the competition and possible alternative timber supply sources.

The October, 1965 GAO report demonstrates that sealed bidding does not reduce excessive bids at all. Out of 423 sealed bid sales, 32 percent exceeded the appraised price by 100 percent; 15 percent exceeded the appraised price by more than 200 percent. Of 518 oral auction sales which were included in the study, 27 percent exceeded the appraised price by as much as 100 percent and 14 percent exceeded the appraised price by more than 200 percent. Factors independent of the bidding method, then, present the controlling reasons for such purchaser behavior.

#### VII. COMMUNITY STABILITY

It is obvious from the predominant federal ownership of the western timber supply that the existence of hundreds of western communities depends primarily on a steady supply of raw material from federal forests. As noted on pages 3-5 of this statement, the need for sound management of federal timber to contribute to the stability of these communities has been recognized repeatedly in several acts dating from 1897 to 1944.

More recently, the Secretary of Agriculture on January 25, 1963 promulgated a regulation calling for harvest of national forest timber according to management plans that shall:

"(3) Provide so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment." (36 CFR 221.3)

Twenty-five percent of the stumpage value of national forest timber is paid to the states for public roads and schools in the national forest counties. (16 U.S.C.

500). Erratic national forest timber sale offerings cause wide fluctuations in the amount of funds available to local government for public services. This adds to the instability caused by the inability of the forest products industry to realistically plan its activities.

The above-mentioned acts and regulations are only a small part of the legislative history showing Congressional and Executive cognizance of the role federal timber management has in the development and stability of forest dependent communities.

Congress has appropriated hundreds of millions of dollars over a long period of years to protect the federal forests against fire and other enemies. Since World War II it has authorized and spent several billion dollars making these forests accessible with roads so that forest management could be practiced to provide a continuous and permanent timber harvest.

#### *Federal forest role chances*

Before the end of World War II federal timber was generally an unimportant source of raw material for local forest industries which supported communities in and around western forests. The major management effort on federal forests was protection from fire. During World Wars I and II and the post World War I home building boom, private forest lands supplied the bulk of the raw material needs for the forest industry of the West. Responding to the government's call for wood for war, the more accessible private forests were heavily overcut in many parts of the West during World War II.

During the post World War II building boom, an unprecedented period of construction activity in the United States, it was logical that federal forests would be called upon to meet a significantly increased share of the raw material needs of the forest industry. This they began to do in fulfillment of the purpose for which they were established by the various acts of Congress which created these huge reservations of growing timber.

By 1964 the western federal forests were providing an annual timber harvest in excess of ten billion board feet. With a hundred thousand board feet of logs required to provide a year-long job in the forest industry, this means that more than one hundred thousand people are working directly on federal timber. In the hundreds of communities throughout the west where federal timber is the principal source of raw material, an equal number of people who serve the forest industry are directly dependent on trees from federal forests for their jobs.

#### *Dependent communities*

Community dependence on federal forest lands is predominant in the west but is also a factor in parts of the Lake States, south and east. There are communities whose existence depends on one or more mills that must get their entire log supply from federal forest lands. More common are the communities in which many different plants form the basis for support. There is an increasing degree of timber utilization that allows each log to be manufactured into its most valuable product. Specialization is more common among the smaller plants while the larger plants are highly integrated. This allows the log most valuable for studs to go into a stud mill, peeler logs to go to veneer plants and pulp logs to paper plants. As transportation improves so does specialization.

Specialization is an important factor in selling wood products in the highly competitive markets where substitute materials are aggressively developed and merchandised. The industry depends on increasing capital investments in manufacturing facilities, research, and product promotion. It also requires a vast number of skilled workers in the woods and mills.

#### *Causing unnecessary instability*

The investors, manufacturers and skilled workers necessary to harvest, process and merchandise products from federal timber will certainly not be encouraged by federal timber selling methods that cause unnecessary instability. Wood markets are historically unstable and unnecessary instability in raw material supply would be a poor public policy. Even though there are other opportunities for similar employment and investment, a short term outlook for either makes unstable communities.

In the community dependent on the single plant, oral auction sales give the industry and the community a chance to maintain permanent operations. Without knowledge of competition that can take away raw material supplies, stability is a fiction.

### *The Eugene situation*

A typical dependent community is Eugene, Oregon and the surrounding area, which includes the adjacent town of Springfield. It is the largest single forest products community in America with 24 sawmills, 11 plywood plants, 6 veneer plants, one pulp and paper complex, 3 pole and piling operations, 5 shingle mills, and a number of other miscellaneous wood-using industries.

The county in which this community is situated has the second largest stand of timber in any county in the United States—67 billion board feet in inventory. More than two-thirds is federally owned. Directly employed are 15,436 people in the community's forest industry with an annual payroll of \$96,331,795. Competition for government timber is so keen that there may be 30 bidders on a federal timber offering. The total population of the community is about 100,000 people and the basic economy is the forest industry.

The employment and economic stability of nearly everyone in the community is affected by government timber sale policies. They have more to do than any other single thing with employment opportunity, home ownership and life itself in this community. The bidding method is an important factor. Protection of the investments, jobs and product markets is based to a large extent on oral auction bidding. By knowing the kind of competition it has to meet, a company which can successfully buy and manufacture government timber will be encouraged to risk reinvesting a significant part of its earnings to stay competitive.

### *Employment means stability*

Community stability starts with continuous employment. Steady employment fosters home ownership, investments in service industries and businesses which in turn support schools and other public functions and makes a community survive and endure. The renewable forest, whether federal or owned by citizens, is the principal source of employment throughout many parts of the west. Growing as it is, most areas in the west need the increased opportunities for employment that the forests can provide.

Timber sale policies which give investors in the forest industry some assurance of a steady source of raw material at prices forest products consumers will allow are the best long-term job insurance in such communities. Without a profitable industry which plows a significant portion of its earnings into new harvesting, manufacturing and utilization processes, this segment of the economy cannot stay competitive in our ever-changing world.

A successful industry can reinvest its earnings to get more from its raw material and diversify its products to build its competitive position. Because of the high degree of federal control over the economy, its timber sale policies must not be changed to stifle investment, lessen chances for employment, preclude a healthy industry, and jeopardize community stability.

In this respect it is important to note that the Canadian government, which controls approximately 60 percent of that country's timber, recognizes the benefits from established industry in terms of employment and community stability. The Canadian lumber producer, enjoying about 15 percent of our domestic softwood market, is a factor in establishing domestic lumber selling prices. The Canadian government's policy was well stated by Chief Justice Gordon Sloan:

"We live by our exports. We must sell on world markets in order to survive. Our forest policies must in consequence be geared to the stark necessity of assisting our industries in every reasonable way to remain competitive in these markets." Forest Resources of British Columbia, 1956.

## VIII. SUMMARY

Sales of government timber are unusual transactions with many complexities and implications for the government, communities and purchasers. Generally, the interests of all are best served by the use of oral auction sale procedures as opposed to sealed bidding.

Federal ownership and management of commercial timber has been authorized by law and regulation to meet the needs of the citizens—needs that can be met continuously from this renewable resource. A healthy and vigorous industry is essential for the sustained-yield management of the government's timber.

While individual firms must compete with many producers to sell their products, the government has little or no competition in selling timber to much of the industry. Individual firms have practically no influence on product prices, but the government does control the price of timber by establishing advertised rates below which no one may bid.

Many factors affect the ability and decision of a firm to overbid for government timber. The size and other characteristics of the offering are considerations. However, a common reason for overbidding is that the government timber is essential to life of the firm—there is no other source of supply. Even if operation at overbid rates will only meet fixed costs, it permits continuance with hope for a better price on the next offering.

Government agencies have acknowledged their dominant positions in the timber market. They control many elements of the market. Care must be exercised to avoid abuse of the government's customers through the use of monopoly power.

Contract conditions and advertised rates for timber are among the elements controlled by the government. The purchaser assumes many risks with government timber. Generally, these risks are not fully recognized in the government's appraisals which unnecessarily rely to some extent on transactions evidence from the abnormal market for government timber.

Competition for government timber offerings is affected by the size of the offering, the advertised price, physical characteristics of the timber and the sale area, the amount of road construction needed, the number of plants within economical haul distance, the degree of timber shortage in the area, etc. No statistically-sound data have been developed to demonstrate a difference in the degree of competition resulting from sealed bids as opposed to oral auctions. Because every sale is different, such a comparison is not possible.

An unnecessary bidding requirement in the sale of federal timber should not be used when it would deprive dependent operators of the opportunity to protect their capital investments, their skilled employees and their dependent communities. The opportunity to see the competition for timber eliminates some undesirable uncertainty for a portion of the industry that continues to be plagued by a high degree of insecurity in respect to raw material supply.

On oral auction sales where there is no alternative source of supply purchasers will still bid away all chance for a profit and will still knowingly accept substantial losses for various business, competitive and social reasons. The government, as seller, will at least not be using an additional method to take unreasonable advantage of its monopoly position to extract a scarcity premium. The purchaser need only bid that amount beyond the appraised price necessary to be a successful bidder.

Many purchasers with substantial manufacturing operations dependent on federal timber are unable to accumulate more than a 6 to 12 months' supply of timber under contract. The reasons may be attributable entirely to the seller or beyond the control of the purchaser. The compulsion to buy to survive can be considerable. The purchaser may be forced into a buy-or-die bidding situation a number of times each year.

General use of sealed bids for the sole purpose of avoiding preclusive bidding is unwise and, in the long term, ineffective. A fact of economic life is that there always will be one firm in the best position to operate any given sale. The government is assured of getting fair price because it sets appraised rates below which no one may bid.

Sealed bidding should not be used as a preventative for illegal collusion. Any such use is entirely speculative and will do much more harm than good. Law enforcement is the proper course of action if there are any such cases.

The public deserves the price benefits of having the timber go through open oral auction to the best competitor among the potential buyers. (Small business is assured of a share of the timber under a special government program.) Sealed bidding does not permit the bidders to operate in the fully-informed manner essential to the efficient operation of the competitive system.

There may be little overbidding in some areas where there are only a few well-informed buyers and a balanced supply-demand situation, if there is oral-auction. Such situations permit the development of stable, well-equipped operations which can properly process the timber, do trade promotion work and develop new products. The government gets fair value for its timber, purchasers have a reasonable opportunity for profit and communities can look forward to a healthy economy under such circumstances.

Sealed bidding does not encourage the use of "cool business judgment" as claimed by some. Sealed bidders do not have the basis for making sound judgments. They do not know how high they must go to get essential timber without unduly reducing their profit opportunity.

In recent years, government timber has become the key to economic health of an increasing number of communities. While nature, with the help of foresters, will renew continually the raw-material base of the economy of such communities, there must be a renewal of capital in the industry and stability of employment. Opportunities for stable employment as well as plant renewal and development depend on the orderly play of economic forces.

Sealed bidding tends to be disruptive in that the timber supply essential to a firm and a community may be lost by chance. Oral auction permits the dependent timber operator to protect his investment and his employees' jobs to the extent of his ability.

#### [APPENDIX I]

### COMMENTS ON THE FEBRUARY 1965 REPORT OF THE COMPTROLLER GENERAL QUESTIONABLE ASPECTS OF ORAL AUCTION BIDDING FOR FEDERAL TIMBER SOLD AT CERTAIN LOCATIONS IN THE PACIFIC NORTHWEST

This attempt to find deficiencies in the administration of federal timber-sale programs does not recognize the primary economic objectives of federal timber management, which are quoted in the body of the preceding industry statement. The Comptroller General's report gives brief notice of the intent "to best meet the needs of the nation." The interest was centered on the possibility that the government would force more overbidding for timber by the use of sealed bidding procedures.

Because there has been overbidding in some areas, the reviewers feel that the government generally should receive more for timber than rates determined to be fair by government appraisers. The absence of overbidding is considered to be evidence of lack of competition. The possibility that advertised rates are too high gets no recognition. No bids are accepted for less than the advertised amount.

The report is based on a superficial review of the sales experience of the Bureau of Land Management and the Forest Service in specific localities. The auditors acknowledge that there is a short supply of timber, but their proposals and arguments ignore this basic fact. This failure is particularly evident on page 10 where bidding responses on the national forest are reviewed.

#### GAO OBJECTIVES

According to the reviewers, the objective of the government timber program is "to make Federal timber available to all qualified bidders at competitive prices." When there is only enough timber for six operators, the government cannot make additional timber available for two more buyers at any price, no matter how the bidding is done.

The government does not attempt to sell timber at "competitive prices." There is no competition on the selling side of the market. The timber is sold at not less than appraised rates, which may be considerably more than would be bid under some circumstances. Full opportunity is given for operators to bid more than the advertised rates.

There is acknowledgement on page 16 that local operators usually are in the best position to economically harvest and process the timber. On page 19, they find that other operators recognize this and may not attempt to take timber under oral auction. The auditors then recommend the use of sealed bids to cause uncertainty and force dependent operators to pay more than the appraised fair rates.

Emphasizing the GAO's set of values is the statement on page 17:

"We believe that the concern of the timber-selling agencies in the problems of community stability in timber-processing areas should not lessen the responsibility of these agencies to obtain reasonable assurance of competitive prices for Federal timber."

This continued drive for higher payments for government timber discounts the complex appraisal procedures used by the timber-selling agencies. It overlooks the fact that any overbidding is a bonus received by the government because of the limited supply of timber. Apparently the auditors could find no specific cause for complaint with the timber appraisals. Their concern is that no operator should purchase government timber at rates the government considers to be fair, if there is an opportunity to force the payment of higher rates.

## CARELESS REVIEWERS

There was evident carelessness in some of the analysis. One of the observations is an endorsement for the oral auction procedure. Other data were not fully investigated.

A comparison was made on pages 5 and 6 between the calendar year 1962 bidding experience for all 19 national forests in Region 6 with the experience for one national forest in the July 1960 to November 1962 period. The bidding experience would be different in these two periods because of the better lumber market in 1962. The average percent overbid for the Region in 1960 was about half of the figure for 1962. As with any average, it included a number of forests with less than the average overbid percent.

Incomplete analysis is indicated by the recommendation for sealed bids following the finding reported on page 16. The accountants state:

"The officials of the Forest Service and the Department of the Interior also expressed to us their concern for maintaining economic stability in the community and stated that oral auction bidding facilitates such stability by permitting timber operators to meet competition from outside their communities. The bidding results in the examples discussed in this report did not indicate that community stability was being significantly threatened or that it was a real problem in those areas during the periods covered by our review."

The significant fact here is that all of the examples discussed in the report were of oral auction bidding. Apparently, this procedure is successful in permitting local operators to meet threats to the local timber supply. Under the oral auction procedure, it has been possible to provide community stability.

## INCOMPLETE INVESTIGATION

The heavy dependence of operators in Josephine County, Oregon on public timber was ignored by the auditors and the consequence of that dependency was not understood. Only about 27 percent of the forested lands of the county are in private ownership.

All the nine active lumber and plywood companies operating in the county are heavily dependent on government timber. They are well distributed geographically. The wide distribution of plants causes different operators to be the logical purchasers of the various offerings.

As a matter of self-preservation, some of the firms have specialized in the development of various products, and this has been reflected in the bidding for different units of timber. Such specialization also results in some interplant transfer of logs best suited for special products.

Other characteristics of the buyers of timber in the area administered by the Bureau of Land Management are outlined below. The auditors give no evidence that they were aware of this information which explains much of the bidding experience in the area.

*Bate Lumber Co.*—Closed its sawmill in February 1961 and sold sawmill-type logs to companies specializing in lumber production. Peelable logs were retained for veneer production at the company's plywood plant. The closing of the sawmill reduced the firm's raw-material requirements by 40 million feet annually. Subsequently, the plywood plant was remodeled to specialize in the production of low-grade veneer for sheathing. The firm sells logs of some species, such as pine and hemlock, to other companies equipped to process them.

*Bidder A.*—Caveman Lumber Co. bought four sales within a few miles of its mill on the Galice District during the period studied. This firm has since gone out of business. Apparently, the Company could not continue to operate on timber bought at the appraised price from the BLM.

*Bidder D.*—Smith & Smith, loggers from Cave Junction, bought a unit of 310 M feet by negotiation after no bids were received at the time of the original offering.

*Bidder F.*—Lane Plywood Co., Eugene, bought three offerings when it was temporarily short of veneer. One sale was at the appraised rate, another at about 42 percent over the appraisal and the third at 48 percent above the appraisal. The firm was contracting the manufacturing of the logs into veneer at Rouge River. When the sales were completed, it closed its operations in the area.

*Bidder H.*—Southern Oregon Plywood Co.—Requires high-quality timber for core stock used in hardwood plywood production. The hardwood veneer is imported, and Douglas fir is used for core stock. White speck veneer, produced from defective fir logs, is not suitable for this product. This firm, also, sells the logs it cannot use to other firms.

*Bidder J.*—Spalding Lumber Co. Has the only mill in the Great Pass area specializing in the manufacture of pine lumber. The two sales purchased by this firm at the appraised rates had about 45 percent of their volume in pine. No other plant operator was interested in this type of sale. Operators report that, because of the use of inland appraisal data, the appraised pine values are inflated, and pine logs are sold on the open market at a loss.

*Bidder K.*—K & C Lumber Co. purchased 2,275 M feet of highly defective-timber in an old burn within a few miles of the mill at the appraised price in July 1962. Caveman Lumber Co. is also located near the sale area, but had already purchased four offerings in 1961 and 1962. It apparently was in no position to bid on more timber. Subsequently, the K & C Lumber Co. plant site was acquired by the State for freeway purposes. The firm went out of business, further reducing competition in the area.

*Bidder L.*—Fir Plywood Co., White City, bought one offering in September, 1962 at \$866 over the advertised price. The stand of timber was highly defective, and at that time this company was in the best position to use low-grade "white speck" logs. The timber has been cut, and on a short-log basis there was an under-run of 24 percent compared to the advertised volume estimate.

The February 1965 GAO report covers an incomplete investigation, having questionable objectives and faulty conclusions. The conclusions are frankly labeled as "opinion" by the authors. An opposite opinion is held by better-informed government and industry people. The narrowly-oriented auditors should have completely examined this issue before recommending an increase in the use of sealed-bidding procedures.

#### [APPENDIX II]

#### COMMENTS ON THE OCTOBER 1965 REPORT OF THE COMPTROLLER GENERAL

REPORT ON ANALYSIS OF CERTAIN ASPECTS OF BIDDING BY BOTH SEALED BIDS AND ORAL AUCTION BIDS ON NATIONAL FOREST TIMBER IN THE NORTHERN REGION (REGION 1) AND THE CALIFORNIA REGION (REGION 5).

The results of any analysis depend largely on the basic data and the questions asked. In this instance, both of these elements are defective.

The "Introduction" acknowledges that key items of information were not obtained because of cost and time considerations. However, the analysts were apparently unaware of other important factors which make the analysis of the data meaningless.

#### SALES NOT COMPARABLE

More than 40 percent of the sealed-bid offerings in the four California forests in 1962-63 were to salvage timber affected by fire, insects or wind damage or were units set aside for small business. Salvage units accounted for 35 percent of sealed-bid sales. No salvage or set-aside units were offered for oral auction. In recognition of risk and other factors, salvage timber is sold differently than regular sales. Set-aside sales also have special characteristics.

Sealed bidding was not to be used in the California forests where:

A mill was established to use the allowable cut of an undeveloped working circle; A large sale is to be offered in an area of community dependency; or

Records show that nearby dependent-community stability is endangered by competition from distant manufacturing centers which draw their timber from several working circles or from private timber.

Each of these criteria was used one or more times in the selection of the bidding procedure used for the sample sales on the four California forests.

Similarly, the type of bidding method used for different sales in Region 1 is not left to chance. The Forest Service officials choose the method according to the characteristics of each offering.

Thus, different conditions existed for the sales made by the two bidding procedures. No proper analysis can be made between the results of bidding.

#### POOR QUESTIONS

By the following statement the GAO itself indicates the deficiency of the questions it examined:

"We have not attempted to inquire of timber operators whether special circumstances, such as the accessibility of the sale timber or the needs of a timber operator for the sale timber at particular times, influenced the bid response for any of the sales included in our analysis."

Other questions showed little thought, e.g., "whether single-bid oral sales seem to produce sales at appraised rates more often than sealed bids."

Certainly of importance to any analysis of this sort would be questions regarding the cost of the related road construction. Frequently, the road cost exceeds \$100,000 and may require special equipment not readily available to all operators. Some of the timber sale offerings had "road Amortization deficits" which mean a subnormal profit opportunity at the advertised rates.

There was no consideration given to differences in the amount of defective timber and other elements of risk. All such factors affect the amount of over-bidding.

What were the criteria used to select the sample forests? Obviously, the sales programs on these forests had an effect on the bidding results. One of the California forests with greatest bidding competition sold 21 percent less than its goal in 1963. Other forests were also deficient. However, the 1963 sales in California forests were 350 million feet more than in 1962.

In Region 1, the supply-demand relationships are different on the three forests considered in the analysis. In some areas there is not sufficient timber to satisfy the needs of existing mills. This factor of supply gets no recognition in the analysis.

#### UNWARRANTED CONCLUSIONS

While both the data and questions are deficient, there is also reason to wonder at some of the GAO's conclusions. For example, the report states:

"In summary, our analysis showed that the difference between the highest and second highest bids was greater in a significantly larger number of instances for sealed-bid sales than for oral auction sales . . . this greater difference does not, in our opinion, necessarily indicate that these bid amounts were unwarranted overbids."

The data show that four-fifths of the sealed-bid offerings resulted in overbids of more than 10 percent, and more than half of such offerings had overbids of more than 50 percent. By comparison, about half of the oral-bid offerings brought overbids of more than 10 percent, and about two-fifths of such offerings had overbids of more than 50 percent. Since the timber was offered at what the government considers to be a fair rate, any unnecessary overbidding is unwarranted.

Under "General Comment" the GAO lists the following reasons only in support of sealed bids:

- (1) To minimize the opportunity for preclusive bidding or collusion;
- (2) To prevent excessive bidding; and
- (3) To avoid discouraging operators from bidding when interest is shown "by an operator in a strong financial position."

Regarding (1), there are formidable penalties under Federal law for those who act in restraint of trade. Ours is a government of law, and we know of no instance where the courts have found such collusion under oral auction sales. In a recent case in which collusion was alleged, the judge found that it is logical that an operator will not bid on timber that is within the milling area of a competitor when the competitor has a clear economic advantage.

Regarding (2), we should recognize that when an operator bids in excess of the value of the timber under oral auction, he does so in the light of all the facts and at his own volition. Under sealed bidding procedures, he overbids without full knowledge of the need and under the compulsion of uncertainty and the necessity to have timber.

The point of (3) is not clear. The bidding procedure will not change the fact that there always will be differences in financial positions, and those with less funds may be discouraged. As you know, there is a balance maintained in the proportion of sales going to large firms and others under the set-aside program in California. Is the GAO saying that we should further restrict open-market competition as the determinant in resource allocation?

The GAO inaccurately says that their October 8, 1964 report disclosed an instance where interest by an operator in a strong financial position discouraged others from bidding. What the report showed was that a well equipped operator, whose mill was closest to the timber, obtained the sale at rates predetermined to be fair by the government. There was no discussion of "financial position" in the report.

Every timber offering will have one operator in the best position to process the timber. The timber is usually appraised to that operation, because highest

appraised rates result. To use a bidding practice which then forces the nearest operator to pay more than the advertised rates is obviously unfair.

The October 1965 GAO report is an incomplete attempt to analyze inadequate data. This unfortunate effort has contributed only confusion to a complex issue.

[APPENDIX III]

COMMENTS ON THE SEPTEMBER 1965 MEMORANDUM OF DR. WALTER J. MEAD  
MEMORANDUM ON COMPETITIVE BIDDING FOR NATIONAL FOREST TIMBER IN THE  
DOUGLAS-FIR SUBREGION

Professor Mead demonstrates the doctrinaire approach to this issue. After qualifying himself as an expert by reference to his work for the Pacific Northwest Forest & Range Experiment Station, he moves to conclusions not supported by that work. Dr. Carl Newport, a well-qualified forest economist and Dr. Mead's superior at the Station, publicly commented on November 23, 1965:

"Mead has no evidence from his study and his work with us and with our help and our statistician's help . . . for or against sealed bids . . . He does not have any statistical evidence that there is a difference between sealed bid and oral auction."

UNSUPPORTED ASSUMPTION

Dr. Mead asks "how effective is competitive bidding for national forest timber?" Then he places the timber sales into three classes, single-bid, token-bid and "serious bid," with a highly-subjective discussion of the characteristics of the groups. At the end of a footnote he acknowledges that bidders may feel that the timber is not worth more than the appraised price, but in the body of the text, in a sinister and repeated manner, he suggests that lack of overbidding means that "cooperative arrangements exist among bidders."

Mead never considers the possibility that all other bidders are excluded because the timber is overpriced or that intelligent bidders will seek only to take timber offerings located near their mills. The latter know that with a short supply there must be voluntary rationing to avoid destructive and senseless throat cutting.

Finger-pointing in somewhat mystical academic jargon, Dr. Mead implies much wrong doing by timber buyers—dependent operators who are only struggling to survive in a one-sided market. Dr. Newport reports that Dr. Mead attempted to find evidence of collusion in the statistical analysis without success. Dr. Newport said that definitely there was no evidence of conspiracy uncovered by the study. In his opinion, supported by other studies, there would be a better opportunity for conspiracy under sealed bidding than under oral auction.

Because a fourth of the study volume was sold without substantial overbidding of appraised rates, Dr. Mead declares "we must conclude that competition has not provided adequate protection for the general interest." He recommends on page 28 that sealed bids be used to increase competition. Earlier in the report (page 22), however, he acknowledges without emphasis that his rather sophisticated analysis showed no significant difference in "the bid-appraisal ratio (the extent of competition)" for sales made by sealed bids as opposed to oral auction.

WRONG GOAL

Dr. Mead's answer to the question of the effectiveness of competition is not only unsupported—it misses the point. Anyone other than a theoretical economist would ask—"Effective in what way?" What is Professor Mead attempting to achieve?

Would his proposal for the use of sealed bids provide a more stable industry? Would it be likely to lead to efficient use of the timber resource and steady employment? Would wood products, which are sold in a highly competitive market, have the best chance for a reasonable price level when timber is sold under open oral auctions or blind sealed bidding?

Dr. Newport gave a partial answer to these important questions when he testified against the proposal to change from oral auction to sealed bidding. He said: "If we could get through the transition of changing over to it, which would be a bloody activity, I believe we would go on . . . the transition of change . . . would be a long and very difficult one, and possibly a very costly one to our economy."

Further answer comes from Dr. Mead himself. He acknowledges on page 31 that under sealed bids "a potential buyer is denied a chance to meet and best a challenge from another bidder . . . to protect one's assumed timber supply . . . a potent argument against use of sealed-bid selling . . ." Dr. Mead, however, does not hesitate to speculate and recommend: "The sealed-bid sale type may bring forth competition by introducing an element of uncertainty."

#### APPRAISAL QUESTION SEPARATE

On page 10, Dr. Mead refers to "bargain prices" for national forest timber. On page 27, he suggests that there are areas "where a substantial volume of the resource is sold at a price less than its competitively determined value." He proposes, in effect, that there should be a general increase in the advertised rates for timber—the carefully appraised rates below which no bids are accepted.

Again, in a forget-the-consequences attitude, Dr. Mead states on page 28: "If the appraised price is substantially increased, then inevitably some timber stands will be substantially over-appraised." He also recognizes, on page 27, that if appraised prices are increased substantially "there would be a significant increase in the number of one-bidder sales, the latter suggesting non-competitive conditions." He speculates that this is of no concern if there has been substantial overbidding on some sales.

Dr. Mead apparently does not see the possibility that current single-bid sales may reflect over-appraised offerings. If all of the timber offerings were accurately appraised to operations of average efficiency and had appropriate margins for profit and risk, it is likely that more bidders would appear. Advertised rates for some offerings are so high that there are no bidders.

With no justification at all, Dr. Mead says on page 19 that the appraised price "has no competitive significance." On page 21, Dr. Mead contradicts himself by stating that differences in bid-appraisal ratio may be accounted for in part by differences in average appraised price. There is reason to wonder why he made no attempt to find the general significance of the size of the advertised price.

We have reviewed Dr. Mead's comments on appraised rates because he offers lack of overbidding as an argument for the use of sealed bids. Similar to the GAO auditors, Dr. Mead offers no information as to specific defects in the government's appraisals. He just wants the government to take full advantage of its monopoly position as the principal owner of a resource in short supply.

In contrast to Professor Mead, Yale Professor A. C. Worrell and his Forest Service-appointed Appraisal Review Committee recommended in June 1963 that the market should set the price for timber which is offered at advertised rates representing a normal profit opportunity to a purchaser of average efficiency. The Worrell Committee concluded:

"The objective of the appraisal process should be to determine an 'acceptable' price for national forest timber. This is the least that the government should accept in view of the dual interest of the public in receiving a just price for its property and in maintaining a healthy and efficient wood-using industry over the long run."

Extremely high overbids, little overbidding or offerings receiving no bids can serve as indicators to appraisers that there may be defects in the appraisal data. Such evidence would be far from conclusive, however, because the bidders may be in error or other factors, described on page 10, may be dominant. In any event, changes in appraisal data should be founded on facts. The Worrell Committee said:

"Under no circumstances should the risk ratio be employed to compensate for errors in the appraisal."

Appraisal questions should be kept separate from the bidding issue. We have an abnormal market for public timber in the West—with many buyers and few sellers. Professor Mead's dreams of developing a classically free market and the use of transaction evidence from such a market to establish appraised rates are both unrealistic.

## RELATIVE IMPORTANCE OF NATIONAL FOREST TIMBER IN THE WESTERN STATES

	Percent of total commercial timber in national forests <sup>1</sup>		Percent of total 1964 lumber production from national forest timber <sup>2</sup>
	By area	By volume	
Alaska.....	92	94	(3)
Arizona.....	66	71	93
California.....	50	54	41
Colorado.....	68	83	91
Idaho.....	71	75	63
Montana.....	61	65	66
New Mexico.....	57	50	51
Nevada.....	28	15	(4)
Oregon.....	47	55	57
South Dakota.....	73	80	84
Utah.....	69	82	97
Washington.....	32	44	37
Wyoming.....	69	85	98
West.....	56	61	.....

<sup>1</sup> Calculated from data contained in "Timber Trends in the United States." Forest Resource Report No. 17, Forest Service, USDA 1965.

<sup>2</sup> From "1964-65 Statistical Year Book." Western Wood Products Association.

<sup>3</sup> Data for Alaska not included in WWPA study.

<sup>4</sup> Data for Nevada not included in basic table to avoid individual disclosure.

TIMBER SOURCE FOR WESTERN LUMBER PRODUCTION 1964 <sup>1</sup>

[Annual production—million feet]

Timber source	Over 50	30-50	20-30	10-20	Under 10	Total
<b>Inland: <sup>2</sup></b>						
Company owned.....	30.8	12.8	7.5	7.1	5.1	18.7
Federal.....	54.5	71.3	71.5	66.5	70.2	63.4
Other.....	14.7	15.9	21.0	26.4	24.7	17.9
<b>Total.....</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Coast: <sup>3</sup></b>						
Company owned.....	48.2	13.1	13.0	11.5	9.7	32.0
Federal.....	31.5	62.0	48.6	48.5	35.7	41.9
Other.....	20.3	24.9	38.4	40.0	54.6	26.1
<b>Total.....</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<sup>1</sup> From "1964-65 Statistical Year Book." Western Wood Products Association.

<sup>2</sup> Inland region (Western Pine region) extends from the summits of the Cascade and California Coastal Ranges to the Great Plains; and from Canada to Mexico.

<sup>3</sup> Coast region, the Douglas Fir region of western Oregon and western Washington.

Note: All figures are shown in percentages of the total footage reported for each classification.

## PURCHASES OF NATIONAL FOREST TIMBER BY CALIFORNIA LUMBER PRODUCERS

The following data were taken from the May 1966 issue of Forest Industries and Forest Service's Quarterly Summary of Sales. The information is not complete, because many small mills and some larger ones were not included in the compilation made by Forest Industries.

[Production and purchases in millions of board feet]

Lumber production of firm (in and out of California)	Over 200	100-200	50-100	25-50	5-25	Total
Number of firms	5	3	14	26	47	95
Number of California mills	20	6	22	29	48	125
Number of cutting national forest timber	16	5	13	17	23	74
1965 lumber production, California	665	338	949	961	744	3,657
Lumber production mills purchasing national forest timber	558	216	569	593	341	2,282
Average annual purchases, national forest timber 1963-65 (log scale basis)	330	75	252	392	235	1,284
Percent California mills purchasing national forest timber	80	83	59	59	48	59
Percent California production from national forest timber	84	64	60	62	46	62
Timber purchases—lumber production:						
For all sample mills (percent)	50	22	27	41	32	35
For sample mills purchasing national forest timber (percent)	59	35	44	66	69	56

Lumber production from all California mills in recent years has approximated 5 billion board feet.

Total timber purchases from national forests averaged just over 2 billion board feet in 1963-65. Some of this timber goes into plywood.

## FEDERAL TIMBER SALES UNDER CONTRACT 1961-67 CALIFORNIA LUMBER MANUFACTURING FIRM

Sale date	Termination date	Volume (M bf)	Percent of volume removed						
			1961	1962	1963	1964	1965	1966	1967
June 30, 1960	Nov. 30, 1962	17,790	97	3					
Sept. 9, 1960	do	19,050	10	86	4				
Aug. 23, 1961	do	1,600	94	6					
Jan. 9, 1962	Nov. 30, 1963	10,180			94	6			
Sept. 28, 1962	Dec. 1, 1964	14,000			92	8			
Dec. 27, 1962	do	7,640			1	84	15		
June 28, 1963	Nov. 30, 1964	13,700				99	1		
Jan. 22, 1964	Dec. 1, 1966 <sup>2</sup>	4,350						88	12
May 19, 1964	Dec. 1, 1965	8,200					100		
June 25, 1964	Dec. 1, 1966	14,900					80	20	
Oct. 22, 1964	June 30, 1965	1,120				9	91		
Apr. 6, 1965	Dec. 1, 1966	6,730					17	83	
June 1, 1965	Nov. 30, 1968	11,700						48	52
June 25, 1965	Dec. 1, 1967	11,900						52	48

<sup>1</sup> Estimated.

<sup>2</sup> Extended from Dec. 1, 1965:

Lumber production	1962	1963	1964	1965
Total, M bf	47,068	47,704	45,361	38,030
From national forest timber, M bf	23,794	25,510	27,361	27,793
Percent of total production from national forest timber	51	54	60	73

## FEDERAL TIMBER SALES UNDER CONTRACT 1961-65 FOR A WESTERN OREGON LUMBER MANUFACTURING FIRM

Sale date	Termination date	Volume (M bf)	Road construction		Percent volume removed			
			Started	Finished	1962	1963	1964	1965
<b>FOREST SERVICE, USDA</b>								
Nov. 28, 1962	Apr. 30, 1965	6,600	( <sup>1</sup> )	( <sup>1</sup> )	4	96		
June 29, 1962	Mar. 31, 1967	21,500	1962	1963	29	36		35
Jan. 24, 1963	Apr. 30, 1965	7,500	1963	1964		82	18	
June 4, 1963	Mar. 31, 1967	19,600	1963	1966		15	53	32
June 12, 1963	Apr. 30, 1966	9,200	1963	1964		19	81	
Jan. 10, 1964	do	3,500	1964	1964			100	
June 29, 1964	Apr. 30, 1968	3,000	1964	1964			6	94
Feb. 23, 1965	Apr. 30, 1967	7,700	1965	1965				65
Do	Apr. 30, 1966	600	1965	1966				50
May 6, 1965	Mar. 31, 1966	5,400	1965	1965				100
May 24, 1965	do	1,900	1965	1965				100
June 11, 1965	Mar. 31, 1967	5,800	1965	1966				92
June 17, 1965	do	3,600	1965	1966				6
June 25, 1965	do	8,100	1965	1966				11
July 7, 1965	Mar. 31, 1970	21,000	1965	( <sup>2</sup> )				9
Oct. 4, 1965	Mar. 31, 1967	3,200	1966	1966	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
Do	do	3,500	1965	1966				6
<b>BUREAU OF LAND MANAGEMENT, USDI</b>								
Dec. 12, 1963	May 12, 1966	2,075	1964	1964			100	
Mar. 3, 1964	Aug. 3, 1966	7,252	1964	1964			90	10
May 27, 1964	May 27, 1965	4,933	1964	1964			100	
Nov. 17, 1964	Apr. 17, 1967	1,757	1965	1965				100
Aug. 4, 1965	Aug. 4, 1967	5,367	( <sup>1</sup> )	( <sup>1</sup> )				100

- <sup>1</sup> No road construction.  
<sup>2</sup> Incomplete.  
<sup>3</sup> No logging.

## FEDERAL TIMBER SALES UNDER CONTRACT 1962-65 FOR A MONTANA CORPORATION

Sale designation (United States)	Sale volume (M bf)	Termination date	Date road construction—		Percent of estimated sales volume removed <sup>1</sup>						Completed
			Begun	Completed	1962	1963	1964	1965	Completed		
Jan. 15, 1962—Ransome Creek No. 2	4,200	Oct. 1, 1966	July 1964	September 1964							127
Jan. 16, 1962—Snar-Hiatt Creeks	4,070	Oct. 1, 1964	July 1964	November 1964							132
Jan. 22, 1962—North Beetle Face	4,580	Sept. 30, 1966	July 1964	September 1964							183
Feb. 8, 1962—Lick-Grubstake	15,380	Oct. 1, 1967	July 1965	September 1965	6	9	19	35			
Feb. 19, 1962—Dry Fork	7,060	Sept. 30, 1965	June 1964	October 1964							110
June 5, 1962—Iron Creek	6,355	Sept. 30, 1967	Third party	Third party							110
June 19, 1962—Gus Creek	5,950	June 30, 1966	October 1962, December 1964, and July 1965	October 1965	19						124
June 19, 1962—Hensley Hill	3,950	Oct. 1, 1965	May 1963	June 1963							100
Sept. 24, 1962—Garden Ridge Lodgepole	2,650	Oct. 1, 1964	September 1964	September 1964							97
Oct. 15, 1962—Ten Mile Creek	1,000	Oct. 1, 1963	No system roads	No system roads							101
Oct. 15, 1962—Wood Mountain	2,300	Oct. 1, 1964	September 1963	October 1963	101						113
Oct. 13, 1962—Stanley-Twilight Creeks	3,600	Sept. 30, 1965	December 1963, January-July 1964	September 1964							135
Jan. 2, 1963—Teeters Peak	10,585	Oct. 1, 1966	December 1964 and May 1965	August 1965							59
Jan. 3, 1963—West Pinkham	4,180	Oct. 1, 1964	No system roads	No system roads							114
Jan. 4, 1963—Goat Creek	14,040	Oct. 1, 1968	December 1964, September, and December 1965	June and August 1966							15
Jan. 7, 1963—Stanley Peak	2,485	Oct. 1, 1964	July 1963	July 1963							100
Jan. 21, 1963—Vinal Lake	7,390	Oct. 1, 1966	November and December 1964	May and August 1965							113
Mar. 18, 1963—Solo Joe Creek	5,140	do	July 1965	August 1965							104
May 14, 1963—West Fork Quartz Creek	13,615	Oct. 1, 1967	October and November 1964	September and November 1965-July and August 1966							7
May 28, 1963—Madge Creek Lodgepole	2,700	Sept. 30, 1967	July 1965	August 1965							101
June 20, 1963—Basin Creek	21,720	Oct. 1, 1968	July and August 1965	September and October, November 1966—not completed yet							91
Aug. 26, 1963—Warland Creek	1,500	Apr. 1, 1965	No system roads	No system roads							101
Oct. 14, 1963—Rainy Creek	6,450	Oct. 1, 1965	May and July 1964	November and December 1964							65
October 21, 1963—Smith Creek	9,840	Oct. 1, 1967	September 1964	November 1964							49
Nov. 12, 1963—Weigel Poles	3,240	Sept. 30, 1967	Spur roads only	Spur roads only							25
Dec. 9, 1963—Zulu-Can	5,600	Oct. 1, 1966	August 1965	September 1965							55
Dec. 16, 1963—Blue Mountain	7,145	Sept. 30, 1967	June 1966	August 1966							5
Dec. 27, 1963—Upper Hensley	5,550	June 30, 1967	June 1964	July 1964—October 1966 completed							26

See footnotes at end of table.



Dec. 16, 1964—Waper Ridge.....	2,500	Oct. 1, 1966	June and July 1965	September and October 1965	39	202
Dec. 29, 1964—Wolf Creek Poles.....	5,485	Oct. 1, 1967	October and December 1966	Work in progress as of Dec. 10, 1966		
Jan. 4, 1965—West Fork Area.....	22,000	Oct. 1, 1970	No road construction started as of Dec. 10, 1966			
Feb. 1, 1965—North Border.....	4,400	July 1, 1967	November 1966	Work in progress as of Dec. 10, 1966		
June 14, 1965—Warland Peak.....	6,880	Oct. 1, 1968	December 1965 and March 1966	May and June 1966		
June 24, 1965—Little Cherry.....	26,930	Oct. 1, 1971	No road construction started as of December 10, 1966			
June 25, 1965—Smith Cabin.....	18,840	do.	October 1965	August and December 1966	(3)	(3)
July 20, 1965—Three Mile Creek.....	3,005	Oct. 1, 1967	November 1966	December 1966	(3)	(3)
Sept. 27, 1965—South Vinal-Yodkin.....	10,400	Sept. 30, 1969	No road construction started as of Dec. 10, 1966			
Oct. 5, 1965—East Side Flowage.....	3,700	Sept. 30, 1967	do.			
Oct. 25, 1965—Lion Creek.....	5,685	Oct. 1, 1968	do.			
Nov. 22, 1965—Goat Rocks.....	6,300	Jan. 1, 1969	do.			
Nov. 29, 1965—Upper Oak Creek.....	2,810	Jan. 1, 1968	do.			
Nov. 29, 1965—South Callahan Creek.....	1,085	Oct. 1, 1967	August 1966	September 1966		
Dec. 7, 1965—Lightning Creek.....	1,755	Jan. 1, 1967	July 1966	July 1966		283
Dec. 21, 1965—Teespee Mountain.....	3,000	Apr. 1, 1968	May 1966	June 1966		
Dec. 28, 1965—Cow Creek.....	11,500	Apr. 1, 1970	No road construction started as of Dec. 10, 1966			
Dec. 29, 1965—Hoskin Lakes.....	18,075	Dec. 31, 1972	do.			

<sup>1</sup> Volume removed is a percent of the estimated sale volume. Sales which undercut would total over 100 percent. Sales which undercut would total less than 100 percent.

<sup>2</sup> Logging completed in 1966.

<sup>3</sup> Construction progress as of Dec. 10, 1966.

STATEMENT OF JERRY McCHESNEY, PRESIDENT, FT. VANCOUVER PLYWOOD,  
VANCOUVER, WASH., ON BEHALF OF AMERICAN PLYWOOD ASSOCIATION

Mr. Chairman and Senators: I am Jerry McChesney, President of Fort Vancouver Plywood, a worker-owned plywood mill located in Vancouver, Washington, a mill which I and 330 of my co-workers own. This mill uses approximately 40 million board feet of logs annually. Ninety-five percent of the timber required to keep this mill running comes from National Forests. In addition to representing Fort Vancouver Plywood, I am also speaking on behalf of American Plywood Association. APA is a trade association of softwood plywood manufacturers whose 83 member companies operate 157 plywood plants that manufacture 85% of the plywood produced in the United States. About two-thirds of the nation's plywood is produced in the West. In western mills, national forest timber accounts for over half their timber supply. To many mills, such as Fort Vancouver Plywood, national forest timber is the only significant source available.

Forest Service timber bidding procedures are obviously of strong concern to many APA member mills. This is particularly true of the 14 worker-owned plywood mills. The 2000-plus worker/owners, like me, have their jobs, their life-savings, and their entire future dependent on the availability of national forest timber.

The co-op plywood plants and other APA member mills dependent on National Forest timber are overwhelmingly in favor of oral auction bidding procedures. We support oral auction procedures because we want to be able to face our competition directly at the bidding table in open competition. When a timber sale is offered that fits our company's needs, is the proper species, the quality of timber we can use most efficiently, located within economical hauling distance of our plant and fits into our logging schedule, we have to go after it. We must be able to buy a high percentage of the sales that fit our needs most closely if we are to survive.

The Douglas Fir Region (Western Oregon and Western Washington) is a fiercely competitive area. This area has the highest concentration of plywood plants and sawmills of any place in the country. At our plant, located in Vancouver, Washington, we compete with about 20 companies who regularly purchase timber in the Columbia River Area. The major reason for the stiff competition is that there is less timber available than is required to keep existing plants operating in the Douglas Fir Region. There are often a dozen or more bidders on a single timber sale. Frequently, sales are bid to double or triple the appraised fair market value. Ironically, the current bidding regulations require the most stringent adherence to sealed bidding procedures (100 percent of all sales) in those areas where no rational person could possibly feel collusion was occurring; i.e. the highly competitive areas of Western Oregon and Western Washington, such as the Vancouver and Portland areas where we buy timber and in the Seattle, Everett and Tacoma areas. It is just plain insulting to say that sealed bidding is necessary in these areas in order to "eliminate collusion". Virtually every sale sold in these areas is hotly contested, with sales selling from \$30 to \$100 per thousand board feet above the appraised fair market price.

In sealed bidding, the dilemma we face is whether to bid away all the profit in order to get a sale we really need, or to figure a reasonable profit and chance not getting the sale. If we bid the top dollar and don't make a profit, we will soon be out of business. If we bid too low and don't buy the sales we really need, we will be out of business. Under oral auction we get more than one chance to bid, so we bid what it takes to buy the sales we need. Sometimes we get a bargain and make a profit, and, sometimes we bid too much. But we have been able to meet the competition and stay in business by getting the sales that best meet our needs. Big companies that have a timber supply of their own to fall back on, can live with a sealed bidding system. They can submit conservative sealed bids on sales—if they get the sales, fine—if they don't, they can log some of their own timber. Small independent mills don't have this alternative.

We believe that Congress acted hastily in placing Section 14(e) in the National Forest Management Act of 1976. We also feel that the Forest Service grossly misinterpreted this section of the law. I personally resent the implication that because of one conviction in the 75 years the Forest Service has been selling timber, it is suddenly necessary to make a law changing bidding procedures throughout the West. As a businessman, a mill worker and a mill owner, I can assure you that this is an honorable industry. It is filled with men of integrity who work hard to compete freely and openly, under highly competitive conditions

In summary, on behalf of Fort Vancouver Plywood and American Plywood Association members throughout the West, I request that this Committee move to repeal section 14(e) of the National Forest Management Act of 1976. With respect to the Advisory Committee study of bidding procedures, I personally think it is unnecessary and a waste of time. The government and its high-powered advisors should concentrate their efforts on improving the productivity of our national forest lands and resolving the roadless area issue.

This is the fourth time I personally will have testified on this issue in the last 4 months. I have testified at a hearing called by Congressman Weaver, a hearing called by the Secretary of Agriculture, and now, twice before the United States Senate. In addition, our company has written numerous letters commenting on the most screwed-up array of confusing regulations I have ever seen. Doesn't anybody in the Government have the guts to make a decision? I am hopeful that the United States Senate does.

Thank you for this opportunity to present our views.

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STATEMENT OF EDWIN H. SEEGER, COUNSEL, BOYD LUMBER CORP., SEDRO-WOOLLEY, WASH.

My name is Edwin H. Seeger. I am attorney for Boyd Lumber Corporation (formerly WRP Lumber Corporation), Sedro Woolley, Washington.

Boyd Lumber, a small company, strongly favors employment of sealed bidding for Federal timber sales, which is the method employed everywhere but in the Pacific Northwest. For that reason, Boyd Lumber welcomed the sealed bidding requirement that Congress included in the National Forest Management Act of 1976 as Section 14(e). For the same reason, Boyd Lumber opposes the legislation now before this Subcommittee to repeal Section 14(e) and to establish an Advisory Committee on Forest Service sales procedures.

In taking this position, Boyd Lumber is well aware of the arguments that there may be needed to protect the Federal timber supplies of so-called dependent communities. It is Boyd Lumber's contention, however, that the needs of dependent communities should be met directly by requiring local processing of Federal timber where and to the extent necessary, and not by permitting oral auction bidding for dependent community sales.

At the very least, there should be a mix of sealed and oral auction bidding, as the Forest Service proposes, with no more than 50 percent of timber sold by oral auction in any community. I am aware that the oral auction bidding proponents claim—though without explaining why—that it is essential that all sales in the Pacific Northwest be made by oral auction bidding, and that there is something wrong with mixing the bidding methods, but it is significant that at a meeting of western forest economists, held on May 2-4, Mr. Dallard V. Johnson of the Region 1 Timber Management Staff stated that, in Montana, 50 percent of Federal timber has traditionally been sold by sealed bidding and 50 percent by oral auction bidding with no suggestion that a bidding mix presents problems for anyone.

THE REASONS WHY SECTION 14(e) SHOULD NOT BE REPEALED

Because it would in effect restore oral auction bidding as the method to be employed for the sale of Federal timber in the Pacific Northwest, passage of S. 1360 would be a major step backwards, particularly in light of the Justice Department's recent statement, which is attached to my testimony, pointing out to the Secretary of Agriculture that there is considerable evidence of collusion in the purchase of Federal timber, and that oral auction bidding is an aid to collusion.

Quite apart from the matter of collusion, the General Accounting Office pointed out in a 1965 report, entitled "Questionable Aspects of Oral Auction Bidding for Federal Timber Sold at Certain Locations in the Pacific Northwest," that there was evidence that oral auction bidding was preventing competition for the purchase of Federal timber in the Pacific Northwest. GAO recommended that future timber sales be made by sealed bidding. I request that the report be made a part of the record.

Boyd Lumber has first-hand evidence that oral auction bidding fosters anti-competitive practices, for the Company's efforts to compete with one of the nation's largest lumber companies have been stymied by oral auction bidding.

Between 1971 and 1976, the President of Boyd Lumber traveled across the Cascades to attend between 15 and 25 oral auction sales in one area without buying a single sale. Whenever he attended a sale, the price went way up. When he was not there, the price would stay down and the timber frequently was sold at the minimum price. Since it takes five hours each way to travel between Boyd Lumber's headquarters on the Western side of the Cascades and the sales area on the Eastern side, in the absence of any success over a five-year period, Boyd Lumber became discouraged and stopped attending sales.

However, shortly after the sealed bidding provisions of the 1976 Act went into effect, Boyd Lumber bought two sales in the same area through sealed bids. The Company now has an opportunity to open a sawmill in this new area—which, as I have pointed out, is dominated by one of the nation's largest lumber companies—but that opportunity will be lost if there is a reversion to oral auction bidding as the exclusive bidding method in that area.

#### HOW ORAL AUCTION BIDDING HELPS PREVENT COMPETITION

Let me explain in somewhat more detail why it is possible through oral auction bidding to squeeze out a relatively small competitor but it is extremely difficult to do so through sealed bidding.

Take the case of a timber purchaser, such as Boyd Lumber, who is located outside a noncompetitive area and notices that timber is being sold at a cheaper price there than in his own area. The outsider calculates that he can buy the timber at the cheaper prices being bid, add on the freight rate to this own mill, and still be able to operate profitably with the logs delivered to his mill. Or he may, as Boyd Lumber has, conclude that there is room for additional sawmill capacity in the area and that he can process the timber locally.

However, when the outsider actually attends an oral auction sale to bid on the timber and put his plan into effect, the bidders within this noncompetitive area come to life and suddenly find themselves able to bid more for the timber and outbid the outsider. In fact, just as has occurred in the case of Boyd Lumber's effort to penetrate a new area, the bidders within the area will bid literally any price to keep the outsider from winning the timber sale.

Just as Boyd Lumber did, the outsider becomes discouraged after a few timber sales. He realizes that he will never actually purchase a sale, and he stops trying. Once he no longer shows up at the timber sales, the same cheaper, noncompetitive prices are again bid for the timber. The competition has been run off, and the Government returns once again to obtaining less than the maximum dollar for the taxpayer.

The situation is very different with sealed bidding. When timber is sold by sealed bidding, the noncompetitive bidders do not know how much the outsider is going to bid, or even if there are any outside bidders. Thus, an outsider who has calculated that he can bid more than the customary, competitive price for the timber has a chance to win a sale. That has been Boyd Lumber's experience, and the 1965 GAO report I referred to earlier states that GAO came to the same conclusion based on a sales history going back at least to 1956.

#### THE REGULATIONS PROPOSED BY THE FOREST SERVICE

Some members of the forest industry take the position that sealed bidding presents a threat to communities whose sawmills are dependent upon Federal timber. In response to that argument, Boyd Lumber has time and again pointed out to the Department of Agriculture and the Forest Service that the appropriate answer to the dependent community problem is to develop a program requiring local processing of Federal timber where necessary, not to perpetuate a form of bidding condemned by the Justice Department and GAO. Neither the administrative agencies involved nor the proponents of oral auction bidding have ever responded to this contention, or suggested that such an approach is unworkable or undesirable.

In any event, the Forest Service has already shown a willingness to bend over backwards—far more so than it needs to, in our judgment—to permit some degree of oral auction bidding for dependent community timber purchases. Thus, the regulations proposed by the Forest Service would permit the oral auction bidding percentage to alter if any dependent community were adversely affected by sealed bidding. While we contend that the Forest Service is thereby proposing to place excessively heavy reliance on oral auction bidding, and have argued that the appropriate way to ensure the timber supply of dependent communities is not to

permit oral auction bidding but to require local processing of whatever Federal timber is needed by these communities, certainly no one can reasonably contend that the Forest Service is either unwilling or unable to take whatever steps are needed to protect dependent communities. Indeed, there is a very real danger that the Forest Service will itself undermine the sealed bidding provisions of the 1976 Act.

The foregoing matters aside, President Carter has indicated that there is a need to reduce the number of Federal advisory committees and the present legislation before this Subcommittee would be in conflict with the President's efforts in this regard.

In closing, we would strongly urge the Subcommittee to permit the Forest Service to complete its efforts to develop regulations implementing the sealed bidding provisions of the 1976 Act and not to take any steps to adopt legislation that would undermine those provisions.

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STATEMENT OF GEORGE A. CRAIG, EXECUTIVE VICE PRESIDENT,  
WESTERN TIMBER ASSOCIATION, SAN FRANCISCO, CALIF.

Mr. Chairman and members of the committee: I am George A. Craig, a professional forester and Executive Vice President, Western Timber Association, San Francisco, Calif. With me is Mr. Gerhart Bendix, an officer of Hi-Ridge Lumber Company and President of the association. Our organization represents firms that process most of the timber sold from the National Forests in California, the second largest lumber producing state in the nation. We are here on behalf of the association to urge passage of S. 1360.

Subsection 14(e) of the National Forest Management Act of 1976 (Public Law 94-588) has given much concern. It was included in the law without the benefit of public comment and without demonstrated need. Forest Service attempts to implement this subsection has caused much uncertainty and threats to the stability of communities dependent on National Forest timber. S. 1360 would relieve these concerns by permitting a return to the successful bidding procedure of the past with increased monitoring to detect any attempt at collusive bidding. Further, the bill would require the entire matter to be examined in depth by a committee charged with offering advice as to how such timber should be sold.

ORAL AUCTION FOR GOOD REASONS

Oral auction has been the predominant method used by the Forest Service for selling National Forest timber in California until enactment of the new law. This policy evolved to meet the conditions of the unusual market in which such timber is sold—the immobility of the plants that process such timber, the degree of dependency of timber processors on National Forest timber, the short supply that is made available and the potential effects on local communities.

Professor Walter J. Mead, an economist with the University of California at Santa Barbara, California, explained the problem when he compared bidding for oil drilling rights to the purchase of Federal timber in the April 1967 *Natural Resources Journal*:

"First, in the timber industry, fixed investments in milling facilities exist prior to sales. . . . Where investments in facilities exist prior to the sale, the buyer needs a means of insuring access to specific raw materials in specific locations. Oral auction provides this means through the opportunity to cast reaction bids. . .

"Second, in the timber case, the severed resource is highly immobile and therefore cannot be transported over a wide area. Logs are of great weight per unit of value, hence, a mill cannot import logs by truck or rail from a great distance if it fails to obtain a nearby sale. . . . Where the severed resource is immobile, it is of great importance that a specific nearby sale be obtained and the oral auction method thereby becomes more suitable.

"Third, in the timber case, the individual sale usually is small relative to optimum mill capacity and, therefore, additional sales must be obtained frequently. . . . Where sales must be obtained repeatedly in order for a processing facility to survive, the oral method of bidding is preferred.

"Fourth. . . . some firms are highly dependent on a single resource of raw material and failure to obtain input from this source creates an accurate log shortage for such firms. The shortage in turn may affect the related dependent community. . . . Thus, specific resource dependency leads to a preference for oral auction bidding.

"Fifth, the sealed bid method of selling introduces planning uncertainty. . . . Buyers in an industry such as timber, composed of relatively small firms would, thus, be handicapped by sealed bidding. . . . Thus, the planning problems and inadequate financing lead to a preference for oral bidding in a small firm industry.

"Sixth, where prior existing fixed processing facilities are specialized and require specific species or grades of a given raw material, it becomes important to be able to obtain specific sales. Lumber and veneer-plywood mills are tending toward increased specialization. . . . Specific needs lead to the oral auction preference.

"Seventh, oral bidding requires more decision making on-the-scene than does sealed bidding, and therefore requires that a higher level of talent be present at the auction. Lumber and veneer-plywood operations are relatively small and the owner-operator usually is present and bids at oral sales. . . . Hence, sealed bidding is more suitable for the large firm situation and oral bidding for small."

#### LOCAL GOVERNMENTS WANT ORAL AUCTIONS

To document the community concerns about bidding procedures we have attached to this statement copies of resolutions passed by the Northern California County Supervisors Association and some of the individual Boards of Supervisors for California counties.

Please note that the Northern California County Supervisors Association declared the Forest Service implementation "has resulted in much grave concern to forest dependent communities" because "the economic life blood of many of our communities is heavily dependent upon continued timber processing." The Supervisors concluded: "unless collusion in the oral bidding process between the purchasers of federal timber in a given area can be proven by incontrovertible evidence, oral bidding should be continued."

On December 14, 1977, the Plumas County, California, Board of Supervisors, with Resolution No. 76-2926, objected to the requirement for sealed bidding for Plumas County on timber sales located on National Forest System lands, noting that the Board—

"Does not feel that collusion among bidders is a major problem. . . .

"Does not feel that sealed bidding would help avoid collusion, even if it were a problem. . . .

"Does not approve of such sealed bidding because the procedure enables speculators the opportunity to tie up large blocks of timber without the lumber companies having a chance to make competitive bids on an oral basis."

On the same day, the Lassen County, California, Board of Supervisors wired the Chief Forest Service as follows:

"The Lassen County Board of Supervisors never having been aware of collusive bidding in Lassen, Plumas, or Modoc timber sales oppose mandatory seal bidding in these territories. Oral auction is beneficial to local government and timber harvesters as well as U.S.D.A."

On December 21, 1976, the Sierra County, California, Board of Supervisors with Resolution No. 7679 objected to action under the interim regulations and requested the Forest Service "to implement as soon as possible a policy of oral auction of nearby Forest Service timber for the communities of Loyaltan and Sattley," noting that—

"Oral auction rather than sealed bid enable small sawmills to openly compete for Forest Service timber, the loss of which could force mill shutdowns and cause grave consequences to mills on which the local community is heavily dependent for employment. . . .

"The communities of Loyaltan and Sattley in the County of Sierra . . . depend heavily on the local mills for employment and . . .

"The loss of Forest Service timber sales to the small mills in those communities could force mill shutdowns and consequent grave economic consequences to their communities and the County of Sierra as a whole."

#### MANY DEPENDENT COMMUNITIES

There are many California communities that are dependent on timber from the National Forests. Such communities are those about which county supervisors have expressed concern.

In an attempt to respond to the wishes of Secretary Long during the development of the interim regulations, we made a hurried survey of communities dependent on National Forest timber from California. Two criteria were considered as significant: (1) The extent to which forest products processing contributes to the total of basic industry employment (i.e., total employment minus employment in

service activities); and (2) the share of the community timber supply that comes from the National Forests.

As the attached map and table show, the information was assembled for 51 communities that use National Forest timber. There are several more in California, but we did not receive needed data for them before our deadline. Timber operators made a real effort to provide us with the estimates. They were also the primary source of data on our industry's share of the basic industry employment. The 1976 estimated share to timbers from the National Forests was used, because it is closer to "normal" than the 1974 and 1975 data due to the extremely soft market in those years.

#### PROSECUTE VIOLATORS

There should be no question as to the industry's position regarding individuals who do in fact violate laws which prohibit certain practices because they are in restraint of trade. They should be prosecuted. Our industry is made up of a large number of individual operators, each engaged in vigorous competition with the other. As such, we more than anybody are interested in preventing violations of such laws. Complaints can be expected if such practices were to occur. Further, realistic people will recognize not only the illegality of such practices, but the improbability of maintaining an effective agreement because of human frailties and the many changes that takes place in our industry.

There have been two cases that have reached the courts. One case was heard by Federal District Court Judge Kilkenny in Oregon in December 1964. The defendants were acquitted by Judge Kilkenny, who made some observations that apply well to the assumptions that, I believe, resulted in the Congressional concern about possible collusion. He said:

"My opinion is that the most that can be said is that the government's case presents a background of conjecture and suspicion which does not rise to the dignity of substantial evidence."

According to the Oregonian, Kilkenny said it is only logical that an operator will not bid on timber where it is evident that a competitor has a clear economic advantage. Therefore, he said, the fact that in certain instances the defendants did not bid against each other is "just as consistent with innocence as it is with guilt, if not more so."

The Ninth Circuit Court of Appeals recently let stand a District Court decision that seven timber purchasers in Oregon were guilty of collusion in bidding. The case plainly illustrates that the Department of Justice is fully capable of enforcing the anti-trust laws, even in the context of oral auction bidding.

We respectfully suggest that the Government's timber customers as a group should not be treated as chronic law violators, because they are not. If there is ever any suspicion of collusion, the answer lies not in punishing the entire industry through a closed bidding procedure, but in vigorous investigation and enforcement of anti-trust laws.

#### WILL SEALED BIDS INCREASE GOVERNMENT INCOME?

Before discussing the community stability question, I would like to note some of the "other considerations" that we believe justify the use of oral auctions.

There has been some supposition that sealed bids will increase Government income. Analysis of bidding experience does not establish this to be either true or false. Comparisons cannot be made readily. In part, this results from the highly varied conditions on the ground, and between timber stands as well as changing markets and the situations of individual bidders.

The question of increasing Government income through even limited use of sealed bidding for timber managed by the Bureau of Land Management in Oregon was considered and rejected by the O & C Advisory Board in 1966. The Oregonian for February 19, 1966 reported regarding the Board.

"It concluded that sealed bidding, while temporarily increasing competition, would ruin financially weak timbermen.

"This, it said, would result in less competition and smaller returns to the government."

Thus, the uncertainty of sealed bids may force individuals to pay high rates in an attempt to prevent the loss of their investments in plant and equipment, but over the long term may yield less than oral auction because of the disruption the uncertainty causes.

## THE NEED FOR CAPITAL FORMATION

The Government should not use its monopoly power to force dependent operators to bid away unnecessarily through sealed bids the margin for profit and risk that may be available to them, including the margin available because of operations that are more efficient than average.

The industry must have an opportunity to accumulate and attract capital, if modern technology is to be applied and there is to be improved use of the timber. Assuring an opportunity for a reasonable return to the timber processor is a way to increase Government income ultimately, because timber is a residual value. The benefits of generally-enhanced product values and improved efficiency flow to the Government in increased stumpage rates. The Government should foster such improved industry health rather than inhibit it.

Modern sawmills cost up to \$10 million to construct. To attract such capital to process National Forest timber will require an opportunity to realize a competitive return on capital and the elimination of the uncertainty caused by sealed bids.

As the Forest Service's commissioned Timber Appraisal Review Committee reported in June 1963 [A General Review of U.S. Forest Service Timber Appraisal Policies and Procedures, pp. 10]:

"The Forest Service thus has a very large stake in the maintenance of a healthy and progressive timber industry. It cannot rationally act as though it were independent of that industry. Furthermore, the national forests are a major segment of the wood supply for the United States. In the long run our country may have to depend on them for as much as 25 percent of the wood we use. The Forest Service cannot logically act as if it were a small timberland owner whose annual sales are of no significance in the overall wood economy."

## UNNECESSARY INEFFICIENCY

There can be no doubt that in much of the West where the National Forests are the major source of timber, the predominant use of sealed bids will lead to unnecessary inefficiencies that are costly to society. For every timber offering there is a plant or combination of plants to which the timber can be logged and processed at least cost. Generally there is an inadequate supply of timber to keep all plants in full operation. Blind sealed bidding will result in the divergence of some timber through less efficient operations or to delays through speculative bidding.

Where there is a dislocation of the timber from the most economical operation through the blind bidding practice, the denied bidder must seek to take timber which can be most efficiently operated through another plant. If he is successful, timber will be hauled at increased costs to all operations and if he is unsuccessful, he cannot operate his plant efficiently. Jobs may be lost. Costs are incurred in on-the-ground reviewing and preparing bids for many more offerings than necessary under oral auction. In any event, society loses by such unnecessary inefficiencies.

## RETURN TO PAST PRACTICE UNTIL STUDIED

The best-informed expression to date of the public's interest in this matter has been given, we believe, by the elected county supervisors who speak from first-hand knowledge of the potential dangers to their communities. As noted here, there are other reasons besides community stability, such as equity and efficiency, for continuing the bidding practices of the past.

We respectfully ask that this committee seek passage of S. 1360 and with report language direct the Forest Service to return to the bidding practices of a year ago. If the study required by the bill gives reason to change, the need can be met at that time.

Thank you for the opportunity to express these views.

## NORTHERN CALIFORNIA COUNTY SUPERVISORS ASSOCIATION

## RESOLUTION GO-1-77 REGARDING THE FOREST SERVICE IMPLEMENTATION OF THE INTERIM REGULATIONS ON THE SALE OF NATIONAL FOREST TIMBER

Whereas, the Forest Service implementation of the interim regulations concerning the sale of national forest timber under Section 14(e) of the National Forest Management Act of 1976 (P.L. 94-588) has resulted in much grave concern to forest dependent communities throughout the Western timber regions of the United States, and

Whereas, it appears that the stated purpose of above quoted Section 14(e) is to prevent collusive bidding or to inhibit the same, and

Whereas, the validity of the heavy handed approach taken by the U.S. Forest Service as witnessed by only one timber sale in all of California being sold by oral auction prior to April 1, 1977, and all other timber sales by sealed bid, is open to very serious question, and

Whereas, the economic life blood of many of our communities is heavily dependent upon continued timber processing, and

Whereas, unless collusion in the oral bidding process between the purchasers of federal timber in a given area can be proven by incontrovertible evidence, oral bidding should be continued,

Now therefore be it resolved, That the Northern California County Supervisors Association strongly objects to the procedure requiring sealed bidding on sales of timber located on National Forest lands in the Western United States.

Be it further resolved, That the Secretary of Agriculture be and is hereby strongly urged to take such action that will cause substantial relaxation of the U.S. Forest Service ruling relative to sealed bidding.

Be it further resolved, That copies of this resolution be sent to and favorable action respectfully requested by the Honorable U.S. Senators Hayakawa, Cranston, Hatfield, Jackson, Church and McClure, and to U.S. Representative Harold T. Johnson, California State Senator Ray Johnson, State Assemblymen Stan Statham and Eugene Chappie, and the United States Secretary of Agriculture.

Passed and adopted this 12th day of February, 1977 by the Northern California County Supervisors Association.

BESSIE L. SANDERS, *President.*

Telegram

To: Chief of Forest Service, Washington, D.C.  
From: Lassen County Board of Supervisors.

The Lassen County Board of Supervisors never having been aware of collusive bidding in Lassen, Plumas, or Modoc timber sales oppose mandatory seal bidding in these territories. Oral auction is beneficial to local government and timber harvesters as well as U.S.D.A.

WILLIS FARRIS, *Chairman.*

#### BOARD OF SUPERVISORS, COUNTY OF SIERRA

##### RESOLUTION NO. 7879

Whereas, the U.S.F.S. has determined administratively that only one community in California (Hyampom, in Trinity County) sufficiently depends on Forest Service timber to justify oral auction rather than sealed bid for nearby Forest Service timber; and

Whereas, oral auction rather than sealed bid enable small sawmills to openly compete for Forest Service timber, the loss of which could force mill shutdowns and cause grave consequences to mills on which the local community is heavily dependent for employment; and

Whereas, the communities of Loyaltan and Sattley in the County of Sierra have populations respectively, of 934 and 72 and depend heavily on the local mills for employment; and

Whereas, the loss of Forest Service timber sales to the small mills in those communities could force mill shutdowns and consequent grave economic consequences to their communities and the County of Sierra as a whole;

Now, therefore, the Board of Supervisors of the County of Sierra resolves as follows;

The U.S.F.S. is requested to reconsider its administrative decision to limit oral auction of nearby timber to only one California community and to implement as soon as possible a policy of oral auction of nearby Forest Service timber for the communities of Loyaltan and Sattley.

Adopted: Board of Supervisors of County of Sierra, 21st day of December, 1976.

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SISKIYOU, STATE OF CALIFORNIA

*January 3, 1977.*

Present: Supervisors Mickey McArdle, Ernest Hayden, George Wacker, Mike Belcastro and Ray Torrey. Chairman Wacker presiding.

Absent: None.

County Administrator: Richard E. Sierck, County Clerk: Norma Price,  
County Counsel: Frank J. DeMarco.

Purpose of meeting: Adjourned regular.

RESOLUTION ADOPTED RE THE FOREST SERVICE IMPLEMENTATION OF THE INTERIM  
REGULATIONS ON THE SALE OF NATIONAL FOREST TIMBER.

It was moved by Supervisor Belcastro, seconded by Supervisor McArdle, that Resolution No. 296, Book 7, being a resolution relative to the Forest Service implementation of the interim regulations on the sale of National Forest timber is hereby adopted and the Chairman authorized to sign. Further, in addition to those mentioned in the resolution, the Clerk is directed to forward a copy of this resolution to the Government Operations Committee of the Nine Northern Counties Supervisors Association.

Ayes: Supervisors McArdle, Hayden, Wacker and Belcastro.

Noes: None.

Absent: Supervisor Torrey.

STATE OF CALIFORNIA,  
County of Siskiyou, ss:

I, Norma Price, County Clerk and Ex-Officio Clerk of the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the minute order of said Board of Supervisors passed on 1-3-77.

Witness my hand and the seal of said Board of Supervisors, this 7th day of January, 1977.

NORMA PRICE, *County Clerk.*  
RAE FIRBOVSKY, *Deputy Clerk.*

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU,  
STATE OF CALIFORNIA

THE FOREST SERVICE IMPLEMENTATION OF THE INTERIM REGULATIONS ON THE  
SALE OF NATIONAL FOREST TIMBER

Whereas, the Forest Service implementation of the interim regulations concerning the sale of National Forest timber under Section 14(e) of the National Forest Management Act of 1976 (P.L. 94-588) has resulted in much grave concern to forest dependent communities throughout the Western timber regions of the United States, and

Whereas, it appears that the stated purpose of above quoted Section 14(e) is to prevent collusive bidding or to inhibit the same, and

Whereas, the validity of the heavy handed approach taken by the U.S. Forest Service as witnessed by only one timber sale in all of California being sold by oral auction prior to April 1, 1977, and all other timber sales by sealed bid, is open to very serious question, and

Whereas, the economic life blood of many of our communities is heavily dependent upon continued timber processing, and

Whereas, unless collusion in the oral bidding process between the purchasers of Federal timber in a given area can be proven by incontrovertible evidence, oral bidding should be continued.

Therefore, be it resolved, That the Board of Supervisors of Siskiyou County strongly object to the procedure requiring sealed bidding on sales of timber located on National Forest lands in the Western United States.

Be it further resolved, That the Secretary of Agriculture be and is hereby strongly urged to take such action that will cause substantial relaxation of the U.S. Forest Service ruling relative to sealed bidding.

Be it further resolved, That copies of this resolution be sent to, and favorable action respectfully requested by, the Honorable U.S. Senators Hayakawa, Cranston, Hatfield, Jackson, Church and McClure and to U.S. Representative Harold T. Johnson and to California State Senator Ray Johnson and California State Assemblyman Stan Statham.

Passed and adopted this 3rd day of January, 1977, by the following vote:

Ayes: Supervisors McArdle, Hayden, Wacker and Belcastro.

Noes: None.

Absent: Supervisor Torrey.

GEORGE WACKER,  
*Chairman, Board of Supervisors.*

## RESOLUTION No. 76-2926

[Objecting to requirement for sealed bidding for Plumas County on timber sales located on National Forest System lands]

Whereas, The National Forest Management Act of 1976 requires sealed bidding on timber sales located on National Forest System lands except where the Secretary of Agriculture determines otherwise by regulation, supposedly to avoid collusion; and

Whereas, this Board of Supervisors, based on its knowledge of bidding practices in Plumas County, does not feel that collusion among bidders is a major problem; and

Whereas, due to the peculiar problems in Plumas County both geographical and otherwise, this Board does not feel that sealed bidding would help to avoid collusion, even if this were a problem; and

Whereas, this Board does not approve of such sealed bidding because the procedure enables speculators the opportunity to tie up large blocks of timber without the lumber companies having a chance to make competitive bids on an oral basis;

Therefore, be it resolved, That the Plumas County Board of Supervisors wishes to go on record as objecting to the procedure requiring sealed bidding on sales for timber located on National Forest System lands; and

Be it further resolved, That the Secretary of Agriculture is requested to eliminate Plumas County from sealed bidding requirements as authorized by The National Forest Management Act of 1976.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Plumas, State of California, at a regular meeting of said Board held on the 14th day of December, 1976, by the following vote:

Ayes: Supervisors, Dean, Olsen, Papenhausen, Crivello and Ross.

Nays: Supervisors, None.

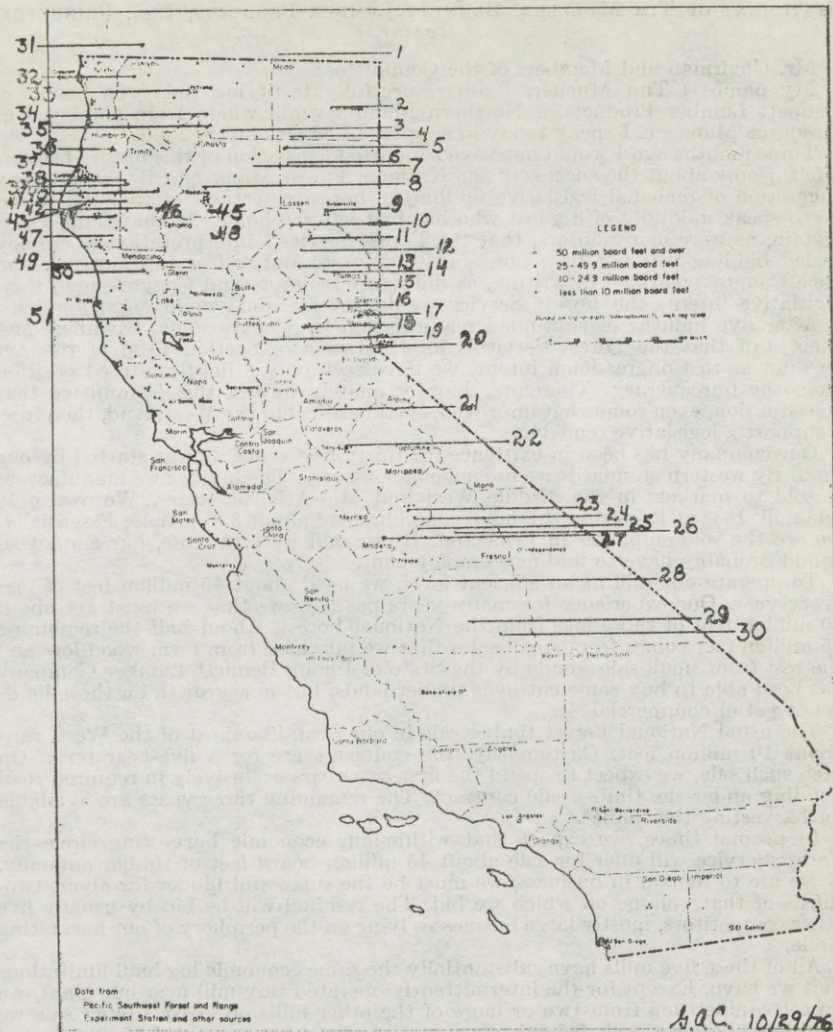
Absent: Supervisors, None.

LEONARD ROSS,  
*Chairman, Board of Supervisors.*

Attest:  
R. SLATER,  
*County Clerk.*

## COMMUNITY DEPENDENCY ON NATIONAL FOREST TIMBER

Community	Number of plants	1976 percent of national forest timber	Forest products share of total basic employment
1. Malin, Oreg. ....	1	80	60
2. Alturas, Calif. ....	1	100	50
3. McCloud .....	1	10	100
4. Adin .....	1	80	80
5. Bieber .....	1	98	100
6. Little Valley .....	1	100	100
7. Burney .....	2	53	90
8. Central Valley .....	1	70	90
9. Susanville .....	2	90	90
10. Chester .....	1	38	95
11. Greenville .....	1	100	100
12. Crescent Mills .....	2	100	100
13. Quincy .....	2	95	95
14. Sloat .....	1	88	100
15. Loyalton .....	1	78	100
16. Comptonville .....	1	65	100
17. Truckee .....	1	30	25
18. Grass Valley .....	4	70	25
19. Marysville .....	2	53	15
20. Foresthill .....	2	60	75
21. Jackson .....	1	59	90
22. Sonora .....	3	75	75
23. Oakhurst .....	1	95	100
24. North Fork .....	1	100	75
25. Auberry .....	1	98	70
26. Dinkey Creek .....	1	100	100
27. Madera .....	1	80	7
28. Dinuba .....	1	91	20
29. Porterville .....	1	82	10
30. Johnsondale .....	1	100	100
31. Cave Junction, Oreg. ....	1	90	80
32. Happy Camp .....	2	100	92
33. Yreka .....	3	75	89
34. Weed .....	1	30	80
35. Mount Shasta .....	2	20	60
36. Hoopa .....	2	55	100
37. Arcata .....	12	20	90
38. Salyer .....	2	95	95
39. Burnt Ranch .....	1	100	100
40. Weaverville .....	1	40	100
41. Hyampom .....	1	100	100
42. Hayfork .....	1	96	70
43. Rio Dell .....	2	15	90
44. Dinsmore .....	1	92	90
45. Anderson .....	7	40	85
46. Wildwood .....	1	60	100
47. Garberville .....	1	54	50
48. Red Bluff .....	4	40	70
49. Paskenta .....	1	30	100
50. Covelo .....	1	89	75
51. Potter Valley .....	1	75	60



Active sawmills in California: 1962

STATEMENT OF TIM MUELLER, BENNETT LUMBER PRODUCTS, INC., PRINCETON,  
IDAHO

Mr. Chairman and Members of the Committee:

My name is Tim Mueller. I am respectfully testifying today on behalf of Bennett Lumber Products, a Northern Idaho sawmill where I am employed as Resource Manager. I speak today in support of Senate bill S. 1360.

Three months ago I would not have supported legislation of this nature because I felt deeply about the success of the National Forest Management Act, and any suggestion of remedial legislative fiddling to improve sections of that bill would be to speak unkindly of a guest who has just left my home. At that time, I was certain, as were many others, that the Forest Service's interpretation to employ sealed bidding was not based on statutory intent but self-serving motives, and once Congress clarified in writing, as did many Senators and Congressmen, their legislative intent, the Forest Service would reverse and employ oral auctions.

After five months of continued reaffirmation by Congressional Members and their staff that the Forest Service's interpretation of Section 14(e) of the Act was not as to Congressional intent, we have seen only a lightly altered position from the bureaucracy. Therefore, I unfortunately inform this Committee that the situation, even somewhat improved, is still critical in the West. And, therefore, I support a legislative remedy.

Our company has been in existence for thirty-five years. It was started by one man. By western standards we are a small company. The lumber we manufacture is sold to markets in the Middle West and Mid-Atlantic states. We own only one mill. It is at Princeton, Idaho, a community of about 350 people. Essentially, we are the sole employer in Princeton. If our mill were to close, our employees would probably have to find new employment.

To operate our mill at an efficient level, we need about 45 million feet of logs every year. Our experience for many years past, shows that we must get about 30 million feet of those logs from the National Forest. About half the remaining 15 million feet comes from small sales that we purchase from farm wood lots and the rest from small sales made by the State of Idaho. Bennett Lumber Company has been able to buy some cut over timber lands, but new growth on those lands is not yet of commercial size.

The usual National Forest timber sale in our area, like most of the West, runs about 10 million feet. Customarily, the contracts are for a five-year term. On each such sale, we expect to spend the first two years exclusively in required road building under the timber sale contract. The remaining three years are available for harvesting the timber.

In normal times, we expect that within our economic harvesting circle the Forest Service will offer for sale about 45 million board feet of timber annually. If we are to remain in business, we must be the successful bidder for about two-thirds of that volume on which we bid. The residual will be bid by usually five other competitors, mostly large businesses lying on the periphery of our harvesting circle.

All of these five mills have substantially the same economic log haul limitations that we have. Except for the intermittently operated tiny mill near our plant, we expect competition from two or more of the other mills on every timber sale we bid. And, because each federal offering averages about one-third of our annual volume needed, unlike our large competitors, we have all our eggs in one basket. If we lose two of these sales each year because of sealed bidding, we would be forced to close. We have no other operations to fall back on.

Currently the Forest Service mandates that the sales in our area must be by sealed bidding. Whether the bidding is oral or sealed, the bidding must start at not less than the minimum price that the Forest Service fixes as the fair market value for that particular sale. Obviously, we must find some timber for our mill or be destroyed. Our situation, therefore, like the situation of so many other companies like ours in the West, is desperate. If there is *oral auction* bidding, we can start the bidding at the fair market value, fixed by the Forest Service, and then increase our bid, step by step, in order to get the timber that is essential to our survival. We can, in other words, protect ourselves against final starvation.

But at sealed bidding, we cannot protect ourselves. We are given one chance to bid blindly for the timber essential to our survival. Western shows on T.V. sometimes show our rugged forebearers cutting the cards once for the gold mine, the girl, or the saloon. Under sealed bidding, those days are here again. We are given, in effect, one cut of the cards for the survival of our mill, for the lifetime of effort

put into this operation by the Bennett father and sons, for the continued employment of our 175 employees, and for the survival of the community of Princeton. In desperation, we may find ourselves bidding hundreds of thousands of dollars over the next high bidder. Or we may find ourselves losing the sale by a blind bid that is almost but not quite high enough. Either way, it is one blind cut of the cards that the Forest Service offers us, sale by sale, for our survival.

And the National Forest timber is now more essential to us than ever as the supply of non-governmental logs dries up.

Within the past few months, the Columbia River has been opened from its mouth to Lewiston, Idaho, for slack water navigation. Log hauling from Lewiston to the mouth of the river some 400 miles away is not too expensive. Upon the opening of this river transportation, we found several Japanese companies searching for whatever private logs they could buy for export to Japan. Based upon the Tokyo consuming market, they can pay prices that are well beyond our reach. The federal and state timber may not be exported in log form. But the advent of Japanese interest is quickly drying up our traditional source of the farm lot logs that we need to supplement our National Forest logs. Consequently, this new factor compounds our dependence on the Forest Service.

Additionally, because of the slack water we are beginning to see log pirates from other coastal states, such as Oregon, bidding on federal timber in our inland forests. Before the slack water, these log pirates did not come inland because the cost of transportation by rail or truck to the coast was not economical. Now water transportation, which unlike rail or truck is not taxed, has made transportation to the coast economically feasible. And, with oral auctions being eliminated on our inland forests, these coastal mills now compete for our resource inland, further threatening our existence.

Based on the aforementioned, it is difficult to ascertain how sealed bidding will affect the entire western region. However, in fair speculation, I would say that these inequities, with only nominal differences of degree, are repeated throughout the western states.

I apologize to this Committee for my self-serving motives and offer the self-humiliation that without Bennett Lumber Products our industry will survive and Americans will build homes. I realize that it is with the public interest and the spirit of free competition that your considerations must lie as Senators. I identify very strongly with that.

Therefore, if the public interest and free competition is the question, then I conjure up these last remarks as the true spirit of my testimony. If under sealed bidding one can only bid once for the timber, he will usually bid higher to assure procurement of that bid. This inserts greater economic risk into each bid when offered by sealed methods. And, who can assume greater economic risk than the larger companies with more economic prowess. As the smaller companies yield to the economic mightier, fierce competition will spark as those who lose their resource base will seek resource in other areas. As time progresses, the economically stronger will survive and the smaller entities will perish.

In the long run, sealed bidding will prune the competition that now exists and move our industry closer to that of a monopoly.

This result would be antagonistic of the free competition spirit and certainly adverse to the public's interest, as the smaller western sawmills perish and the communities such as Princeton, whose economy depends on our local sawmill, perish with them.

Moreover, the present administration was campaigned into office in part by recognizing that more and more governmental regulation has given the American businessman less and less predictability with respect to future capital expenditures. The public interest is served best when the private business sector invests healthily in capital expenditures insuring future productivity and thus a viable economy and jobs for the working classes. Sealed bidding has greatly dampened the incentive to invest in new plant and equipment in our office because we are not sure we can sustain our resource base at the bidding table. All predictability has escaped our business with respect to the future.

In closing, if this Committee is successful in solving our industry dilemma, that oral auction provided by new legislation would greatly enhance free competition by the continuation of the small operator in our business sector, and in turn provide for the public interest, and once again capital investment will rise as each mill sees the protection of his local resource.

I thank you for your attentiveness and await your questions.

STATEMENT OF ROBERT ROBERTSON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT LUMBERMEN

Thank you Mr. Chairman for this opportunity to appear before you today. My name is Bob Robertson. I am Executive Vice President of the National Association of Independent Lumbermen. N.A.I.L. is a consortium of three regional associations representing small business timber operators: the Southeastern Lumber Manufacturers Association, College Park, Georgia; the North West Timber Association, Eugene, Oregon; and the Western Forest Industries Association of Portland, Oregon.

I am here today to express the concerns of N.A.I.L. and its members with regard to Section 14(e) of the National Forest Management Practices Act of 1976 and to speak in support of S. 1360, the legislation before you today.

We do not acknowledge any conflict whatsoever in supporting the South's desire to maintain their historic sealed bidding method and the West's desire to return once more to their traditional method: oral bidding. There is unanimity among our members that S. 1360 should be acted upon favorably by this Committee and the Senate. The differences are detailed in the two statements, which, with the Chairman's permission, I would like to submit for the record as parts of my presentation. The two are: Bryce Griffis for the Southeastern Lumber Manufacturers Association—he is chairman of their Governmental Affairs Committee and a member of the NAIL Board of Directors; and Arnold D. Ewing—a NAIL Board member also and executive vice president of the North West Timber Association. In the interests of conserving time and getting right to the point, I would like to summarize briefly what each has to say:

*Mr. Griffis.*—The South wants to stay with their traditional method of bidding (sealed) on U.S. Forest timber sales. However, the South is supportive of the West's desire to return to their historic method of oral bidding. Mr. Griffis cites that there is a fundamental difference between the South and the West in this regard—the South is not dependent on Forest Service timber to the extent the West is; therefore, community stability is not in jeopardy because they have ample supplies of private timber to tide them over unsuccessful bids for federal timber. He cites the smallness of the federal sales in the South and their desire not to have to hire more timber purchaser specialists, which they consider an unnecessary expense, all things considered.

*Mr. Ewing.*—Stresses community and small business operator stability in his argument that the Forest Service should return to historic oral bidding practices in the West. He underlines the Federal Government's virtual monopoly of the timber supply in an area where the mills are nearly 100% dependent upon federal timber for their survival and that of the communities in which they are located.

A brief history of western bidding practices is included in Mr. Ewing's statement. He points out the predation which has occurred since sealed bidding was begun by the Forest Service, of bidders unsuccessful within their own, traditional area venturing farther and farther afield to take timber out of other areas into which they had not ventured previously in order to stay alive—log trucks, in this era of energy shortage, passing each other on the highways.

Attached to Mr. Ewing's statement are examples of federal timber sales which score the points he has made.

In summary, NAIL supports passage of S. 1360 because it is the means by which the serious problems of the West caused by Section 14(e) of the 1976 Act can be corrected.

Thank you Mr. Chairman.  
Attachments.

STATEMENT OF BRYCE GRIFFIS ON BEHALF OF SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION

My name is Bryce Griffis; I am the president of Sturgis Lumber Company, Sturgis, Mississippi. Also, I am the chairman of the Governmental Affairs Committee of the Southeastern Lumber Manufacturers Association. This Association, which I represent here today, has a total of 290 member mills in eight southern states. These mills collectively cut over 2 billion board feet of lumber annually. A total of 114 of these mills depend upon National Forest stumpage to supply at least a portion of their raw material needs. And, as my company purchases timber from the national forests in Mississippi, I am vitally interested in the legislation being considered by this committee.

Section 14(e)(2) of the National Forest Management Act of 1976 states: "The Secretary of Agriculture shall take such action as he may deem appropriate to obviate collusive practices in bidding for trees, portions of trees, or forest products from the National Forest System lands, including but not limited to—requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation; . . ."

The passage I would like to address today is "requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation; . . ."

The history of timber sales in the South has always evolved around the sale of timber from the small landowner. Historically, sealed bidding in the South has been an equitable and just method of purchasing timber. The independent lumber mills in the South have relied on the private landowner to supply a large part of his raw material needs because the small landowner owns 92% of the South's commercial forest lands. Even the national forest sales in the South have historically been small. In just the past six months there have been 118 Forest Service timber sales in the eight states in which the SLMA operates. The average sale sold for \$102,000 with the largest sale being \$690,000, and the smallest of the sales going for \$2,200. Also, it is interesting to note that over 30% of these sales were under \$10,000.

The timber buyer in the South is a key personage on the independent lumberman's staff. He must—with only one walk through a stand of timber—have a close idea of the volume, the grade quality, the logability, and a good concept of what it is going to take to get this particular landowner to sell his timber. This individual must know wood, woods, lumber, and people; and he is usually one of the highest paid on the mill owner's staff. This is the caliber of person that is sent to an oral bid sale. If every National Forest timber sale is an oral bid the mill owner has but two choices. He can hire more of these highly trained persons, which he cannot afford, or he can stop buying the amount of National Forest timber he has purchased in the past. Oral bid sales in the South leaves the independent mill owner with two very poor alternatives from which to choose.

Gentleman, the Southern timber industry not only desires sealed bids but needs the sealed bid system to help produce the lumber that this nation must have.

But apparently this is not so of our associates in the Pacific Northwest. I believe one of the major attributes of our great country is its cosmopolitan make-up. There is no one country in the world that has a greater diversified mixture of peoples and geography. This poses many difficult problems for our Congressional lawmakers. They not only have to make the decision of what is fair and lawful for all of our peoples, but they have to decide how such laws are to be administered. Here is where the difficulty lies.

Unlike the South, historically, the Pacific Northwest has relied on publicly-owned lands to supply the major portion of its raw material needs. Not only do the lumber mills rely on National Forest timber sales but many of the communities are heavily dependent on these mills for their economic well-being. They must have a steady supply of National Forest timber in order to survive. The term used is "community stability."

We recommend that you give the Secretary of Agriculture the means to obviate collusive practices in bidding. But also give him the vehicle with which he can provide favorable bidding practices to the different geographical regions of this country. Congress must decide what is lawful, what is fair, and what is most beneficial to the timber industry and to our nation.

The people of this country are expecting great achievements of our 95th Congress and our new administration, and I believe the return to standard bidding practices on national forest timber sales will help alleviate the conflict which now exists under the present terms of the National Forest Management Act of 1976. Thank you.

STATEMENT OF ARNOLD D. EWING, EXECUTIVE VICE PRESIDENT, NORTH WEST  
TIMBER ASSOCIATION

Thank you for the opportunity to appear before you today.

I am Arnold Ewing, Executive Vice President of North West Timber Association. Our membership is composed of small independent operators all from western Oregon. They are nearly 100 percent dependent upon public timber for their raw material. Thus, any action that adversely affects their ability to assure themselves of any individual timber sale when they need it is real reason to become alarmed and emotional.

These mills are generally family owned operators sometimes spanning as much as three generations. The mill represents a lifetime investment.

These mills have survived mergers, purchases by large companies, bad markets, OSHA, increasingly more government regulations, and worst of all a decreasing supply of timber available from Federal lands.

They have spent a lifetime of personal struggles and total commitment of their assets to make their operations efficient and complete. Their ability to maintain a viable operation is dependent upon a continuous dependable supply of timber and a bidding system that allows them to protect this investment. Oral auction bidding provides this opportunity.

A little history of bidding procedures used by the Forest Service may be appropriate. The earliest record I have observed was a Washington Office letter to Regional Foresters, dated March 11, 1941, stating that Region 1 had requested permission to use auction bidding. Following are excerpts used by the Forest Service supporting initiation of auction bidding:

"Proponents of the method point out that it will give an established operator—perhaps vitally dependent upon the particular block of timber being offered for sale—an opportunity to meet unexpected competition from a 'dark horse'. Thus, sale by public auction might result in greater returns to the Treasury and more continuity of local employment."

"Another type of case in which sale by auction might be desirable is where the applicant for a body of timber feels that there will be considerable competition for it and bids an unjustifiably high price because he believes that he must have the timber. We all know of cases where this has happened and the high bid was materially above the next lower bid, sometimes resulting in the purchaser losing money on the operation; abandoning the sale; applying for cancellation; or taking other action which has interfered with the orderly cutting of National Forest timber and the concurrent social benefits. If the sale were by oral auction, each bidder would know the exact nature of the competition he must meet."

"One theoretical advantage of the sealed bid system is that it is supposed to reduce the opportunities for collusion, but that may be more theoretical than real. The sealed bid procedure was formerly an aid to the buyer who could not conveniently attend an oral auction, but the automobile has largely removed that factor."

Additional correspondence from the Washington Office to Regional Foresters, dated May 8, 1942, reporting the trial of oral sales in Region 5 was satisfactory in that the timber was sold at fair prices. It was also mentioned that Region 8 held oral sales in the Regional Office in Atlanta. The letter did express concern about difficulties of travel by automobile. Many of us recall gas and rubber shortages for our cars during those years. This letter states, "The use of oral auction bidding instead of sealed bids was authorized as a permissible alternative."

In a letter dated February 19, 1947, Region 6 stated they had not sold any sales by oral bid to date. Quoting from this document, "Recent extreme competition for National Forest timber has caused us to consider the advisability of sales by auction bidding. . . Tentative policy is to give auction bidding a trial, but not to shift to it as standard procedure. . . For the present time we believe it should be used for sales on which an established manufacturing plant or community is dependent. . ." Still quoting from this document:

"In our opinion auction bidding favors the large operator, since it enables him to meet any competition. We, therefore, do not favor its use in small sales, even though the small sale may be made for the benefit of an established operator or dependent community. In other words, sales which are so small that they do not mean life or death to an established manufacturing plant need not be made on an auction basis."

H. J. Andrews, North Pacific regional forester and spokesman for the Forest Service placed a news item in the *Oregonian* on February 15, 1947, announcing their intent to change bidding procedures to the auction method in certain sales, and explained reasons for such action. Portions of that news item follow: "The proposed trial of auction bidding, he said, is due to recent 'wild bidding' on timber offerings, plus a desire to avoid disturbing the stability of established wood-using plants and existing communities long dependent on National Forest timber supplies." Further quoting Andrews in this news item, "In recent months, lumbermen in Oregon and Washington have bid as much as \$25.11 per 1,000 feet for Douglas-fir, \$18.21 for cedar and \$10.11 for hemlock to establish new all-time high records. Date for the first sale under the auction method has not yet been set." The regional forester further pointed out, and I quote, "If in a particular instance a sale offering includes the whole or a substantial part of the allowable

cut tributary to a dependent plant or community, the local bidder is faced with a life-or-death situation. A high bid by an operator not dependent on the timber for his continued operation or by a bidder from some distant point would mean death to the local industry with consequent loss of employment and economic stability for the community." Andrews further stated, "Auction bidding in such a situation does not guarantee that this will not happen, but it at least gives the local concerns an opportunity to protect their interests without submitting inordinately high bids blindly under the sealed bid procedure."

On March 17, 1948, a written statement indicates Region 6 had then gone to 90 percent oral auction and said operators favored it in almost 100 percent of the cases. It further stated: "Whether or not the auction method has resulted in an over-all increase in prices bid is unknown. For certain sales we undoubtedly have received higher prices than would have been obtained under sealed bids, but in other cases we are certain that sealed bids would have resulted in higher prices." A later quote from this document read.

"From the purchaser's standpoint auction bidding eliminates the necessity of bidding in the dark, which is the one feature of sealed bidding that is disliked."

I believe the Forest Service has adequately stated industry's position except for these short additional observations. Since sealed bidding has been used there has been a noticeable increase of bidders from outside the normal bidding areas successfully purchasing the timber. This timber will be hauled out of the normal processing area to fill a void existing someplace else. This in turn will cause those areas with the newly created shortage to reach to other areas to fill their void. This can cause some severe disruption in communities as well as creating additional unneeded harvesting costs.

Oral auction bidding is important because there is no alternate supply of timber. There is no tomorrow.

I have been informed by legal council that the Forest Management Act of 1976 does provide the Forest Service the flexibility to use 100 percent oral auction bidding.

It appears the Forest Service's advice is otherwise. If this cannot be resolved shortly, I urge consideration for some clarifying legislation.

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STATEMENT OF J. F. O'DONNELL, EXECUTIVE VICE PRESIDENT, NORTHWEST PINE ASSOCIATION, SPOKANE, WASH.

I'm Jim O'Donnell, Forester and Executive Vice President of Northwest Pine Association. Northwest Pine is an association of lumber and plywood manufacturers who operate mills in eastern Washington and eastern Oregon. These mills are heavily dependent on U.S. Forest Service Timber offerings and usually represent the major source of employment in the communities where they are located.

NORTHWEST PINE ASSOCIATION SUPPORTS S.1360

Northwest Pine Association supports the concept of establishing an Advisory Committee on timber sales procedures, especially since those delegated to write regulations to implement that part of the National Forest Management Act of 1976, dealing with bidding seem determined to undermine the intent of the act and destroy the community stability provided by regular offerings of U.S. Forest Service Timber.

Section 2(a)(1) says it all as far as we are concerned "Such study shall be made for the purpose of providing its independent recommendations with respect to establishing procedures by which the Forest Service will be able to sell timber in a manner which will provide for community stability and will fully recognize the diversity of geographic location, climate, species and other factors, and will be over the long term, the most beneficial to the public interest and provide the most stable return to the Federal Government while maintaining diversity in terms of sizes, types and locations of operation and facilities which process timber."

The key words here are community stability, diversity of geographic location, and beneficial to public interest. I'll expand on these three phrases.

## COMMUNITY STABILITY

Northwest Pine Association finds that the way to provide community stability is to have a long term timber supply available, offer it at reasonable prices, and allow the bidders the opportunity to meet the opposition in open oral auction bidding. Sealed bidding allows for uncertainty and eventually would cause injury to a local public timber dependent mill which obviously would not provide for community stability.

## DIVERSITY OF GEOGRAPHIC LOCATION

There is a great difference between regions and even within regions in how timber is sold. In the south the traditional method of selling timber is sealed bid. They accept it are used to it and of course are not nearly as dependent on Government timber. As Burt Lance says "if it ain't broke, don't fix it."

Timber sales and bidding responses are very different within region six. In the coastal area you may get as many as 20 bidders on each sale and competition is fierce while inland where timber values are lower, and mills are far apart you may have only one company interested in a sale. In neither should collusion be suspected. Case of difference in bidding practices because of geographic location are numerous and it would be wise to study them closely.

## BENEFICIAL TO PUBLIC INTEREST

Having a healthy economy should be of concern to all of us and promoting ways to provide this health a continuous effort. A stable timber supply, with the opportunity to purchase this timber will help in maintaining a healthy economy. Oral auction is the only competitive sale method that allows for this opportunity. Where timbers is tributary to dependent communities there seems to be unanimous agreement in the legislative history of the National Forest Management Act of 1976 that oral auctions are in the public interest.

Concerning the bidding feature of the law, the joint explanatory statement of the Committee of Conference states ". . . sealed bidding will be required for all advertised sales except in those instances when the secretary determines that the public interest justifies use of other methods.

In summary, Northwest Pine Association endorses S. 1360 and prays for its speedy enactment. We will pledge our support of the Advisory Committee. We are confident that unbiased persons working for the public interest and recognizing the need for community stability will reject sealed bidding on U.S. Forest Service timber sales.

In the meantime repeal of section 14 (e) of the 1976 National Forest Management Act is needed and return to the historic bidding methods reinstated. There has already been community disruption and further delays will cause continued uncertainties. Thank you for this opportunity.

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STATEMENT OF ERWIN KULOSA, MANAGER, SOUTHWESTERN FOREST RESOURCE AFFAIRS, FEDERAL TIMBER PURCHASERS ASSOCIATION, ALBUQUERQUE, N. MEX.

Mr. Chairman and Members of the Committee, I am Erwin Kulosa, Manager, Southwestern Forest Resource Affairs, Federal Timber Purchasers Association, Albuquerque, New Mexico. Our Association represents more than 30 forest products manufacturing companies with more than 50 plants and facilities located in the states of Colorado, Arizona, Idaho, Montana, New Mexico, South Dakota, Utah and Wyoming. Each year our members manufacture national forest timber into wood products totaling about one billion board feet of lumber, plywood and paper products to shelter and serve the people of this nation in a variety of ways. In that process, they directly employ about 10,000 people and generate over \$80 million of economic activity in more than 50 communities which span the length and breadth of the Rocky Mountains and the Southwest. Minorities are heavily represented among those employed.

Members of Federal Timber Purchasers Association depend upon the national forests for more than 95 percent of the timber they use in their wood processing facilities. As such, they and their employees have a vital stake in the outcome of your deliberations and findings with respect to S. 1360 and the method by which Forest Service timber sales are bid.

On January 26, 1977, the Board of Directors of FTPA unanimously adopted a policy of favoring 100 percent use of oral auction methods in the sale of national forest timber. The present controversy which the Forest Service has provoked through its inept attempts to dictate and require the wider use of sealed bidding methods in the West is totally unnecessary and is serving no useful purpose other than to divert precious funds, time and energy away from the efforts that should, be applied to other, far more important, aspects of the National Forest Management Act and the Forest and Rangeland Renewable Resources Planning Act.

Mr. Chairman, we hope that the record of these hearings will establish a firm indestructible foundation upon which can be built a successful effort, either through legislation or other means, which will get the Forest Service back on the job of truly managing the renewable resources of the national forests.

It is our position that the Congresses never intended what has happened thus far with the sealed bidding issues. Respected attorneys have supported us in this view. I submit that the Forest Service has done what it has done to date purely for its own convenience and totally without consideration for the needs of its customers for timber. The needs and stability of the dependent forest communities all over the West have been crassly disregarded. The only positive effect of this controversy has been to focus long overdue attention on the dependent community concept.

We wish to draw attention to the fact that, in the Southwest and the Rocky Mountain States particularly, every community where national forest timber is given primary processing depends upon national forest timber to a degree that is unequaled in other regions of the nation. This is because there are, for all practical purposes, no alternative sources of timber available which could sustain any of the established processing facilities in the event that national forest timber was no longer available to them. The prospect of being denied the opportunity to purchase needed timber sales is enhanced through the use of sealed bids.

Where national forest timber is either the only source of supply, or the major source of supply, for primary processing facilities located in dependent communities, oral auction bidding procedures for its sale should be the rule, rather than the exception. It should be clearly in the public interest to afford the protection of oral auction bidding to all communities that depend upon the processing of timber from the national forest system.

A large number of communities in the West which depend on national forest timber are at or very near the danger point in terms of raw material insecurity. Investments to increase efficiency or comply with air and water pollution control requirements are not being made, because the future is so uncertain and money is not available unless the raw material is at hand to provide the means to pay it back. With housing starts expected to increase substantially during this year, a demand-supply crisis of disastrous proportions can be foreseen for softwood forest products. If the homebuilding industry had any grasp of the true wood product supply picture as it portrays those of its suppliers who rely on the national forests, there would be a rash of panic buying before the supplies dry up.

For the area that we represent, it can be stated without reservation that every community that contains a wood processing facility which utilizes national forest timber is dependent, because no suitable alternative timber sources are economically or feasibly available. The Forest Service does not now, and has not for several years, offered enough timber for sale to meet the need of dependent community wood processing facilities for raw material security. Timber sale programs are sporadic and unpredictable and individual timber sales are often of a size and frequency that can mean survival or failure to a dependent community facility if they are not purchased or otherwise available for manufacture. I cannot emphasize enough that the continued blind, indifferent insistence on the use of sealed bid timber sale methods will drive those forest products manufacturers who depend upon national forest timber, particularly in the Rocky Mountains and the Southwest, to economic ruin.

The Chief of the Forest Service has, at present, a policy which says that only enough timber will be offered for sale to sustain the present industry capacity. Even this is not being done, because the funds needed to provide access to areas which can be managed on a favorable cost return basis are being denied, diverted, or withheld. In addition, commercial forest land in our area is being held hostage to appease the insatiable appetites of those who want to expand the wilderness preservation system.

Before the Rocky Mountain area is written off entirely as being uneconomic or incapable of making a contribution to the nation's wood needs, we would like these points to be considered:

1. Commercial forest lands in the national forests of the Rocky Mountains regions amount to 43 percent of the total commercial forest land in the national forest system.

2. In the Rocky Mountains, national forests contain a higher percentage of higher productivity lands than other ownerships.

3. There is a great potential for increasing the timber yield from Rocky Mountain national forests.

4. There is a great potential for development and use of the associated forest resources in the Rocky Mountains.

Therefore, we support S. 1360, as written, and recommend that it be passed quickly before further injury is suffered by the wood products industry. However, we do ask that the Congress direct the Forest Service to return to bidding methods which prevailed prior to passage of the National Forest Management Act of 1976, unless there is conclusive evidence that collusive bidding is occurring.

If relief of this nature is not forthcoming, every dependent community in the West will eventually be driven either out of the business of processing national forest timber or to petition Congress to establish some type of protective designation such as a sustained yield unit. The present imposition of sealed bidding requirements upon an already critically unstable raw material situation will cause the collapse of the traditional relationship that has existed between the Forest Service and its customers for timber. In the long run, this may not be bad, because it will force a badly needed reassessment of the whole process by which timber from the national forests finds its way into the homes that are badly needed by young families, poor families and the elderly. The cost in human suffering, community dislocation, and housing opportunities foregone before such a reassessment is triggered, however, may be worth careful consideration before the point of no return has been reached. In the final analysis, there just has to be a better way than the present cumbersome, inefficient, costly and tortured process we are forced to accept in order to obtain our raw material.

Thank you.

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STATEMENT OF DON SMITH, REPRESENTING POTLATCH CORP., LEWISTON, IDAHO

My name is H. Don Smith. I am a Logging Manager for Potlatch Corporation in Lewiston, Idaho. I am a forest economist and have served in this capacity for both Potlatch and an industry association at North Carolina State University in Raleigh.

Potlatch Corporation employs approximately 4,500 people in the Northern Idaho area and pays salaries and benefits of \$89 million annually.

Our corporation supports Senate Bill 1360. We are deeply concerned that a dependable, continuing supply of raw material be available from public lands to provide stable employment for our people and to protect our investment in plant facilities.

In our northern Idaho operating area, the bidding for national forest timber has historically been split between oral and sealed bidding. Sealed bidding has represented 16-20 percent of all sales by volume and 35-40 percent by individual offerings. The sealed bid method has predominantly been used for smaller sales.

This region has a mature forest products industry that up to now has been characterized by a fair balance between raw material supply sources and conversion facilities. The competing converters range from large corporations such as ourselves with fee-owned timberland that supplies slightly more than half our needs, to smaller single-facility sawmills that are almost totally dependent upon Forest Service timber sales.

All forest-related industries in the region have been troubled by a continuing withdrawal of lands from commercial timberland base, and by a failure of the federal agencies to offer for sale the full allowable cut. Mandatory sealed bidding for federal timber has introduced an additional element of risk for all companies in the region. This will inevitably affect employment and future investment with the smaller companies being most severely affected.

Oral bidding does not necessarily change the cost of timber purchases. However, it does provide an individual mill owner the opportunity to purchase the volume or species critical to his continuing operation when he needs it. Timing is extremely

important to a smaller mill because timing affects risk. To be profitable, mills must attract and hold skilled employees on a sustained basis and this requires a continuous supply of timber. With sealed bidding, an individual mill owner can never know when an outsider, with no investment in the community, will submit an occasional higher bid, at a loss, in order to obtain incremental quantities of logs. With oral bidding, the local mill owner has a chance to exceed the bid of the outsider, and thus protect his employees and his investment. Oral bidding reduces his risk of forced closure or curtailment due to a gap in the local timber supply.

The long-term effect of an uncertain timber supply will be that many smaller operators who are highly dependent on Forest Service sales will be forced out of business, and the larger operators such as ourselves will consolidate our converting facilities to better match our own fee-owned timber holdings. In either case the local communities will suffer economically.

We ask Congress to consider retaining the same balance of sealed and oral bidding that has been practiced over the past five years. Such a balance will benefit the people employed in the forest products industry in our area, and particularly the smaller operators and communities who are so heavily dependent on Forest Service timber.

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STATEMENT OF FRED SOHN, PRESIDENT, SUN STUDS, INC., ROSEBURG, OREG.

I am Fred Sohn, President and owner of Sun Studs, Inc., in Roseburg, Oregon.

We manufacture lumber and veneer. In logging and manufacturing, we employ about 400 men and women.

Our operation is, we think, unique. We stress two elements—quality control of our product and maximum utilization of every log. That quality control starts in the woods. The timber we purchase must be suited to the mill equipment. Falling and especially bucking are closely related to maximization of the quality of the end product.

To assure the highest possible utilization of the fiber of each log in our lumber and veneer mill, each log is scanned by electronic beam. That scanning activates a computer that then so positions the log in relation to the saw as to get the most lumber possible out of each log. To keep this operating we carry 7 computer scientists on our steady payroll.

If this operation is to be efficient and, therefore able to survive, it must have about 100 million board feet of logs per year. Of this, over 75 million feet must come from the national forests. The rest comes from other government timber and a little from various, private sources. Incidentally, last year, we planted a million seedling trees on some land we bought in a cut-over condition.

Roseburg, Oregon, is the headquarters of the Umpqua National Forest. Besides our operation, a number of other plants in the area are also dependent on the Umpqua.

Parenthetically, in order to dispel any notion of collusion, the oral auction sales on the Umpqua in calendar 1976 up to the enactment of the Management Act went for more than 100% over the fair market value fixed by the Forest Service. Under sealed bidding the price has been only 60% over appraisal, but this drop is attributable to a shift in the Forest's appraisal base.

Obviously our unique plant has required great capital investment in recent years. We could make the investment because we were confident we could compete successfully for the needed timber. But under sealed bids, our timber supply has changed. We can no longer raise our bid to protect ourselves. As a result of blind bidding, we now see the timber sales flowing out of the area. And this occurs just as the Forest Service tells us it must now reduce the annual sales volume on the Umpqua.

To be specific in calendar 1976 while oral bids were used, the Umpqua sold over 191 million board feet of timber. 80.2% of that remained in the area. Since then, the Forest has sold 67.3 million board feet at sealed bids. 41.3% of those sales went out of the area—some of it to areas that never before even bid for Umpqua timber. If this rate of outflow is sustained, in a couple of years one or two major operating plants in our area will in all probability be eliminated. And in Roseburg, the mills are the sole industrial employers.

To save our plant, we have been forced to go over a hundred miles out of our area to try a blind bid where we were not expected. Sheer luck was with us. On the other hand, we recognized that the protection of our plant, payroll and community forced us to visit dislocations on still another community. We do not

like to do this. And we do not think that the Government, as the owner of a practical monopoly of the timber in all these areas, should create the forces that have these economically and socially unhealthy results.

Sealed bidding multiplies the already great risks that characterize our industry. We buy timber now for harvest in two or more years hence. From year to year—even from month to month, the market for our products is highly volatile. Our risks are great. But at oral bidding, we knew we had a fighting chance to get the timber.

But now, any guess must be purely guess. Some remote mill that has never bid in our area suddenly drops in the sealed bid at a price well in excess of what we believe to be the sale's value. Under oral bidding, we could still get the sale even at a loss—if we needed the sale that badly. But under sealed bidding, we can not do that. Thus, forces for further community instability are set in motion as we are forced to raid still other areas. And the added risk, of course, makes us wonder whether we should retire and sell out to a big business that can offset any losses against his profits from the private timber in other parts of the nation and even abroad.

A mix of sealed and oral bidding does not solve the problem. Most mills are built to run at their maximum efficiency on certain sizes, species and types of logs. A sale that meets one mill's needs will be less suited or perhaps of almost no value to another mill. We must focus, therefore, on the timber that comes closest to meeting our particular needs. Under a mixed bidding system, we run the risk that all of the sales we need—or none of them—may come up at sealed bid. This creates still one more hazard that we do not need.

Finally, I think the Forest Service needs to wake up to the facts of community stability. It is inconceivable to me that a rational person could conclude that Roseburg is not dependent on Umpqua National Forest timber. True, Weyerhaeuser has large holdings in the area and once in a while may even sell some timber. It is rarely of any help to us or to any of the other independents like us. Weyerhaeuser uses its timber to supply its operations at Cottage Grove (about 60 miles from Roseburg) and at Coos Bay (about 80 miles from Roseburg). Whether the Weyerhaeuser timber is near or far from Roseburg—it does nothing for Roseburg's employment or tax base. Yet, I understand that because of its actual proximity, the Forest Service has decided that Roseburg is not dependent on national forest timber. It is not merely that I disagree with the Forest Service. I simply can not understand this. It is much like their conclusion that no community in all of Montana is dependent on national forest timber. Such stuff is dangerous nonsense.

The set-aside program of the Small Business Administration still gives us some optimism toward investing monies to improve our efficiencies. In our own company, utilization has improved 50% and our productivity per employee has gone up 40% during the past five years. But the Small Business Administration can neither protect us against a shrinking timber supply nor against sealed bidding. The only salvation a small company has is to sell out to a large, publicly owned company which senses now the weakness of the set-aside program and the opportunity sealed bidding creates.

It is obvious that the major victim of this program will be the small independent operator since government timber sales policies and programs are creating conditions under which small businesses can not sustain a profitable operation.

Oral bidding does serve a number of public interests. Various witnesses have mentioned a number of them. I urge a quick return to oral auction except in those instances where the Secretary of Agriculture, acting pursuant to general regulations, finds that oral auction would be contrary to the public interest.

