The original documents are located in Box 15, folder "Forest Practices (Monongahela Bill)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

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Monongahela 1975

NEWS
U.S. DEPARTMENT OF AGRICULTURE

NO APPEAL PLANNED ON NATIONAL FOREST TIMBER SALES QUESTION; LEGISLATION EYED:

WASHINGTON, Dec. 1--The Federal government has decided not to seek Supreme Court review of a Circuit Court decision restricting timber sales in the Monongahela National Forest of West Virginia.

The U.S. Department of Agriculture (USDA) said today it had been notified by the Department of Justice that the government will not petition the Supreme Court to review the 4th Circuit Court of Appeals' August 1975 decision. The decision had affirmed a U.S. District Court ruling which prevents the USDA's Forest Service from selling any trees which are not dead, mature or of large growth. The ruling also requires each tree selected for sale to be individually marked and removed from the harvest area after cutting.

Chief John R. McGuire of the Forest Service said he would recommend remedial legislation. To facilitate consideration of such legislation, the agency will relate its legislative proposal to the long-range Assessment and Program required for the Forest Service in legislation Congress passed last year. The proposed long-range Assessment and Program, a requirement of the Forest and Rangeland Renewable Resources Planning Act of 1974, is to be presented to Congress in early 1976.

Meanwhile, Chief McGuire said, the regular timber sales program will be continued nationally, except in nine National Forests in the 4th Circuit Court area of West Virginia, Virginia, North Carolina, and South Carolina. In those states the Forest Service will continue the timber sales restrictions it imposed following the 4th Circuit Court's decision.

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USDA 3474-75

MONONGAHELA LAWSUIT RULINGS

Q. What is the Monongahela decision?

A. On August 21, 1975, the U.S. 4th Circuit Court of Appeals in Richmond, Virginia, upheld a decision by the District Court in West Virginia that certain Forest Service timber harvesting practices on the Monongahela National Forest in West Virginia were in violation of the Organic Act of 1897. Specifically, the Court ruled that trees in the Monongahela cannot be harvested unless they are "dead, mature or of large growth," and unless they have been individually marked for cutting. The 4th Circuit Court serves West Virginia, Virginia, North Carolina and South Carolina. The lawsuit had been brought against the Forest Service in the spring of 1973 by the West Virginia Division of the Izaak Walton League, the Sierra Club, Natural Resources Defense Council, and an individual.

PCLEACH
12/3/75

MONONGAHELA RULING TO ALL OF 4th CIRCUIT

Q. Why were timber sales suspended throughout the entire 4th Circuit.

A. While the Forest Service was enjoined only on sales in the Monongahela National Forest in West Virginia, the Forest Services believes that additional sales made within the 4th Circuit would be clearly in violation of the law as interpreted by the Appeals Court. The decision of the Court of Appeals represents the final interpretation of the law within the 4th Circuit.

PCLEACH
12/3/75

NATIONAL IMPLICATIONS OF MONONGAHELA RULING

Q. What would happen to the timber sale program if the restrictions of the Monongahela decision were applied to all National Forests?

A. Initially, there would be a very substantial reduction in timber sales since the Forest Service would have to redesign most sales now being prepared. The Forest Service estimates that immediate application nationwide would reduce the current fiscal year's National Forest System timber sale program by 75 percent. The Forest Service estimates, that the long-term impact would be a reduction of about 45 percent. The reduction would be about 90 percent in the young eastern forests and about 40 percent in the old-growth western forests.

PCLEACH
12/3/75

EFFECTS OF MONONGAHELA RULING

Q. What were the immediate effects of the Monongahela Decision?

A. As a result of the Appeals Court ruling, the Forest Service decided on August 28 to suspend further timber sales in the National Forests in the four States of the 4th Circuit Court. After reviewing the ruling, the Forest Service determined that a limited amount of timber in those four States is eligible for harvesting under the Court's interpretation of the 1897 Organic Act. The limited sales program will involve 30 million board feet for the remainder of the fiscal year in contrast to the originally planned sale of 285 million board feet. The harvesting will primarily be salvage sales of diseased or wind-damaged trees. Additional sales may be possible after examining the timber stands more thoroughly.

PCLEACH
12/3/75

FOREST SERVICE APPEAL RECOMMENDATION ON MONONGAHELA

Q. What did the Forest Service recommend to the Department of Justice?

A. The Forest Service, through the Department of Agriculture, strongly recommended appeal of the Monongahela case.

PCLEACH
12/3/75

REASONS FOR RECOMMENDATION TO APPEAL MONONGAHELA

Q. Why did the Agriculture Department recommend appeal?

A. The Forest Service has concluded it cannot proceed with an orderly multiple resource program in the National Forests under the conditions imposed by the Monongahela decision. The District Court decision, upheld by the 4th Circuit Appeals Court, is based on a strict interpretation of the 1897 Act, which provides organic authority for management of the National Forests. Under the 4th Circuit's interpretation of this Act, it will be impossible on many forest stands to apply professionally and scientifically accepted silvicultural methods developed over the last eighty years.

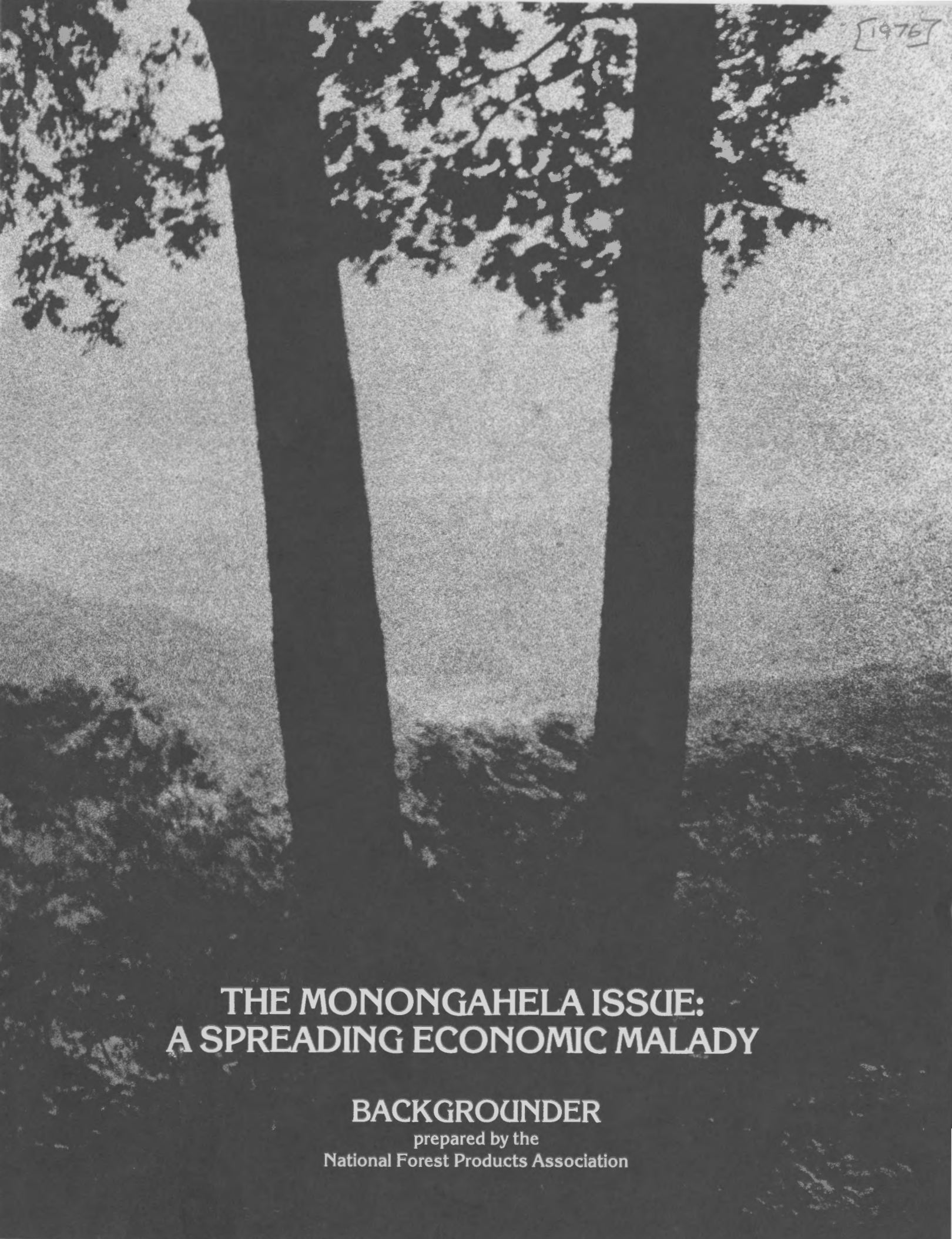
PCLEACH
12/3/75

REASON FOR DECISION NOT TO APPEAL MONONGAHELA DECISION TO SUPREME COURT

Q. Why isn't the Forest Service appealing the decision?

A. The final decision was made by the Department of Justice, through the Solicitor General, who considered a number of recommendations. This was the independent decision of the Solicitor General and I cannot speak for him about the reasoning leading to the decision.

PCLEACH
12/3/75



THE MONONGAHELA ISSUE: A SPREADING ECONOMIC MALADY

BACKGROUNDER

prepared by the
National Forest Products Association

SUMMARY AND CONTENTS

The Monongahela issue is an economic malady that arose in West Virginia, spread to Alaska and imperils the entire nation. It threatens bankruptcies, unemployment, and shortages and higher prices for wood, housing, paper, and the thousands of other products of the forest. The cause: court decisions strictly interpreting an 1897 law, despite later laws and over three-quarters of a century of broader interpretation and technological advances. Judges suggested the 19th Century law is outmoded — "an anachronism," said one — and could cause economic suffering. But they said it was up to Congress and not the courts to remedy matters. Congress, in an election year, may be hard-pressed to do so. Neither Congress nor the White House wants to act on such a controversy until after the polls close in November. But America's consumers, who will bear the burden, can ill afford to wait. [*See details, pg. 1*]

The Monongahela decision, by the U.S. Fourth Circuit Court of Appeals on August 21, 1975, upheld a 1973 lower court decision that narrowly defined the 1897 Organic Act for the National Forests. It forbade the Forest Service to sell trees from the Monongahela National Forest in West Virginia unless they were dead, physiologically mature, large, individually marked, and removed. The federal government did not appeal to the U.S. Supreme Court. The Forest Service applied the ban throughout the Fourth Circuit, covering nine National Forests in Virginia, West Virginia, and North and South Carolina. Officials warned that the decision, if extended to all 155 National Forests, would end professional forestry for federal timber and "seriously reduce our ability to produce a variety of wildlife habitat." They said it could drop timber production 75 percent in 1976 — from 12 billion board feet to 3 billion — and 50 percent for the rest of the century. On December 5, 1975, the first mill closed in Appalachia for lack of National Forest timber. Others were on the brink. [*See details, pg. 2*]

The issue moved West on December 29, 1975, when the U.S. District Court for Alaska agreed with the Monongahela decision. It ordered a halt to an existing sale, a 50-year, 8.2-billion-board-foot contract, with 26 years to run, on Alaska's Tongass National Forest. At stake were 1,500 of the total 3,500 jobs that the company, Ketchikan Pulp, provides. If appealed and lost, this decision could shut down the entire Ninth Circuit, encompassing such great forest states as Oregon, Washington and California. Other suits are pending, including one against another 50-year Tongass sale involving 1,200 jobs. [*See details, pg. 4*]

What do the preservationists want? Forest Service officials say the preservationists who sued the government want to cut the federal timber harvest in half. This, they say, would be accomplished if the court decisions prevail, and at double current administrative costs. They say the plaintiffs want "a shift of timber harvesting from National Forests to private lands." But the industry, with only 13.5 percent of the nation's forestland, can not meet U.S. needs without more, not less, timber from the National Forests. The United States is a net importer of wood fiber. [*See details, pg. 7*]

The role of Congress is crucial. Only Congress can avert this economic malady — bankruptcies and unemployment, shortages and higher prices, half the wood fiber at twice the cost, loss of county road and school revenues from federal timber sales (in lieu of land taxes), and unsound silviculture. The forest industry supports the objectives of a bill to suspend the Monongahela issue's effects until Congress can act, even though preservationists threaten "a bloody battle" on any interim legislation. The industry and professional foresters oppose the preservationist-plaintiffs' bill that would incorporate the Monongahela ruling into law. [*See details, pg. 7*]

The President's role is equally crucial. The 1974 Renewable Resources Planning Act allows him, in laying down Forest Service policy and programs, to deal with such emergencies as the Monongahela issue. [*See details, pg. 8*]

COVER PICTURE: "Shocking!" said a U.S. Senator viewing a clearcut on the Monongahela National Forest in 1970. Only five years later, the same area, foreground, is a thing of beauty. The forest renews itself.

THE MONONGAHELA ISSUE: A SPREADING ECONOMIC MALADY

The Monongahela issue is not yet a household phrase. But it might well become one in 1976. It is an economic malady that sprang to life in the wooded hills of West Virginia only a short while ago and then spread to the far reaches of Alaska, threatening the Far West now, the entire United States soon. If it is unchecked, the nation will be seized by a shortage of wood, paper and the thousands of other products of the forest, a shortage that could be worse than the recent fuel and energy crisis — with consequent spiraling prices. And, worst of all, thousands upon thousands of Americans will be put out of jobs.

Two U.S. District Courts and one U.S. Circuit Court of Appeals have said they are powerless to stop it. The judges were asked to interpret a 19th Century law and, despite all the legislation and technological advances of the intervening decades, apply it narrowly to the modern-day practice of forest management. Their findings were that the narrow interpretation of the law's restrictions and prescriptions must be observed despite 75 years of broader intepretation. In two of the three rulings, the judges acknowledged the law may be out of kilter with the times — one called it "an anachronism" — and could cause economic hardship. They said, however, that was a situation to be remedied, not by the courts, but by Congress.

Congress, however, may be hard-pressed to do so. This is an election year, a presidential election year. The Monongahela issue is controversial, and controversies require participants to pick and choose. Taking sides in a controversy loses votes as well as gains them and, with all 435 House of Representatives members and one-third of the Senate up for election, some of the members say they would like the Monongahela issue to go away — at least until after the polls close in November. The White House, which must take the lead if Congress is to act, showed little enthusiasm long after the issue appeared.

But the nation can ill afford to wait for a time convenient for the White House and Congress, not even until November. The malady is a clear and present danger, and it is growing and spreading. The U.S. Forest Service says **the Monongahela issue** could prohibit the use of three-fourths of the timber available from the nation's 155 National Forests in fiscal 1976 and of 50 percent from now to the end of the century. These lands provide one-fourth of all the timber consumed annually in the United States. Unemployment, intense shortages, higher prices, new taxes to support county schools, and further delay in the long-awaited housing recovery could result, and every consumer would bear the burden.

Already, in chronically depressed Appalachia, where **the Monongahela issue** first arose, one mill in a small town has gone out of business because of it, wrecking the local economy. Others are on the brink. Several are on a day-to-day supply basis, and private landowners, their timber in more demand than ever, are holding back on sales in expectation of higher prices. What if the threat to the far West becomes a reality, through court actions already launched and Congress' continued inaction? What will happen in Oregon and Washington, whose forest industries in 1973, their last strong year, had sales of $5.9 billion and employed 138,000 persons?

COLUMBUS AND THE FORESTS

The United States has plenty of trees, nearly three-fourths as much forestland as when Columbus landed. It totals 754 million acres, about one-third of all the nation's land. A half-million acres are "commercial." The other 254 million -- about one-third of the total forestland -- can not be harvested because they are set aside for parks, wilderness and recreation, or deemed unsuitable. These non-commercial forest areas are equal in size to the states of California, Oregon, Washington and most of Idaho.

Here is how America gets its wood fiber:

	Acreage	Inventory	Harvest
National Forests	18.4 pct.	33.5 pct.	15.6 pct.
Other Public	9.0 pct.	10.5 pct.	6.7 pct.
Industry	13.4 pct.	15.4 pct.	26.2 pct.
Non-industry private	59.2 pct.	40.6 pct.	51.5 pct.

THE MONONGAHELA DECISION

On August 21, 1975, the U.S. Fourth Circuit Court of Appeals in Richmond, Va., upheld a 1973 lower court decision in a case brought by the West Virginia Izaak Walton League, the Sierra Club and others against Secretary of Agriculture Earl L. Butz and several Forest Service officials. The suit sought to apply more narrowly the provisions of the 1897 Organic Act for the National Forests in the management of timber on the Monongahela National Forest in West Virginia. These provisions, as defined in the decision, are that the Forest Service may sell only dead, physiologically mature or large trees, that timber to be sold must be both marked and designated, and that each tree sold must be cut and removed. The Forest Service had been interpreting "mature" as commercially ready for harvest, often many years before the tree stops growing, and had been marking only those left when most were to be harvested.

At first, the decision was widely and erroneously interpreted as a ban against clearcutting. But **the Monongahela issue** is much broader than that. Chief John R. McGuire of the Forest Service says that, if applied nationwide, the Monongahela decision would mean the end of professional management of the 155 National Forests. It was McGuire who estimated that, on a national basis, the planned 1976 harvest of timber from the National Forests — which provide one-fourth of the supply and contain about one-half of the available U.S. softwood sawtimber, the raw material for lumber and plywood essential in homebuilding — could drop 75 percent, from 12 billion board feet to 3 billion board feet.

Half the Timber

On October 3, 1975, Deputy Chief Thomas C. Nelson of the Forest Service discussed the decision at a Washington, D.C., meeting of Regional Foresters and Directors. He made these points:

- "To a large extent, this precludes the use of the professionally accepted, scientifically based silvicultural systems which are applicable to the management of forests for high-level, sustained-yields of timber. Many have stated that it bans clearcutting. As a matter of law it does not, but from a practical standpoint we will find few natural stands which don't have an intermingling of young trees which can not be sold."

- "To the best of our knowledge, no one has ever tried to manage a significant forest area for sustained yield with the constraints imposed by the decision."

- "It seems apparent that in the young eastern forests very little timber can be offered until the forests become mature."

- "In the old-growth western forests, there are ample trees to be cut, but if we hold to our even-flow policy, the allowable harvest will drop more than 40 percent in most forests."

- "Our judgment is that the harvest level we can sustain nationwide, using management regimes compatible with the decision, is about 50 percent below our current harvest level. And this level could be maintained only with very substantial increases in administrative costs, perhaps as much as 80 to 90 percent over current levels."

- "I think we all recognize that loss of control over stand structure will seriously reduce our ability to produce a variety of wildlife habitat. It will also adversely affect the compatibility of timber and range programs."

- "We estimate compliance (with the court's requirement that each tree to be sold must be both marked and designated) will increase sale preparation costs about 25 percent."

On December 1, 1975, the Department of Agriculture, the Cabinet parent of the Forest Service, announced that the Department of Justice would not request U.S. Supreme Court review of the Monongahela decision. Chief McGuire said he would seek remedial legislation through the long-range Assessment and Program required for the Forest Service under the Forest and Rangeland Renewable Resources Planning Act of 1974 (Humphrey-Rarick) to be presented to Congress some time after it convened January 19, 1976.

Timber Sales Halted

In the meantime, while the Forest Service did not interrupt timber sales elsewhere, Chief McGuire cancelled some 110 million board feet of sales scheduled for 1975 in the Fourth Circuit and a total of 285 million board feet, except for 30 million board feet of diseased, dead or dying timber, for the rest of fiscal 1976. The Fourth Circuit encompasses Virginia, West Virginia, North Carolina and South Carolina, which have a total of nine National Forests. Maryland, the other state in the Circuit, does not have a National Forest. While the court decision dealt specifically with the Monongahela, the Forest Service applied it throughout the Fourth Circuit "as a matter of law," as Nelson explained.

This interpretation was confirmed in a December 29, 1975, ruling by U.S. District Judge W. W. Jones in Asheville, N.C., against the Southern Appalachian Multiple-Use Council. The Council, a group of North Carolina purchasers of federal timber, had sought to enjoin the federal government from applying the Monongahela decision throughout the Fourth Circuit or, in the alternative, require its application to all of the nation's National Forests. It argued that the Constitution guarantees equal treatment under the law, that the 1897 Organic Act is national and not regional in nature, and that the Forest Service acted "arbitrarily and capriciously" in banning timber sales on all nine National Forests of the Fourth Circuit. The Council has indicated it would appeal the decision and may file an additional suit.

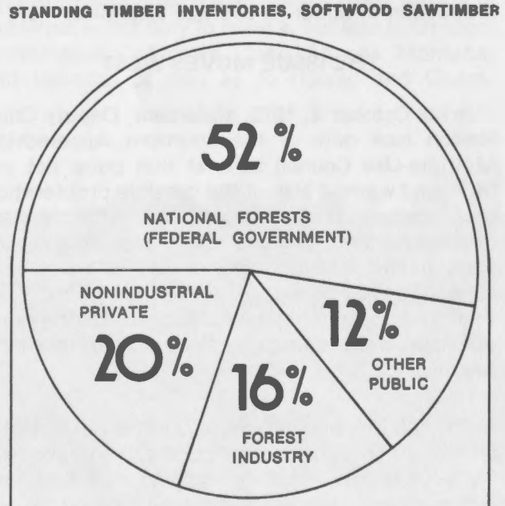
Small Companies Suffer

In his October 3, 1975, discussion of the Monongahela, Deputy Chief Nelson observed: "The 90-percent reduction in planned sales in the Fourth Circuit will have a significant impact, even though the National Forest timber harvest makes up 5 percent or less of the total timber harvested in each of the states affected. The brunt of the impact will be on small independent companies, particularly in the hardwood industry. We understand some hardwood companies have less than a 3-month timber supply available."

He was prescient. On December 5, 1975, less than a week after it was announced there would be no Supreme Court appeal, the first lumber mill closed in Appalachia as a direct result of the cutoff of federal timber arising from the court decision. James L. Gundy, executive vice president of Appalachian Hardwood Manufacturers, Inc., said: "It is only the first. Others are tottering." It was a small mill — normally producing 5 million board feet of framing for housing and similar structures each year, and employing 22 people, all now out of jobs. But Gundy warned that "the small companies go first," and Thomas E. Orr, an official of the shut-down company, said: "We set up for federal timber, and it's been cut off. We can't operate one week up and one week down, like we've been doing. *Unless Congress changes the law, we're out indefinitely.*" In the hardwood area affected, the 255 million board feet being

Where the wood is

STANDING TIMBER INVENTORIES, SOFTWOOD SAWTIMBER



NATIONAL FORESTS—	982 BILLION BOARD FEET
OTHER PUBLIC—	223 BILLION BOARD FEET
NONINDUSTRIAL PRIVATE—	382 BILLION BOARD FEET
FOREST INDUSTRY—	317 BILLION BOARD FEET
	TOTAL—1.9 TRILLION BOARD FEET

IN PERPETUITY. Wolf Point Lookout in Cowlitz County, Washington, was a mess after a 1940 clearcut [left]. By 1950 [below] it was green and growing. In 1960 [right] regeneration towers 40 feet.

withheld is the equivalent of the total annual production of about 40 average-size mills.

THE ISSUE MOVES WEST

In his October 3, 1975, statement, Deputy Chief Nelson took note of the Southern Appalachian Multiple-Use Council suit, at that point not yet filed, and warned also of the possible proliferation of litigation arising from the Monongahela decision. "We already have suits pending in Oregon and Alaska," he said. "Two of these challenge existing sales." And he warned: "Thus there is a possibility — if not a probability — that *our entire program may be stopped within the next few months.*"

The suit pending in Oregon is *Miller v. Mallory*, affecting 17 companies that purchase timber in the Bull Run watershed near Portland. It would stop all timber sales in the watershed. The court did not indicate in advance if it would rule in this case in terms of **the Monongahela issue** or decide it on the basis of other issues involved. If it did, however, and that decision was contrary to the Monongahela finding, the Portland case would provide a conflict between the Fourth and Ninth Circuits, demanding a Supreme Court resolution. But that could take years.

One Alaska suit, *Zieske v. Butz*, was decided December 29, 1975, by U.S. District Judge James A. von der Heydt in Anchorage. The ruling cited the Monongahela decision, agreed with it, and ordered a halt to a 50-year, 8.2-billion-board-foot timber sale in the Tongass National Forest to Ketchikan Pulp Co. It granted a permanent injunction, for the remaining 26 years of the 1951 contract, "barring the cutting of trees other than those which are large, physiologically matured, or dead and requiring such trees to be individually marked prior to cutting."

At Stake: 1,500 Jobs

The Alaska suit was filed February 6, 1975, by Herbert L. Zieske, the Tongass Conservation Society and others against Secretary of Agriculture Butz, several Forest Service officials and the company. It arose from a controversy precipitated by the citizens of Point Baker, a fishing and retirement community near the area involved. The immediate impact of the ruling, barring litigative or legislative intervention, would be to delay timber harvesting in the sale area, and possibly the rest of Alaska, until the Forest Service can arrange to mark individually all trees to be harvested.

The Ketchikan Pulp Co. had halted operations in the area until early Spring because of weather conditions. The total resource needs of the company average about 350 million board feet annually, half for its pulp mill and half for its three sawmills. Approximately 60 percent of this volume, about 190 million board feet, was to come from the sale now enjoined, and it is uncertain if the company's operations could shift to other sales, or whether these, too, would be subject to injunction. If the work is stopped, some 1,500 jobs would be lost, a disaster for the area. The irony is that Ketchikan was induced by the federal government to undertake the 50-year contract as a boon to the local economy.

The Forest Service indicated that the government would seek an appeal after Judge von der Heydt had issued his final order. Yet, the appeals route is fraught with peril. If it corroborated the Fourth Circuit Court of Appeals, the enormous Ninth Circuit would be shut down, too. And that would mean **the Monongahela issue** would have spread its economic malady to the great forests of the West — not only to Alaska, but also to Oregon, Washington, California, Idaho, Arizona, Montana, and Nevada, as well as to Hawaii and Guam,

"Conservation means the wise use of the Earth and its resources" . . .
Gifford Pinchot

HIGH WINDS AND NO PAYCHECK

On January 20, 1976, Sen. Ted Stevens (R-Alaska) introduced a bill, with Sen. Mike Gravel (D-Alaska), to stay the Tongass decision until September 30, 1977. Congress, Stevens said, could then work out a definitive solution.

All Tongass logging would stop under the ruling, he added, because of "the economic and physical impracticability of cutting and removing selectively marked trees." He said high winds would blow down the shallow-rooted Alaska trees left standing, creating fire hazards and insect breeding grounds.

And the Tongass, he noted, is the only source of raw material for Ketchikan Pulp Company, which directly employs 3,500 people, is the sole economic base for area communities, and produces 25 percent of the nation's high-grade pulp for rayon.

which are also included in the Ninth Circuit. And, again, the process would take time, a year or two, to be followed, perhaps, by more time on appeal to the U.S. Supreme Court.

Another 1,200 Jobs Jeopardized

Deputy Chief Nelson said in his October 3, 1975, presentation: "We do not believe the major environmental groups will initiate further litigation, unless the Congress simply ignores the issue. They want a thorough Congressional debate of the issue and realize it will not be forthcoming in a crisis atmosphere." With Congress virtually ignoring **the Monongahela issue** throughout the Fall of 1975, the preservationists went to court again, apparently unmindful of creating "a crisis atmosphere."

On December 12, 1975, the Sierra Club filed a motion in the U.S. District Court for Alaska, requesting it to reconsider its March 25, 1971, decision upholding a timber sale on a section of the Tongass National Forest known as the "Juneau Unit." In the 1971 decision, Judge Raymond Plummer refused to stop a 50-year, 8.75-billion-board-foot timber sale to Champion International. That sale requires Champion to build a pulp mill which could create as many as 1,200 jobs. This time, the Sierra Club raised **the Monongahela issue,** contending that the contract violated the 1897 Organic Act through failure to require that the timber involved be designated prior to sale.

The Forest Service and Champion International, in opposing the new motion, argue that the Court lacks jurisdiction to reconsider its nearly five-year-old ruling. The court held in 1971 that the contract provided "adequate protection against indiscriminate cutting and satisfied the purpose" of Section 476 of the Organic Act. Contract provisions called for (1) continuing cooperation between the Forest Service and the company, (2) designation of blocks of timber every five years in conformity with the overall timber management plan, and (3) set-aside blocks of land for recreational, conservational or esthetic purposes, in which modified cutting practices called for designation of individual trees.

"A Dangerous Precedent"

After the federal government announced on December 1, 1975, that it would not appeal the Fourth Circuit decision, President Eliot H. Jenkins of the National Forest Products Association declared that this was a clear signal to Congress to adopt a prompt legislative remedy. The alternative, he said, was a drift leading to "social and economic dislocations that could afflict our nation for generations." Jenkins warned:

"This decision, based on an 1897 law, and using a Webster's dictionary to define terms like 'dead' and 'mature' and 'large growth of trees,' brushed aside Congressional intent, years-long practices, and the scientific findings of three-quarters of a century of professional silviculture . . .

"A dangerous precedent has been set for all 155 National Forests . . .

"The forest products industry is suffering its worst year for lumber production since 1945. It could be forced into deeper unemployment, and more mill shutdowns, bankruptcies and loss of production capacity . . .

"Unless Congress acts promptly, the nation's struggles against both recession and inflation could be dealt a heavy blow. Counties dependent upon federal timber sales for school and road revenues, already down, may see them virtually disappear. The long-awaited homebuilding recovery will be further delayed, with shortages and inevitably higher prices in wood products, and every American consumer will bear a heavier burden.

"Professionally, the situation makes no sense. Forestry by fiat is as illogical and unworkable as dictating to doctors how to practice medicine."

With the two Alaska developments spreading the malady West, his worst fears, and those of the Forest Service, were being realized.

WHAT DO THE PRESERVATIONISTS WANT?

Producers and consumers of forest products might be forgiven if they viewed **the Monongahela issue** court actions as over-emphasis on esthetic enjoyment at the cost of shortages and higher prices for things of the forest — housing to toilet paper — with no paper bags at the supermarket. How much, they might ask of Wilderness, is enough?

Deputy Chief Nelson has provided, in his October 3, 1975, discussion of the Monongahela case, what he called the Forest Service's "view (of) the plaintiffs' objectives in this case." He noted that "they have generally been frank in describing what they want," and he explained it in these words:

"We believe their prime objective in bringing the Monongahela suit was to force the Congress to review the basis for timber management practices on the National Forests. From this review, they hope to obtain a shift of timber harvesting from the National Forests to private lands.

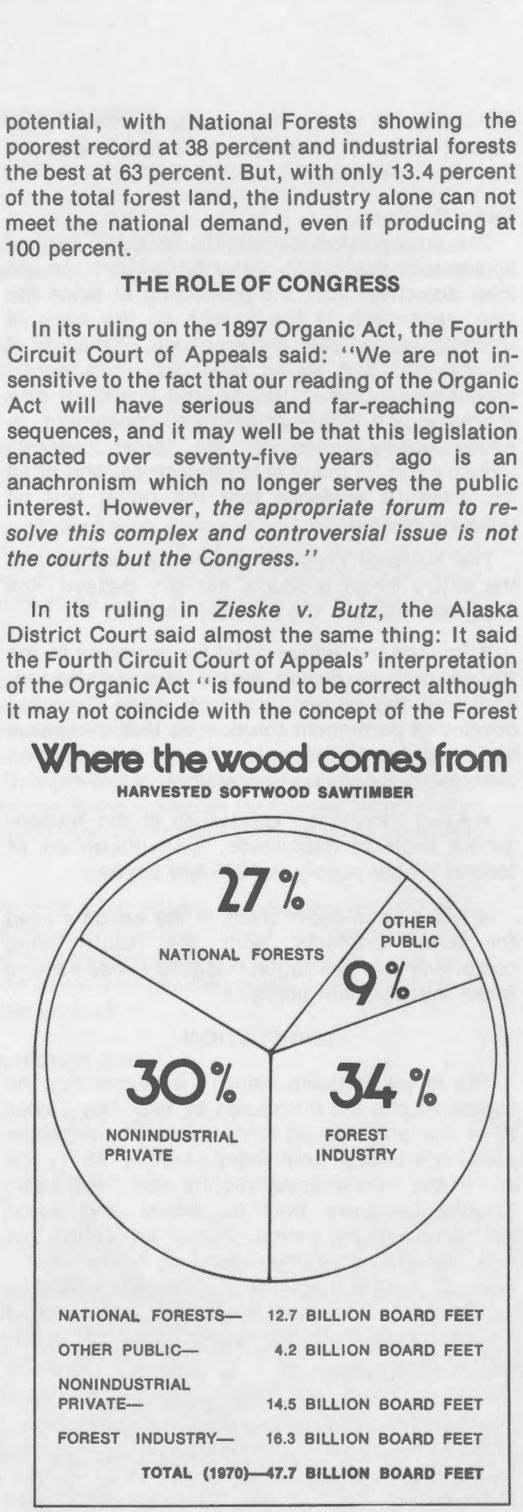
"The reduction in harvest which we have projected as a result of the decision" — half of the approximately 12 billion board feet annually at almost double current administrative costs — *"about matches their objectives. In reducing the overall level of harvest, they hope to avoid harvesting on marginal areas. Many, in fact, hope that no additional areas will need to be developed. They would like to see uneven-aged management applied as the primary management system, with emphasis on producing large, high-quality trees."*

What Congress will find in any review of production performance by private lands, compared with the National Forests, is this: According to Forest Service figures, actual growth for all forest ownerships averages about 49 percent of potential, with National Forests showing the poorest record at 38 percent and industrial forests the best at 63 percent. But, with only 13.4 percent of the total forest land, the industry alone can not meet the national demand, even if producing at 100 percent.

THE ROLE OF CONGRESS

In its ruling on the 1897 Organic Act, the Fourth Circuit Court of Appeals said: "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."*

In its ruling in *Zieske v. Butz*, the Alaska District Court said almost the same thing: It said the Fourth Circuit Court of Appeals' interpretation of the Organic Act "is found to be correct although it may not coincide with the concept of the Forest



Service as to sound timber management. *That matter, however, is for Congress rather than the Courts to decide.''*

Twice the Cost

The preservationist-plaintiffs, as noted earlier, appear to be moving in, through the courts, to win their objective: Half the production at twice the cost, regardless of the impact on the nation's struggle with inflation and recession, of the loss of county road and school revenues from federal timber sales (paid in lieu of land taxes), of new shortages and higher prices to all consumers, of added unemployment in the forest products industry and its many allied industries, and of all the scientific evidence that the result will be unsound silviculture.

The National Forest Products Association and the entire forest products industry believe the Congress must, in the national interest:

- Provide immediate relief for operators in the Appalachian hardwood region directly affected, and limit the decision's effect, while Congress develops a permanent solution, so that it imposes no further hardships regionally and nationally on consumers, workers and investors.

- Avert threatened application of the Monongahela decision nationwide, with disruption of federal timber supply in 1976 and beyond.

- Make an in-depth study of the nation's need for forest products, with the result being comprehensive legislation that establishes a sound forest management policy.

LEGISLATION

The forest products industry is supporting the objectives of a bill introduced by Rep. Roy Taylor (D-N.C.), which would suspend the Monongahela decision's effects until September 30, 1977, the end of the federal government's next fiscal year, to give Congress time to debate and adopt definitive new legislation. Similar legislation has been introduced by other members of the House. None of them attracted any immediate attention in Congress. Preservationists have threatened a ''bloody battle'' if an interim solution is attempted.

The industry and professional foresters are opposed to a draft bill prepared by advisers to Sen. Jennings Randolph (D-W. Va.) who, by and large, correspond to the plaintiffs in the Monongahela case. This proposal, designed to be introduced after Congress convened January 19, 1976, would generally incorporate the Monongahela ruling into legislation. A second draft was hardly different from the first, and a third draft was understood to be in preparation as Congress opened the new year. The bill's drafters' chief aim was to prohibit clearcutting of Eastern hardwood on National Forests and restrict and prescribe timber management on all National Forests. It would apply the same rules to diverse forests from Puerto Rico to Alaska. Professional foresters and timber growers agree that silvicultural practices are much too complex to be prescribed by law without doing more harm than good.

Sen. Hubert H. Humphrey (D-Minn.), during the recess, was reported considering introduction of a timber management proposal that was dropped from his bill (Humphrey-Rarick) before it became the Forest and Rangeland Renewable Resources Planning Act of 1974. Like Sen. Mark O. Hatfield (R-Ore.), Sen. Humphrey has offered to assume leadership in achieving remedial legislation in general.

The President's Role

The Forest Service, after considering several legislative approaches, has elected to deal with **the Monongahela issue** through the Forest and Rangeland Renewable Resources Planning Act. The specific provision involved requires the President to come forward early this year with an Assessment and Program and a Statement of Policy — that is, to tell Congress what the resources of the National Forests are and how the Administration plans to manage them. This would include advice on any legislation deemed necessary to achieve the management levels that are recommended, and so the law provides an opportunity for the Forest Service, through the President, to seek remedial legislation that would protect the timber uses of the National Forests without harming the environment.

Amid the difficulties of an election year, the Forest Service will succeed only if it can get a majority of Congress to accept the gravity of the threat of what Eliot Jenkins described as ''social and economic dislocations that could afflict our nation for generations.'' It may have to convince Congress that workers facing the loss of their livelihoods and consumers confronted by higher prices may not stand idly by while responsibility for averting the threat is left unshouldered.

PROFILE OF THE MONONGAHELA

The Monongahela National Forest, when it began in 1920, was known as "the great brush patch." After three decades of heavy logging and uncontrolled fires, some started by citizens to encourage the growth of berries and grasses, it had earned its name. Today, it is vigorous and valuable, the most productive of the 17 forests that make up the Eastern Forest Service Region (R-9). Its 860,000 acres, mostly of fine, young, even-aged stands of shade-intolerant hardwoods, constitute a strong argument for even-aged management, including clearcutting.

This was adopted as the primary management system on the Monongahela in 1964. But, from 1968 to 1973 when the court halted sales, clearcutting declined and other methods (selection, shelterwood, group selection, thinning, salvage and seed tree) were used more extensively. The acreage harvested during those six years came to 37,933, or 4.4 percent of the 860,000 total. Of this amount, 17,417 acres were harvested through clearcutting, and 20,516 through other methods. In the six years, only 2 percent of the Monongahela's total acreage was clearcut. Nature has regenerated all of the areas involved.

The Forest Service concedes now that, in certain concentrated areas, it may have clearcut too much too soon without first educating the public as to what was being done and why. But it maintains that it was sound silviculture, that the Appalachian hardwoods are best managed through the even-aged method to regenerate the most desirable tree species and for all the multiple uses of the forest. It was a case, it has been said, of good forestry and poor public relations.

In 1971, under pressure from the West Virginia legislature, the Forest Service shifted its policy from primarily even-aged management to a "variety of methods, with no one method as primary." It limited clearcuts to 25 acres. In practice, they have averaged less than 18 acres since then.

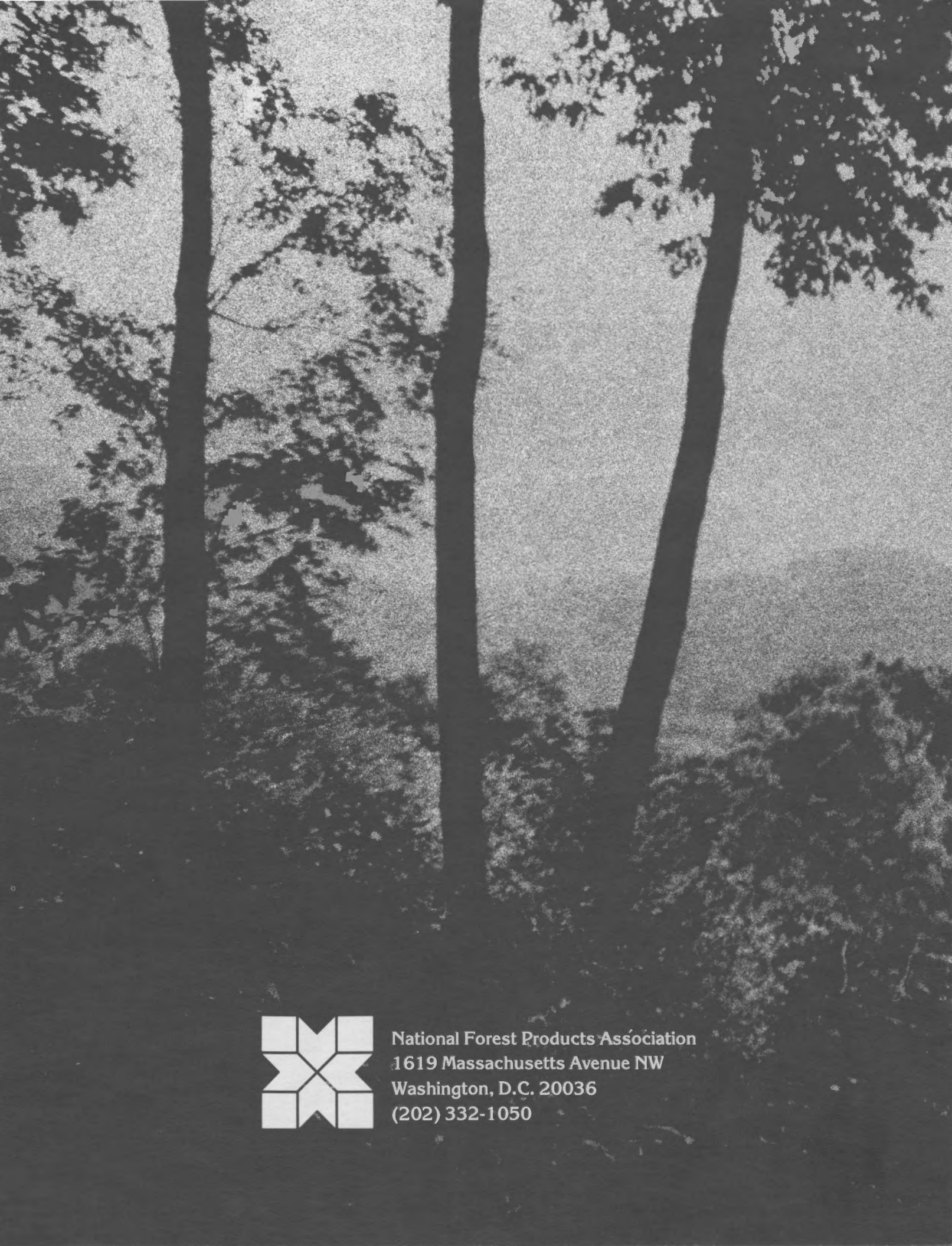
The major area of controversy — some 600 acres of Hunter's Run in the Monongahela's Gauley Ranger District — was not a clearcut at all, although it looked like one. It was a selective cut followed by removal of the overstory. Today, it has so grown out and blended with its surroundings that a layman would have great trouble picking it out.

Under the court decision, Forest Service studies show, only minor volumes of trees meet the 1897 Act's strict harvest prescriptions — an average of less than 1,000 board feet per acre. This is less than one-third of the volume generally required to make a timber sale economically feasible. The forecast, with such harvesting restrictions, is high-grading, which is taking the best and leaving the poorest, to the detriment of the forest — and of the wildlife dependent upon clearings for food.

The Monongahela may once more become "the great brush patch."

Monongahela Clearcut

Same scene, five years later.



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INFORMATION

Ag - Forest

THE WHITE HOUSE

WASHINGTON

May 21, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Forest Practices Legislation - "The Monongahela"

Attached at Tab A is an information memorandum on this situation and at Tab B are several updated Q & A's relating to this subject of particular importance in the Pacific Northwest.

These have been prepared and/or cleared by OMB, USDA and the Domestic Council.

Forest Practices Legislation
(Monongahela Bill)

Background

The Fourth Circuit Court of Appeals on August 21, 1975, upheld the judgment of the U.S. District Court for West Virginia that the Organic Act of 1897 limits the sale of timber to trees which are dead, matured, or large growth; requires that all trees to be sold be individually marked, and that trees cut be removed.

Nationwide application would be highly significant as national forests presently supply about 25 percent of the Nation's softwood sawtimber and contain over 50 percent of the inventory. Eventual extension is likely as one court (Alaska) has already applied this ruling to a long term sale and several other cases are pending around the country. National forest timber sales would drop about 50 percent and consumer costs would increase substantially with nationwide application.

The Department of Agriculture strongly supported S. 3091 as introduced by Senator Humphrey and others. This bill was also generally favored by the forest products industry, the housing industry, organized labor, professional forestry organizations, and wildlife interests. This bill would have provided adequate timber sale authority and guidelines for developing regulations in connection with land management plans. Regulations would also cover public participation and consideration of environment implications.

Senator Randolph introduced a competitive bill (S. 2996) supported by preservation-wilderness-environmental organizations such as the Sierra Club, Natural Resources Defense Council, Wilderness Society, and others. This bill would prescribe strict limits on various forest practices -- especially clearcutting. It would reduce the potential for selling timber from the national forests as much or more than extending the Fourth Circuit ruling. It provides wide exposure to litigation. The Department of Agriculture strongly opposed enactment of this bill.

After interagency consideration, S. 3091 was determined to be a suitable vehicle for transmitting the Administration position while avoiding politicizing the issue along partisan lines.

The Senate Agriculture and Interior Committees jointly marked up a bill last week. The basic approach of S. 3091 was retained but a number of additional provisions were adopted.

The Committee Bill as Reported

The Committee bill represents many compromises as efforts were made to merge S. 3091 and S. 2996, and to deal with other matters of interest to particular Senators. It has a great amount of superfluous language and many small problems. It also has the following major problems:

- Sustained yield is interpreted as meaning even flow on each national forest (never cut more than can be sustained indefinitely). This is the present Forest Service policy but one which is under internal review and external attack. The Department of Agriculture had favored a flexible approach consistent with the sustained yield principle. This provision was added without adequate consideration of the implications, even though a comprehensive Forest Service study is nearly complete. While it is not precisely clear what sustained yield policies are most appropriate, this requirement would severely limit the capability of national forests to respond to rising demand, would not permit consideration of timber resources on other ownerships, would have serious economic effects on some regions and communities, and would be used in pressing for major budget increases ($100-200M) for more intensive management as the only way of increasing national forest timber sales.

- The Director of OMB would be required to testify before six committees concerning any failure to request specific funding as deemed appropriate by the Congress. This is not necessary or appropriate.

- It would increase the States share of national forest receipts in calculating the 25 percent share of States on gross receipts rather than gross receipts minus the cost of timber purchaser constructed roads and cultural work. The result would be an increase in outlays of about $70 M at current program levels. These deductions are believed to be legitimate expenses of timber sales which yield the value. However, a study of Forest Service receipt sharing is being conducted by the Commission on Intergovernmental Relations.

- The last major problem concerns increased and unnecessary exposure to litigation from interests who do not approve of a particular policy or specific sale. Terms like irreversible, fragile, etc., are scattered throughout the Committee draft and are subject to interpretation.

Prognosis

The chances of further objectionable provisions being added on the floor of the Senate appear greater than removing provisions. Senators Randolph and Bumpers may offer amendments that would further restrict timber production on national forests, minimize the practice of clearcutting and lock up all presently roadless areas (now in timber planning base) for lengthy period to preserve the opportunity to designate as wilderness. The Forest Service believes that any attempt to delete provisions will open the bill up to these sorts of additions.

The House approach is very uncertain at this time. A bill has been introduced by Representative Litton which is straightfoward and would not have the problems of S. 3091 as reported. Chairman Foley apparently is sympathetic to this sort of bill. However, Chairman Foley is not optimistic that a less restrictive bill can be obtained and hopes that the Senate bill can be made less restrictive before it reaches the House.

MONONGAHELA DECISION

Q: What is your position on the Monongahela decision and Congressional attempts to remedy its consequences?

A: As you know, the Court in the Monongahela case based its decision on a literal interpretation of an eighty year old statute. This would require individual selection of trees to be cut from our National Forests. In my view, this result is contrary both to accepted professional forest management practices and to optimum use of our renewable forest resources. Before the decision, about 25% of our annual saw timber came from National Forests and about 50% of our inventory of saw timber is on National Forests. If the decision is applied nationally, National Forest timber sales would drop about 50% and consumer prices will increase substantially.

I am committed to correcting this situation quickly. My Administration has been working closely with the Congress on this matter and has strongly supported Senator Humphrey's bill (S.3091). This bill would modify the result of the Monongahela case in a way that would give the Forest Service flexibility in managing our forest resources both for timber production and for other long-term objectives such as wilderness, wildlife, recreation and watershed maintenance and forage. Unfortunately, a bill has now been reported in the Senate which contains certain limitations which I believe are too restrictive on Forest Service management.

As this legislation goes forward, we will be continuing to recommend to the Congress the less restrictive approach of the Humphrey bill.

PCL
5/21/76

CLEARCUTTING

Q: Mr. President, do you favor clearcutting?

A: The practice of clearcutting has been intensively reviewed by the Senate Interior Committee, the President's Panel on Timber and the Environment, the Forest Service, and members of the academic community. There is a consensus of these experts that even age management practices are proper if applied under appropriate conditions. Thus, I would support the use of clearcutting in certain circumstances where this technique is justified by scientific forest management practices.

PCL
5/21/76

NATIONAL FOREST ROAD BUILDING

Q: The forest products industry has strongly opposed amendments to the Senate bill (S.3091)which they allege will further shift the cost of building National Forest access roads to timber purchasers. The industry is especially concerned that the elimination of the "prudent operator rule" will lead to construction of more expensive roads than would be required for timber production alone. What is your view of this feature of this bill?

A: As I understand it, the proposed amendment does not prevent the Forest Service from continuing this practice or from using the prudent operator rule where appropriate. But what the amendment does do is to give the Forest Service flexibility -- just as we hope it will have flexibility on cutting practices -- over the management of the road building program. I can assure you that the Forest Service will use this flexibility intelligently so as to avoid undue impacts on purchasers of National Forest timber.

PCL
5/21/76

NON-DECLINING YIELD/EVEN-FLOW CUTTING

Q: Do you support the provision of the Senate Bill which would mandate non-declining yield or even-flow cutting practices?*

A: I think it is inappropriate for the Congress to mandate that particular approach -- or any other approach -- at this time since the issue of non-declining yield is currently under study within the Administration. We expect the results of the Administration study later this summer. The issue is extremely complex covering use of the inventory of National Forest timber presently available and optimum growth over future time periods. Consideration must be given to overall timber demand and supply and other resource values of our National Forests. Once our study of this complex issue is completed, a decision can then be made.

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* Never cut more than can be sustained indefinitely -- even though an enormous inventory of over-age timber is allowed to die naturally or not.

PCL
5/21/76

DISPOSAL OF MATERIALS ON PUBLIC LANDS
(30 USC sec. 601, et seq.)

[Undated]
Forest Service
Fact Monongahela

A 1955 Act of Congress (1) gave the Secretary of Agriculture the same broad authority to sell national forest timber that the Secretary of Interior had been given as to public domain timber (2) when wood was needed in 1944 during World War II (3). Interior's urgent wartime timber selling authority expired at the end of hostilities (4). But Congress immediately voted to give Interior the same broad authority permanently (5). And in 1955, Congress gave the same broad sales authority to Agriculture with respect to national forest timber (6).

The Forest Service totally ignored the timber sale provisions of the 1955 Act. The Forest Service believed that it had full authority to manage and sell national forest timber on a sustained yield basis (7) under an 1897 Act (8). But recently, the 1897 timber sales authority of the Forest Service was challenged in the courts of the Fourth Circuit (9) which formally enjoined on the Monongahela National Forest in West Virginia the sale of any timber that is not "dead, physiologically mature or of large growth." Unaware of the existence of the 1955 statute, the Fourth Circuit Court of Appeals advised the Forest Service to seek still more legislation. Because there is practically no "dead, physiologically mature or large growth of trees" in the national forests in the Fourth Circuit, i.e. in West Virginia, Virginia, North Carolina and South Carolina, the Forest Service stopped all national forest sales in those states. Some mills have closed and others are verging on closure.

In the key litigation, the Monongahela lawsuit (10), the defending Lands Division of the Justice Department never mentioned the timber selling authority contained in the 1955 statute mentioned above. Nor was there any request for Supreme Court review of the case.

The Forest Service has never issued any regulations for the sale of timber under the 1955 Act. Rather, on the basis of the uninformed decision of the Fourth Circuit Court of Appeals and a following decision of a district court in Alaska that is being appealed and without any consideration of the matter by the Supreme Court, the Congress is now in the process of enacting legislation that the President recently branded as unsatisfactory. In these circumstances, at the very least the Forest Service ought to start immediately a public involvement process to consider the issuance of regulations under the 1955 Act that the Interior Department has used steadily for these many years.

The 1955 Act gives each of the agencies authority to sell timber under regulations issued pursuant to the act if the sale of such timber is not "expressly permitted" or "expressly prohibited" by any other statute. As the Fourth Circuit Court has interpreted the 1897 Act, it does expressly permit the sale of the "dead, mature and large growth of trees", and does not pertain to any other national forest timber. No other statute either authorizes or prohibits the sale of national forest trees. Under the 1955 Act, therefore, the Forest Service could sell, if it issues appropriate regulations, the timber that is neither dead, nor mature, nor of large growth. And the practice of the best modern forestry could be resumed quickly.

FOOTNOTES

(1) 30 USC sec. 601, et seq.

(2) House Report No. 730, 84th Cong., 1st Session; 1955 United States Congressional and Administrative News 2474, 2475, 2481.

(3) 58 Stat. 745; -- Cong. Rec. 1647 (Feb. 15, 1947)

(4) Senate Report No. 204, May 26, 1947, 80th Cong., 1st Sess; 1947 United States Code Congressional Service 1523.

(5) id.

(6) 30 USC sec. 601, et seq; House Report No. 730, 84th Cong., 1st Sess., supra.

(7) 16 USC sec. 528-531

(8) 16 USC 476

(9) West Virginia Division of the Isaak Walton League of America, Inc. v. Butz --- F. 2d ---, 8ERC 1076 (4th Cir., August 21, 1975)

(10) id.

(11) Zieske v. Butz, no. J-75-2, D. Alaska 1976.