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CLEARCUTTING ON NATIONAL FORESTS

STEPHEN H. SPURR*

Since the passage of the Organic Act in 1897,¹ the Federal Government has been authorized to sell timber on the national forests of the United States. Until after World War II, logging was limited in the West because larger trees were more accessible and available on private land. East of the Great Plains, national forests had been established largely during the 1930s on cutover land which held little merchantable timber for several decades.

In the intervening years, however, logging on national forests has increased greatly. Large clearcut areas became widespread and highly visible, and public concern rose proportionately. Clearcutting on national forests became a major public policy issue in 1969 and 1970, beginning with an outcry against clearcutting on the Bitterroot National Forest in Montana and the Monongahela National Forest in West Virginia.

During the seventies, an interplay of competing forces utilizing legislative, judicial, and executive processes has gone far to resolve this issue, or at least to establish a set of procedures by which this issue can be resolved in specific cases. An analysis of how the controversy has evolved provides a valuable case study to demonstrate that our administrative, legislative, and judicial processes can work.

THE NATIONAL FORESTS IN 1970

Regulations promulgated in 1979 for controlling management of national forests began to be developed a decade earlier. In 1970, according to the U.S. Forest Service, national forests contained 18 percent of the commercial forest land in the United States.² This acreage, however, held 51 percent of the softwood sawtimber growing stock, or slightly more than one-half of a principal raw material upon which housing and other wood-using industries were dependent.

Harvest of softwood sawtimber on national forests had more than

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1. 16 U.S.C. §§ 473-482,551 (1976).

2. U.S. DEPT. OF AGRICULTURE, FOREST SERVICE, THE OUTLOOK FOR TIMBER IN THE UNITED STATES (1974) [hereinafter cited as OUTLOOK REPORT].

doubled from 1952 to 1970 (see Table 1). Over this period, the proportion of the nation's total production of softwood lumber and plywood from these public lands increased from 15 to 27 percent. In 1970, softwood trees of sawtimber size were being cut faster than they were being grown on national forests.

TABLE 1
GROWTH AND HARVEST OF SOFTWOOD SAWTIMBER ON
NATIONAL FORESTS

	Growth	Harvest	Percent of Total U.S. Harvest
	<i>million board feet</i>		
1952	6,913	5,834	15
1962	8,062	10,616	28
1970	8,599	12,740	27

Source: U.S. DEPT OF AGRICULTURE, FOREST SERVICE, THE OUTLOOK FOR TIMBER IN THE UNITED STATES (1974).

Despite increases in harvest, the wholesale price index of lumber (1967 = 100) had jumped to 123.5 in 1969. It dropped to 103 in 1970, but rose sharply to 134 in 1972. As a result, the forest industry was pushing for even larger harvests on national forest lands.

This was also a period of great activity by conservation groups, particularly the Sierra Club, Friends of the Earth, and the Wilderness Society. With the successful passage of the act creating the National Wilderness system in 1964,³ these and other similar organizations were actively promoting the setting aside of additional large roadless tracts in the national forests as wilderness areas. At the same time, these groups were becoming increasingly concerned about widespread clearcutting on national forest lands.

Thus the stage was set for a confrontation between industry and conservationists regarding management practices in the national forests. The specific issue to emerge was the practice of clearcutting.⁴

Bitterroot National Forest

The case of the Bitterroot National Forest in Montana raised the curtain on the debate. In 1969, Sen. Lee Metcalf of Montana wrote to Dean Arnold Bolle of the University of Montana School of Forestry:

3. 16 U.S.C. §§ 1131-1136 (1976 & Supp. III 1979).

4. See generally Spurr, *Silviculture*, 240 SCIENTIFIC AM. 76 (1979).

Enclosed are copies of letters I have received recently from constituents in the Bitterroot Valley.

I am especially concerned, as are my constituents, over the long-range effects of clear-cutting, and the dominant role of timber production in Forest Service policy, to the detriment of other uses of these national resources.⁵

The object of concern was a large-area clearcut that had been terraced by bulldozers in an effort to obtain better survival and growth for planted seedlings. This and other clearcuts were highly visible scars on the mountainside above the well-settled Bitterroot River valley. In 1968, the Ravalli County Resource Conservation and Development Committee objected to these forestry practices. In response the Regional Forester appointed an internal task force which first reported in April, 1970.⁶

In its report, the task force admitted that the Forest Service had placed timber production ahead of multiple use management, that communications with the public had been inadequate, and that in several cases land management had been substandard. Regarding silvicultural systems, the task force recommended that the selection system or shelterwood methods be used for ponderosa pine. For other timber types, clearcutting could be used only where it was the only feasible method. Where clearcutting is done, the task force recommended that patches should be small enough and shaped in such a manner as to simulate natural openings.⁷

A concurrent study by Bolle and other faculty members of the University of Montana was published by Congress in 1970.⁸ The

5. SELECT COMMITTEE OF THE UNIVERSITY OF MONTANA, A UNIVERSITY VIEW OF THE FOREST SERVICE, S. DOC. NO. 115, 91st Cong., 2d Sess. (1970) [hereinafter cited as SELECT COMMITTEE REPORT].

6. U.S. DEPT. OF AGRICULTURE, FOREST SERVICE, MANAGEMENT PRACTICES ON THE BITTERROOT NATIONAL FOREST (1970).

7. To maintain a sustained yield of timber from the forest, mature trees must be harvested in such a way as to establish a new generation of trees. The many various patterns and timings of removal of the old stand are grouped into four *silvicultural systems*. Repeated light partial cuts made every few years over many decades will create an uneven-aged stand. This is termed the *selection system* and is suitable only for tree species which can grow throughout their life under the shade of overstory trees. The other silvicultural systems create even-aged stands. *Clearcutting* involves the removal in one cut of the entire overstory at maturity with the area being either planted or naturally regenerated with seed left on the ground or blowing in from the side. In the *seed-tree system*, a few large-crowned trees are left singly or in small groups. In the *shelterwood system*, the even-aged mature stand is removed in two or three cuts over a relatively short portion of the life of the stand, thus providing seed, cover and growing space for the new stand to become established. Once natural regeneration becomes established, the remaining mature growth is cut to turn the site over to the new growth.

8. SELECT COMMITTEE REPORT, *supra* note 5.

Bolle report was less critical of clearcutting as a silvicultural tool but highly critical of the economic justification of clearcutting and terracing as practiced on the forest, concluding that it was the abuse, not the use of clearcutting that was objectionable. In subsequent years, clearcuts on the forest have been made much smaller and less frequent.⁹

The Bolle report emphasized that the rather intensive management practices of the Forest Service were not economically justified on many sites and that timber production was unduly weighted compared to other legally-mandated uses of the forest. Although clearcutting was not evaluated in terms of its silvicultural justification for timber production, the report was seized by environmentalists as a professional study that condemned the general use of clearcutting.

Monongahela National Forest

Across the country, in West Virginia, the Monongahela National Forest changed its management plan in 1964 from one based on all-age management (selection system) to even-aged (clearcutting).¹⁰ This change was made because partial or selective cuttings removed the more valuable trees and left lower value trees to take over the site, thus deteriorating the forest by "high-grading." In contrast, clearcutting created an even-aged stand of young hardwoods, mostly sprouts from the stumps of the cut trees, that could be managed from the beginning for the production of quality timber. The forest management, however, placed little emphasis on the fact that many of the "worthless" old trees were valuable nest and food trees for raccoons, squirrels, and other animals. In particular, one large clearcut on the side of a mountain which was highly visible from the valley concerned and antagonized many people and visitors from nearby Washington, D.C. The West Virginia state legislature passed resolutions in 1964 and 1967 asking for an investigation of timber practices on the forest. In 1970, spurred by a report of the West Virginia Forest Management Practices Commission, the legislature passed a third resolution asking "the government of the United States to take prompt and effective action to curtail the practices of clearcutting on National Forest land in the State of West Virginia."¹¹

In response, the Chief of the Forest Service in 1970 established a

9. See Popovich, *The Bitterroot—A Fading Polemic*, 74 J. FORESTRY 39 (1976) and Popovich, *The Bitterroot—Remembrance of Things Past*, 73 J. FORESTRY 758 (1975).

10. Popovich, *Monongahela Hearings: A Congressional Postscript*, 74 J. FORESTRY 300, 300-01, 310 (1976).

11. *Clear-Cutting Study*, 68 J. FORESTRY 389 (1970).

Special Review Committee.^{1 2} Its report defended even-aged management by clearcutting, but was critical of the manner in which the system had been applied. In short, the Forest Service planned to continue to clearcut but to do it better.

National Timber Supply Bill

The obvious effect of any limitation on clearcutting on national forests would be to curtail the flow of timber from those lands. As the Bitterroot and the Monongahela cases surfaced, however, pressures were being exerted by the lumber industry to increase the cutting of timber on national forests, a move that would inevitably result in greater clearcutting.

These pressures resulted in the proposed *National Timber Supply Act of 1969* (later renamed the *National Forest Timber Conservation and Management Act of 1969* (H.R. 12025)), which stated that "it is necessary to increase substantially the timber yield from the commercial forest land of the Nation including that in the national forests."^{1 3} The bill proposed establishment of a high timber yield fund to receive receipts from the sale of national forest timber and directed that allowable harvesting rates be revised upwards in contemplation of more intensive management. The measure was reported out of the House Agriculture Committee, but subsequently died.

Softwood Lumber and Plywood Panel

During the same period, the Council of Economic Advisors, alerted by the lumber industry, became concerned about the extremely rapid increase in the price of softwood lumber and plywood and attendant inflationary effects on the American economy. As a result, the Cabinet Committee on Economic Policy appointed 12 agency representatives to a Task Force on Softwood Lumber and Plywood in March of 1969. That task force issued preliminary findings and recommendations on June 18, 1970, received additional instructions from the president the following day (obviously drafted by the task force), and issued a final report on June 21, 1971.^{1 4}

As has been already noted, the relative price indices for softwood

12. U.S. DEPT. OF AGRICULTURE, FOREST SERVICE, EVEN-AGE MANAGEMENT ON THE MONONGAHELA NATIONAL FOREST (1970).

13. National Forest Timber Supply Legislation, *reprinted in* 67 J. FORESTRY 560-62 (1969).

14. Task Force on Softwood Lumber and Plywood, *Memorandum for Cabinet Committee on Economic Policy* (June 18, 1970), *Statement by the President* (June 19, 1970), *Report* (June 21, 1971) (unpublished copies on file at the NRJ office).

lumber and plywood had peaked in the late winter of 1969 and then had fallen to previous levels. Nevertheless, the task force expressed concern over inadequate future supplies of softwood timber and recommended that the national forest harvesting be expanded through appropriate investment in more intensive management. President Nixon's statement directed the Secretaries of Agriculture and the Interior to formulate plans to permit an increased harvest and adopted the task force recommendation that "a panel of outstanding citizens be invited to study the entire range of problems involved in ensuring that the achievement of our housing goals is not constrained by an inadequate supply of softwood lumber and plywood, while fully protecting and enhancing the quality of our environment."

1971: A YEAR OF PREPARATION

The battle lines had now been formed. Protectionists, united in their condemnation of the Bitterroot and Monongahela examples, pressed to eliminate or restrict clearcutting on national forests. Forest industries supported the report of the Task Force on Softwood Lumber and Plywood to force increased timber sales on the national forests. The Forest Service, beleaguered on both sides, strove to justify its practices and to put its house in order. This complex of activities culminated in 1971.

The conservationist movement pressed its cause in all three branches of the federal government. In Congress, Senators Lee Metcalf of Montana and Jennings Randolph of West Virginia were joined by Frank Church of Idaho and Dale McGee of Wyoming.

From April 5 to June 29, 1971, the Subcommittee on Public Lands of the Senate Interior and Insular Affairs Committee, chaired by Senator Church, held extensive hearings on management practices on public lands, principally dealing with the clearcutting issue.¹⁵ Lining up in favor of legislative limitation of clearcutting on national forest lands were spokesmen for the Sierra Club, Friends of the Earth, Izaak Walton League, Wilderness Society, and Defenders of Wildlife. Arguing for a professional forest management policy which would allow clearcutting as an alternative were the National Forest Products Association, Industrial Forestry Association, American Pulpwood Association, American Plywood Association and Western Lumber

15. Sen. Subcomm. on Public Lands to the Comm. on Interior and Insular Affairs, 92d Cong., 2d Sess., *Clearcutting on Federal Timberlands* (March 29, 1972) (unpublished), reprinted in CONGRESSIONAL RESEARCH SERVICE, 92d CONG., 2d SESS., *AN ANALYSIS OF FORESTRY ISSUES IN THE FIRST SESSION OF THE 92d CONGRESS* 51 app. (Comm. Print 1972) [hereinafter cited as CONG. CLEARCUTTING REPORT].

Manufacturers Inc. Several large wood-using industries, such as Boise Cascade and St. Regis Paper Company, as well as Society of American Foresters, American Forestry Association, and the United Brotherhood of Carpenters and Joiners of America also backed clearcutting. Several professional foresters supported the conservationist viewpoint, but more testified in favor of professional discretion. Over 90 witnesses were heard, representing all sides of this highly controversial issue.

In the executive branch of the Federal Government, protectionist pressure was exerted on the Council of Environmental Quality (CEQ), urging the President to take appropriate action. The CEQ, following the example of the Bolle Committee, asked the Deans of five leading forestry schools to prepare detailed reports and recommendations on clearcutting in their respective regions. These reports were submitted in the summer of 1971. All favored the continued use of clearcutting under professional control. Perhaps because the reports did not support the beliefs of members of the CEQ staff, they were not released. Finally, in 1972, their summaries were read into the *Congressional Record* by Sen. Mark Hatfield.¹⁶ Two years later, brief versions were published.¹⁷

On the judicial front, environmentalists studied existing legislation in an effort to find a legal basis for an action to stop clearcutting. Their efforts would later prove successful. Meanwhile, in an effort to increase public support for the anti-clearcutting cause, the Sierra Club published a self-styled "Battlebook" entitled *Clearcutting: The Deforestation of America*, in which its position was strongly presented.¹⁸

In response to industry pressures and in accordance with his response to the Softwood Task Force, President Nixon appointed an Advisory Panel on Timber and the Environment¹⁹ in September of 1971 under the chairmanship of Fred Seaton, former Secretary of the Interior. The other members were Marion Clawson of Resources for the Future; Ralph Hodges of the National Forest Products Association; Prof. Donald Zinn, past president of the National Wildlife Federation, and this writer, a university-based specialist in silviculture and forest ecology.

16. 110 CONG. REC. 2986-94 (1972).

17. E. HORWITZ, CLEARCUTTING: A VIEW FROM THE TOP (1974).

18. N. WOOD, CLEARCUT: THE DEFORESTATION OF AMERICA (1971).

19. REPORT OF THE PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT, H. Doc. 94-93, 94th Cong., 1st Sess. (1975) [hereinafter cited as PAPTE REPORT].

For its part, the Forest Service undertook a study of management in Wyoming.²⁰ This study team admitted past mistakes, advocated the continued use of clearcutting in the lodgepole pine (but not in the Engelmann spruce types), and recommended a number of management safeguards. At the national level, the Forest Service published in 1971 a report entitled *National Forest Management in a Quality Environment*, which supported clearcutting as one possible method of harvesting.²¹ Major emphasis was placed, however, on some thirty problem situations and how to resolve them in light of varied objectives and needs of multiple use forest management.

By the end of 1971 all the forces were in motion, and an early action in at least one of the three major branches of the federal government was inevitable.

EXECUTIVE AND LEGISLATIVE ACTION

Executive Order

In an effort either to forestall the impact of the President's Advisory Panel on Timber and the Environment (PAPTE) or to anticipate its recommendations, the Council on Environmental Quality pressed the White House in early 1972 to have the President issue an Executive Order curbing and limiting clearcutting in the national forests.

The draft version specified that clearcutting would be permitted only under certain conditions:

- clearcutting must have a silvicultural justification;
- the area of the clearcutting be limited;
- the area to be clearcut be planned to minimize adverse impact on outdoor recreational use;
- no tract would be clearcut where there will be unacceptable impacts on scenic beauty;
- clearcut areas should be blended into the landscape;
- clearcutting should not be done on sites susceptible to severe erosion;
- there must be assurance that the area will regenerate promptly;
- water quality be protected through the restriction of logging adjacent to streams and lakes; and
- severe impacts on wildlife be avoided.

The timber industry reacted vigorously in opposition. PAPTE

20. U.S. DEPT. OF AGRICULTURE, FOREST SERVICE, FOREST MANAGEMENT IN WYOMING (1971).

21. U.S. DEPT. OF AGRICULTURE, FOREST SERVICE, NATIONAL FOREST MANAGEMENT IN A QUALITY ENVIRONMENT (1971).

asked that action be delayed until it could consider the matter, and the White House decided not to proceed at that time.

Church Guidelines

Failure to achieve action through the executive branch, however, was followed shortly by successful action in the legislative branch. The Public Lands Subcommittee of the Senate Committee on Interior and Insular Affairs reported in March, 1972.²² The Subcommittee's attention was directed primarily to clearcutting practices on the national forests. After eight days of hearings, it concluded that recent Forest Service policy changes represented defensive responses to pressure from environmental groups, rather than energetic initiative. As a consequence, the Subcommittee concluded that the Forest Service image had suffered and that "its numerous recent actions in the right direction" had made little impact. The Subcommittee also noted that Congress had treated the Forest Service much better in its budget request for timber sale administration than it had for recreation and wildlife, reforestation, and soil and water management.

Most important, however, the report proposed a carefully considered set of guidelines (known as the Church guidelines) for clear-cutting management. The report stated:

Therefore, the Subcommittee believes timber management activities on Federal lands should be subject to the following policy guidelines:

1. Allowable harvest levels

- a. Allowable harvest on Federal forest lands should be reviewed and adjusted periodically to assure that the lands on which they are based are available and suitable for timber production under these guidelines.

- b. Increases in allowable harvest based on intensified management practices such as reforestation, thinning, tree improvement and the like should be made only upon demonstration that such practices justify increased allowable harvest, and there is assurance that such practices are satisfactorily funded for continuation to completion.

If planned intensive measures are inadequately funded and thus cannot be accomplished on schedule, allowable harvest should be reduced accordingly.

2. Harvesting limitations

Clear-cutting should not be used as a cutting method on Federal land areas where:

22. CONG. CLEARCUTTING REPORT, *supra* note 15.

- a. Soil, slope or other watershed conditions are fragile and subject to major injury.
 - b. There is no assurance that the area can be adequately restocked within five years after harvest.
 - c. Aesthetic values outweigh other considerations.
 - d. The method is preferred only because it will give the greatest dollar return or the greatest unit output.
3. Clear-cutting should be used only where:
- a. It is determined to be silviculturally essential to accomplish the relevant forest management objectives.
 - b. The size of clear-cut block, patches or strips are kept at the minimum necessary to accomplish silvicultural and other multiple-use forest management objectives.
 - c. A multidisciplinary review has first been made of the potential environmental, biological, aesthetic, engineering and economic impacts on each sale area.
 - d. Clear-cut blocks, patches or strips are, in all cases, shaped and blended as much as possible with the natural terrain.
4. Timber sale contracts
- Federal timber sale contracts should contain requirements to assure that all possible measures are taken to minimize or avoid adverse environmental impacts of timber harvesting, even if such measures result in lower net returns to the Treasury.²³

These guidelines were similar to those previously proposed for inclusion in the aborted Executive Order of the President. At the press conference where the guidelines were made public, Senator Church announced that his Subcommittee was rejecting legislative proposals to impose a moratorium on clearcutting, pending completion of studies underway.

Shortly thereafter, Chief Edward P. Cliff of the Forest Service announced that his agency would follow the guidelines, which were technically sound and generally compatible with a series of reports recently published by that agency. Indeed, several had already been adopted and were in effect.

An analysis of forestry issues in the first session of the 92nd Congress documents the activities of the legislative branch during this important period.²⁴

President's Advisory Panel on Timber and Environment

PAPTE, organized in the fall of 1971, was concerned with all aspects of the timber production-environment interrelationship. Arising

23. *Id.*

24. PAPTE REPORT, *supra* note 19.

as it did from the President's acceptance of the report of the Task Force on Softwood Lumber and provided with logistical support by the Council of Economic Advisors, PAPTE was principally concerned with structural wood supplies and prices. PAPTE's basic economic orientation was emphasized by the fact that Marion Clawson, a noted resource economist, was the principal draftsman of its final report.

Nevertheless, PAPTE also concerned itself with ecological aspects of the clearcutting issue. To provide a basis for judgment, PAPTE commissioned independent studies to investigate the impact of timber harvest on the environment, soils and water, and wildlife. These studies were conducted by three noted university professors, David M. Smith of Yale, Earl Stone of Cornell and William L. Webb of State University of New York College of Environmental Science and Forestry. Drawing upon their own experiences and an extensive review of the literature, all three consultants concluded that clearcutting had an important place in silvicultural practices designed to produce timber, protect soil and water, and optimize wildlife. The studies concluded that most erosion and stream damage resulted from improper logging and road construction and were not related to the pattern and amount of forest cut at a given time.

In its own report, PAPTE warned that the issue of whether to permit clearcutting had become confused with the issue of whether to permit any cutting at all. Many of the arguments used against clearcutting on the western national forests are in reality arguments against logging in any form. The threshold decision on a given piece of public land is whether it should be devoted to timber production. If not, it should be reserved as a wilderness area or in a marginal land classification exempting it from harvest operations.

PAPTE recommended that on commercial forest lands in which timber production was one goal, the professional forester should have at his disposal the widest range of tools and methods to meet the objectives set forth by Congress:

Clearcutting is a recognized practice for growing timber in even-aged stands. It is a viable alternative in many forest management decisions and an essential one in others. If properly applied, clearcutting does not lead to soil erosion, nutrient depletion, wildlife habitat damage, or stream deterioration. Its use is compatible with long-term sustained yield forest management.

Clearcutting does have a generally adverse aesthetic effect and this may be serious enough in specific instances and areas to merit the minimization or elimination of clearcutting. The undesirable aesthetic effect of clearcutting, however, can be minimized and re-

stricted to a matter of a very few years if the area of clearcut is small and if reforestation is immediate.²⁵

The PAPTE report was transmitted to the President on April 30, 1973. Both the President and Congress, however, were deeply involved in other matters and the report on forest practices had little impact. The clearcutting conflict continued to move along on other fronts.

Outlook Report

In trying to evaluate the forest situation in the United States, the chief source of data is the recurrent statistical summary published by the Forest Service and based upon the ongoing forest survey. These had previously been published in 1948 (*The Reappraisal Report*), 1958 (*Timber Resources Review*), and 1965 (*Timber Trends*). An updated report, *The Outlook for Timber in the United States*, was published in 1974.²⁶ Although based on sampling data that were largely limited and out of date, it still provided the only statistical survey of the forest situation in the United States.

The Outlook Study was fairly encouraging about the timber situation in the early 1970s. The United States was growing more wood than it was cutting. Only in the larger softwood sawtimber sizes in the West was cutting exceeding growth. For projected future demand for both sawtimber and pulpwood, however, the picture was not encouraging. Substantial increases in productivity were seen to be needed to meet demands for wood by the end of the century.

All in all, the Outlook Report did little to change the views of the various protagonists concerning national forest management. Data could be drawn from the report to buttress the arguments of both sides. Advocates of the "wise use" school were able to conclude that, if more money could be invested in silvicultural management on public lands, future wood needs could be met. Advocates of preserving more forested wilderness, however, could argue from the data that the removal from production of substantial areas of low grade forest land would have relatively little impact on overall U.S. wood production. The report did have the effect, however, of bringing arguments on both sides down to earth.

RESOURCES PLANNING ACT

The need for long term planning as a basis for national forest management has long been apparent. In 1973, PAPTE recommended that

25. *Id.*

26. See OUTLOOK REPORT, *supra* note 2.

"the President require the Federal agencies concerned with forests to prepare a comprehensive nationwide program of forest development and timber supply." Later that year, with support from the Forest Service, Hubert Humphrey introduced a bill into the Senate which was passed in the fall of 1974 as the Forest and Rangeland Renewable Resources Planning Act of 1974 (abbreviated to the Resources Planning Act or RPA).²⁷

This act called upon the Forest Service to assess the nation's wild-land resources at ten-year intervals and to prepare a plan for the management of lands under its management at five-year intervals. The President is required to frame his budget requests for the Forest Service in terms of the RPA program and describe the relationship between his budget request and the program.

In 1976, the Forest Service submitted its first assessment and program, but the documents apparently had little effect on the budget process. As of 1980, it appears that Congress and the Office of Management and Budget were paying more attention to the program in framing the agency's budget.

The RPA reports of the Forest Service represent a major step forward in long-range planning for national forest management. Shortages of time, data, and staff, however, inevitably affect the quality of the final product. Speaking for the Society of American Foresters, Vaux entered constructive suggestions into the record, calling for:

- RPA guidance by Congress,
- Congressional overview of wilderness,
- coordination of goals with state and private sectors,
- involvement of all federal land programs in the assessment,
- consistency between national and regional goals,
- improved analyses and research, and
- caution on further revision of the RPA Act itself.²⁸

As will be discussed below, the National Forest Management Act of 1976 largely took the form of amendments to the Resources Planning Act which incorporated new materials but did not fundamentally change the directed planning progress.

VIEW OF PROFESSIONAL FORESTERS

The clearcutting issue continued to concern professional foresters outside of the Forest Service, as well as federal agency personnel and concerned environmentalists.

27. 16 U.S.C. §§ 1600-1614 (1976 & Supp. III 1979).

28. Vaux, *SAF's Statement on Implementation of Resource Planning Act*, 75 J. FORESTRY 573 (1977).

Early in the next round of conflict, Prof. Kenneth P. Davis, then President of the Society of American Foresters (SAF) testified before a Senate subcommittee, arguing that a place existed for even-aged management.²⁹ While maintaining that clearcutting is often effective, economical and properly applied in the U.S., he did not deny that the method may have been over-applied or misapplied on occasion. Davis recommended that no moratorium on clearcutting be placed on specific national forests, but that the Forest Service initiate continuing study of silvicultural cutting methods, including clearcutting, and report to the Congress as may be required.

SAF scheduled a major forum on clearcutting at its 1972 convention.³⁰ All the papers concluded that the controversy was real and that it would continue. Paul V. Ellefson and others made it plain that clearcutting was not a single major issue, but rather a means for criticizing a broad range of issues involving public land management such as strip mining, forest road construction, wilderness, alleged overcutting, monoculture, use of chemicals, and disproportionate funding of timber activities on national forests.

While many professional foresters were defensive in their support of clearcutting and of professional practices in general, Edward C. Crafts was not:

Clearcutting can be applied judiciously and with expertise, or brutally and with calamitous results. In the United States there has been too much of the latter and too little of the former. But foresters must not and cannot brush off the massive public reaction against clearcutting. There has been too much public outcry.³¹

Crafts cited the Church Committee report with approval and recommended that clearcutting of hardwoods be eliminated except for aspen, paper birch and emergency conditions such as fire, insect and disease control. In softwoods, Crafts recommended that clearcuts be limited to 25 acres and controlled by strict environmental guidelines.

Leon S. Minckler, another prominent research forester, argued that multiple-use criteria applied in the prescription of silvicultural systems for eastern hardwoods would often lead to the choice of a group selection system rather than to clearcutting.³² Both Crafts and Minckler have been criticized within the forestry profession for their alleged apostasy.

29. See Davis, *The Place for Even-aged Management*, 68 J. FORESTRY 39 (1970).

30. See Montgomery & Walker, *The Clearcutting Controversy*, 71 J. FORESTRY 10 (1973).

31. Crafts, *Foresters on Trial*, 71 J. FORESTRY 14 (1973).

32. See Minckler, *Prescribing Silvicultural Systems*, 72 J. FORESTRY 269 (1974).

THE NADER STUDY

The clearcutting controversy became so prominent in the public arena that a Ralph Nader Study Group was organized to investigate the management of national forests. This investigation spawned a 1974 report, a chapter of which detailed the history of the clearcutting controversy from an environmentalist's point of view.³³ Claiming that clearcutting causes significant deterioration of national forests, the report argued that adequate scientific information on the effects of clearcutting was not available and that the Forest Service courted disaster by continuing the present level of clearcutting. Favorably impressed with the competence and attitudes of Forest Service personnel, the Nader group recommended Congressional guidance, favoring true multiple use management, better funding, and increased public involvement in its activities.

THE MONONGAHELA AND TONGASS COURT DECISIONS

In early 1973, the clearcutting controversy stood at dead center. In Congress, environmentalist pressure had scuttled the proposed National Timber Supply Act, but industry counterpressures had stifled thoughts of putting the Church Committee guidelines on clearcutting into law. In the executive branch, the attempt of the Council of Environmental Quality to have the President issue an Executive Order putting clearcutting strictures into effect had been stopped by industry, while environmentalist concerns had stymied efforts to increase the allowable cut on the national forests. The Forest Service had the Resources Planning Act to back its effort to fund the management of public forests on a true multiple use basis, but the Office of Management and Budget or Congress showed little interest in providing such funding.

At this juncture, enter the courts. In May, 1973, a number of conservation organizations filed suit in federal district court against the Secretary of Agriculture, alleging that clearcutting was violative of the Organic Act of 1897.³⁴ That act provides for the management of the national forests and limits the cutting of trees to those that are "dead, matured or large growth" and that are "marked and designated." This case, entitled *Izaak Walton League v. Butz*, was decided in favor of the conservationists, and affirmed on appeal to the Circuit Court in Richmond, Virginia in 1975.³⁵

33. See D. BARNEY, *THE LAST STAND* (1974).

34. 16 U.S.C. §§ 473-482, 551 (1976).

35. West Virginia Div. of the Izaak Walton League of America v. Butz, 367 F. Supp. 422 (N.D. W. Va. 1973), *aff'd* 522 F.2d 945 (4th Cir. 1975).

This decision is a prime illustration of the appropriate use of professional testimony and judicial decisiveness.³⁶ The Fourth Circuit Court of Appeals found that the restrictions of the 1897 Organic Act applied literally and that the government was legally restricted to cutting only trees that were "dead, matured or large growth" and that were "marked and designated." The court based its decision on a reading of an authoritative dictionary (the *Terminology of Forest Science, Technology, Practice and Products* published by the Society of American Foresters), the record of Congress in considering the original legislation, and the regulations published by the Forest Service over the years. It concluded that the congressional language was unambiguous and must be obeyed:

We are not insensitive to the fact that our reading of the Organic Act will have serious and far-reaching consequences, and it may well be that this legislation enacted over seventy-five years ago is an anachronism which no longer serves the public interest. However, the appropriate forum to resolve this complex and controversial issue is not the courts but the Congress.³⁷

As a result of this decision, the Forest Service was forced to close down most timber sales in the four states within the jurisdiction of the Fourth Circuit Court.

A similar line of reasoning was followed by the U.S. District Court in *Zieske v. Butz*,³⁸ which involved logging on the Tongass National Forest in Alaska. "The issue is one purely of statutory interpretation," said the court, and found that the language of the Organic Act of 1897 must be literally interpreted," although it may not coincide with the concept of the Forest Service as to sound timber management."³⁹

It is worth noting that in *Zieske v. Butz*, the plaintiffs alleged violations not only of the Organic Act but also of the National Environmental Policy Act (NEPA), the Multiple Use-Sustained Yield Act, the Water Pollution Control Act, and the Refuse Act. Without going into technical forestry matters, the summary judgment held that the Secretary of Agriculture had complied fully with NEPA, and had not abused his discretion under the multiple-use act. Claims under the Federal Water Pollution Control Act were disallowed because the case fell within the "public works" exception to the act.

36. See generally Spurr, *Use of Professional Competence by the Judiciary*, 75 J. FORESTRY 198 (1977).

37. 522 F.2d at 955.

38. 406 F. Supp. 258 (D. Alaska 1976).

39. *Id.* at 259.

Finally, the court held that the permanent injunction against timber harvesting should apply only to the specific geographical portion of Prince of Wales Island mentioned by the plaintiffs. Nowhere in the opinion were technical forestry questions ruled upon.

With these two decisions, it became obvious that virtually any timber sale on national forests could be curtailed by an injunction issued by any federal district court.

NATIONAL FOREST MANAGEMENT ACT

The courts had held that some timber management practices on national forests were not authorized by law. It was the responsibility of the Congress to define what those practices should be. The initiative had clearly been shifted to the Congress and, in the spring of 1976, the Ninety-fourth Congress focused its attention upon proposed remedial legislation. A number of bills were introduced in both houses, but attention was soon concentrated upon two: the Randolph bill (S.2926) and the Humphrey bill (S.3091).

The Randolph bill, providing for sound management practices in the national forests of the United States consistent with the principles of multiple use and sustained yield, was drafted by many of the same environmentalists who had been active in the clearcutting controversy over the preceding years. It quickly became known as the environmentalist or anti-clearcutting bill.

The Humphrey bill, amending the Forest and Rangeland Renewable Resources Planning Act of 1974 and the Act of June 4, 1897, proposed to set policies for the management of national forest lands similar to those that had developed in practice over the years. It became known as the industry bill.

Intense interest was generated by the debate. Nearly two thousand pages of testimony were generated from hearings in the two houses of Congress.⁴⁰ The Randolph bill was supported by the Sierra Club, Friends of the Earth, Environmental Policy Center and Environmental Action, acting as the Coalition to Save our National Forests. The Humphrey bill had wider support, including the Forest Service, Society of American Foresters, American Forestry Association, the forest industry generally, and some related unions. Wildlife associations testified against the prescriptive aspects of the Randolph bill, but felt that the Humphrey bill lacked policy direction.

40. See *Forest and Rangeland Management: Joint Hearings on S. 2926 Before the Senate Comm. on Interior and Insular Affairs and the Senate Comm. on Agriculture and Forestry*, 94th Cong., 2d Sess. (1976); *Forest Management Practices; Hearings on H.R. 10364 Before the House Comm. on Agriculture*, 94th Cong., 2d Sess. (1976).

Clearcutting was one issue, but the principal focus was on the specificity with which Congress should spell out management policies on the national forests. Especially difficult to resolve were management policies such as the designation and treatment of marginal forest lands and the determination of allowable cut.⁴¹

The Randolph bill was specific on clearcutting. It proposed "that no single system dominates in the national forests, except that even-aged forest management primarily implemented by selection cutting shall be used in the eastern mixed hardwood forests" and "the area (clear) cut shall generally not exceed twenty-five acres in size and, whenever feasible, no cut shall be closer than one thousand feet of another clearcut or even-aged cut made within the preceding ten years." It also provided that "such cuts are used in the eastern mixed hardwood forests only for the special purposes of the improvement of wildlife habitats or the salvage of timber damaged by fire, disease, pest infestation, blowdowns, or other catastrophe."

In contrast, the Humphrey bill was brief and discussed clearcutting only by inference. It specified that the Secretary of Agriculture would set out the process for the development and revision of the land management plans and guidelines and standards within two years.

In the eventual compromise, the Humphrey bill was used as a basis for mark-up, but was broadly interlaced with language from the Randolph bill. The proposal that clearcutting be outlawed in the eastern hardwood forest was dropped, but a general proviso was included to permit the use of clearcutting only when "it is determined to be the optimum method . . . to meet the objectives and requirements of the relevant land management plan."

Borrowing from the Church guidelines, the final act contained language affecting all harvest cuts. It specified that the Secretary of Agriculture should establish guidelines for land management plants which "insure that timber will be harvested from National Forest System lands only where—

- (i) soil, slope, or other watershed conditions will not be irreversibly damaged;
- (ii) there is assurance that such lands can be adequately restocked within five years after harvest;
- (iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental

41. See McGuire, *National Forest Policy and the 94th Congress*, 74 J. FORESTRY 800 (1976) and LeMaster & Popovich, *Development of the National Forest Management Act*, 74 J. FORESTRY 806 (1976).

changes in water temperature, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

- (iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber.⁴²

This language was generally acceptable to all sides. The Senate voted 90 to 0 in and the House voted 305 to 24 in favor of the bills as reported out of their respective committees. Both industry and environmental representatives spoke well of the final act.

The resulting legislation, the National Forest Management Act of 1976,⁴³ cleared the way for continued logging on the national forests pursuant to guidelines and regulations to be developed according to procedures detailed by the act. The paragraph in the Organic Act of 1897 limiting timber harvesting was specifically repealed, thus rendering moot the Monongahela and Tongass court decisions.

TEXAS NATIONAL FORESTS

Other laws existed, however. In 1976, environmentalists in Texas brought suit against the Secretary of Agriculture, alleging that timber on the Texas national forests was being harvested in violation of the Multiple Use-Sustained Yield Act, the Endangered Species Act, and the National Environmental Policy Act as well as the Organic Act and the National Forest Management Act.⁴⁴

On May 24, 1977, the federal district court in Tyler, Texas ruled that the Forest Service should file a programmatic environmental impact statement (EIS) on clearcutting in the Texas national forests, and that it should be enjoined from clearcutting, seed-tree cutting, shelterwood cutting, or other cuts designed to regenerate even-aged stands of timber until the statement had received the approval of the court. No action was taken by the court on the Multiple Use-Sustained Yield Act or the Endangered Species Act.

That, however, was not to be the last word. The Fifth Circuit Court of Appeals, on May 8, 1978, overturned the District Court decision. It held that while the Forest Service must file an environmental impact statement as it develops new management guidelines pursuant to the National Forest Management Act, clearcutting may continue under the general guidelines set forth in that act until final

42. 16 U.S.C. § 1604(g)(3)(E) (1976).

43. 16 U.S.C. §§ 1600-1614 (1976 & Supp. III 1979).

44. *Texas Committee on Natural Resources v. Bergland*, 433 F. Supp. 1235 (E.D. Tex. 1977), *rev'd*, 573 F.2d 201 (5th Cir. 1978), *cert. denied*, 439 U.S. 966 (1978).

management practices are promulgated by the Secretary of Agriculture. The circuit court warned

our decision today is not a wholesale license to clearcut in Texas forests. Both the Church guidelines and the NFMA express serious reservations about the practice that may not be disregarded by the Forest Service in developing permanent guidelines. The NFMA specifically notes that clearcutting may not be adopted simply because it gives the greatest dollar return per unit output. Rather clearcutting must be used only where it is essential to accomplish the relevant forest management objectives.⁴⁵

FEDERAL REGULATIONS

Pursuant to the National Forest Management Act of 1976, the Forest Service has developed and promulgated regulations. The process began with preparation of draft regulations and a draft environmental impact statement.⁴⁶ The act also established a committee of scientists and a framework for substantial public involvement.

The final rules and regulations were published a year later.⁴⁷ In general, the Church guidelines on timber harvest practices remained as written in the regulations. The major additional step was the incorporation of specific size limits on the area of a clearcut:

(2) Individual cut blocks, patches, or strips will conform to the maximum size limits for areas to be cut in one harvest operation established by the regional plan according to geographic areas and forest types. This limit may be less than, but will not exceed 60 acres for the Douglas-fir forest type of California, Oregon and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.⁴⁸

The regulations permit larger cuts when silviculturally desirable to produce a better combination of benefits, when approved by the regional forester after 60 days public notice, or when timber must be salvaged because of fire, insect and disease attack or windstorm.

The final regulations on the size of clearcuts represent a compromise between environmentalists (many of whom wanted a 25-acre maximum cut across the country) and most professional foresters

45. 573 F.2d at 212.

46. 43 Fed. Reg. 39,046 (1978).

47. 44 Fed. Reg. 53,928 (1979) (to be codified at 36 C.F.R. § 219).

48. *Id.* at 53990-91 (to be codified at 36 C.F.R. § 219.13(d)(2)).

(including the Committee of Scientists). Since little research evidence exists to identify any particular area as critical, the limits chosen seem as defensible as any. As further evidence is accumulated, the regulations can be changed.

THE POLICY SITUATION TODAY

The issue of clearcutting on national forest lands is far from being resolved. The very fact that so many people were satisfied with the language of the National Forest Management Act of 1976 could indicate that much of its language is subject to differing interpretations and thus to eventual litigation.

Strongly divergent views still persist. Many people feel deeply that logging should be severely limited on national forests in favor of management for the purposes of wildlife habitat and outdoor recreation. Many others believe that trees are there to be used and that increased logging is in the public interest, even in amounts larger than those permitted by present sustained-yield determinations. These views are not apt to change, nor will efforts to swing public policy in one way or another be relaxed.

Clearcutting is but one issue on which the public is divided, but it is one that is symbolic of attitudes toward national forest management. We can expect continued action in the executive, legislative and judicial branches of our federal government to both limit clearcutting and to permit its wider application. The political process has worked well thus far to produce policies which have achieved fairly widespread acceptance. Indications are that they will continue to work as well in the future.