

# **Washington's Dynamic Forests 2000**

**A STUDY OF FORESTS AND FORESTRY ISSUES - PART II**

League of Women Voters of Washington Education Fund

## LEAGUE OF WOMEN VOTERS OF WASHINGTON FOREST POSITION

The following position resulted from consensus reached on our 1997-98 study Washington's Dynamic Forests and was adopted by the Board May 14, 1999. It was approved by delegates to Convention '99.

The League of Women Voters of Washington finds that all benefits of the forests - ecological, human and economic - are inextricably interconnected. Healthy forests are essential to habitat for a diversity of plant and animal life, to the hydrologic cycle, and to carbon storage to mitigate global warming. In addition, healthy forests are essential to a forest products industry with the jobs and goods they provide, and to the economic and aesthetic values of their recreational opportunities.

Therefore, the League of Women Voters of Washington supports laws and policies to insure that forest management (for timber extraction, recreation or any other activity) is carried out in a manner that will sustain healthy forests, streams and habitats.

The League of Women Voters of Washington believes that the following are essential elements of an adequate forest practices policy.

- The public must be involved in the decision-making process in the development of regulations. There must be adequate public notice of forest practices permit applications and hearings.
- There must be authority and funding for enforcement of regulations. Existing land use and forest practices regulations must be monitored and enforced, and should be responsive to changing scientific knowledge.
- There must be coordination of regulations for public and private lands among governmental entities.
- Riparian zones are an integral part of the forest ecosystem and must be regulated adequately to protect the streams and the wildlife dependent upon the streams.
- Education should be made available to timber owners on scientifically sound forest practices with the establishment of a small landowners' agency for this purpose.
- Full accounting of all costs, including cumulative ecological impacts, of timber harvests and other forest uses must be considered in forest activity decisions.
- Forest management must be responsive to scientific research and knowledge and should include:
  - mapping, classification and protection of all streams,
  - more and better data – including total watershed analysis,
  - evaluation of cumulative effects of combined activities in the forest should be considered in the granting of individual permits, and
  - planning for sustainability of forest ecosystems.
- Forest roads must be built, maintained and decommissioned to have the least impact on the forest ecosystems.
- Educate consumers about the human and ecological values of our forests as well as the opportunities and benefits of more efficient use of forest products, of recycling and the use of alternatives to wood.
- Fund independent scientific research that would include improved forest practices and ecologically sound alternatives to the use of wood.
- Tax benefits and compensation should be considered to encourage small landowners to manage their forests in an ecologically sustainable manner.
- Washington schools must be fully funded without reliance on timber harvests.

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## I. INTRODUCTION

The League of Women Voters of Washington undertook a study of Washington's forests because we realized that our forested lands represent an important economic, environmental and spiritual value for this region; in fact, our forests and the waters associated with them define the Northwest. We also were concerned that we are losing forest lands to development and losing biological diversity to monoculture forestry. The title of our 1998 report, *Washington's Dynamic Forests*, expresses that finding. As our forests change, the League continues its study.

This second phase of the study updates the reader on important events that have occurred in the last two years and looks in more depth at issues raised in the first study.

This part examines the economics of forests, specifically the implications of our global economy and the forestry issues raised at the 1999 World Trade Organization meeting held in Seattle. It brings the reader up to date on changing forest practices regulations, mainly the result of legislation (House Bill 2091) passed in the 1999 session of the Legislature and based on a document referred to as the "Forests and Fish Report." The study also looks at management: the exchange and sale of public lands (both federal and state) and the pressure on federally granted state lands to cut timber for revenue to support education.

As we deal with these topics, the study committee is even more aware of the dynamic nature of Washington's forests.

## II. WORLD TRADE AND FOREST ISSUES

### A. The World's Forests

Forested land in the world is declining in area. In 1990 forests (natural and planted) covered 3.5 billion hectares (a hectare is 2.47 acres). In 1995 (the most recent year for which these figures are available) there had been a decline of 56.3 million hectares. That decline was an average loss of 11.3 million hectares, or 0.3% per year. It should be noted that natural or semi-natural forests constitute 97% of the world's forests and plantation forests only 3%.

That loss was concentrated in developing countries. Over that five year period the developing countries lost 65.1 million hectares, and the developed countries gained 8.8 million hectares. Looking at a longer period, between 1980 and 1995, the same patterns of loss can be seen. Total forested areas declined by 180 million hectares, including a net increase in developed countries of 20 million hectares and a net loss of 200 million hectares in developing countries.

Declines in forested areas are caused by many factors. Among these are clearing of forests for agriculture and animal raising, forest fires, insect

damage and disease, over harvesting of industrial wood, collection of wood for fuel, storms, air pollution, and clearing for economic development. Increases in developed countries of forested areas are mainly due to reforestation programs and to natural growth of forests on lands that are no longer being used for agriculture. (1)

### B. Development of Trade Agreements

In the mid-19th century loggers began felling Washington State timber for trade. Most of the timber leaving the US was destined for Asia, primarily Japan. During that century there were few, if any, governmental regulations or restrictions on such trade. Gradually, in the late 1800s and first half of the 1900s, in order to protect their own markets, countries began imposing tariffs on a wide range of products, including wood and wood products.

Believing that multiple trade restrictions contributed to economic problems following World War

Area	Total Forest 1990	Total Forest 1995	Total Change 1990-1995	Annual Change	Annual Change Rate
Africa	538,978	520,237	- 18,741	- 3,748	-0.7
Asia	517,505	503,001	- 14,504	- 2,901	- 0.6
Oceania	91,149	90,695	- 454	- 91	-0.1
Europe	930,732	933,328	+ 2,594	+ 519	0
North & Central America	537,898	536,529	- 1,369	- 274	-0.1
South America	894,466	870,594	- 23,872	- 4,774	-0.5
<b>Total</b>	<b>3,510,728</b>	<b>3,454,382</b>	<b>- 56,346</b>	<b>- 11,269</b>	<b>-0.3</b>

**Table 1:** Change in Forest Cover 1990-1995.

Note: Figures in thousand hectares; one hectare equals 2.47 acres.

Source: *The State of the World's Forests 1999*, United Nations Food and Agriculture Organization, [www.fao.org/forestry](http://www.fao.org/forestry).

I, allied nations determined to address this issue. Toward the end of World War II, in July 1944, 44 nations met in Bretton Woods, New Hampshire for the International Monetary Conference. Out of that conference two organizations were created: the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (known as the World Bank). These entities were created with the goals of stabilizing the world's financial systems, promoting world trade, and facilitating short and long term lending to nations in need.

This international meeting had also been intended to establish an International Trade Organization (ITO) under the United Nations. But some nations, including the United States, failed to approve the treaty and the ITO did not come into existence. Instead, in 1947, 22 nations joined in establishing the General Agreement on Tariffs and Trade (GATT).

The chief purpose of GATT was the reduction and elimination of tariffs among participating nations. It was thought that this would be a provisional agreement anticipating the subsequent approval of the ITO. But that never happened, and GATT set the rules for international trade for the next 50 years. By 1979 GATT's membership had grown.

In that year GATT discussed, for the first time, the matter of non-tariff barriers to trade. These non-tariff barriers to trade initially included outright bans on exports and imports, quotas, governmental subsidies to industries and exporters, and excise taxes. In recent years negotiations over non-tariff barriers to trade have expanded to include foreign investments, environmental regulations, government procurement policies, eco-labeling, genetically modified organisms, intellectual property rights and many other subjects.

### C. World Trade Organization

The most significant change in the rules for international trade came out of the Uruguay Round of trade negotiations in 1994. That Round created the World Trade Organization (WTO) which commenced operation on January 1, 1995. Unlike GATT, the WTO is a permanent structure. The WTO incorporated the former GATT rules and procedures, created new bodies to regulate international trade, established a much stronger dispute resolution system, and for the first time adopted a system for enforcing its rules which included severe financial penalties against those countries that disobey its rules. WTO headquarters are in Geneva, Switzerland. Currently, the

#### LEAGUE OF WOMEN VOTERS AND TRADE

The League of Women Voters of the United States has long supported free trade. This support had its origin in a 1920 study of high postwar prices. This study, together with another study of the economic causes of war, convinced the League that high tariffs and restrictive trade practices add to consumer prices, reduce competition and cause friction among nations. The depression of the 1930s, which increased the impact of high tariffs, caused the League to take action for the first time on trade matters. Since then the League has been involved in every major piece of trade legislation, always strongly supporting measures that expand rather than restrict trade.

The national League has two trade positions. An East-West Trade position, adopted in 1965, states that the League "supports East-West trade policies that will relax restrictions and permit flexibility and selectivity." A position adopted in 1973 on trade in general says the League "supports systematic reduction of tariff and non-tariff trade barriers and supports broad, long-range presidential authority to negotiate trade agreements."

The national League is currently re-evaluating its positions on international trade.

WTO has 134 member nations whose combined trade constitutes over 95% of world trade. Thirty-two other nations have applied for membership.

### **1. Advanced Tariff Liberalization Agreement/Global Free Logging Agreement**

The Advanced Tariff Liberalization agreement (ATL) includes the Global Free Logging Agreement (FLA), which is a proposal designed by industry participants within WTO to eliminate tariffs worldwide on raw logs, wood products, and pulp and paper products. The objective, proponents say, is to create a level playing field by eliminating arbitrary trade barriers. While ATL/FLA proponents in Seattle – where, many observers believe, the agreement was on the table for WTO approval at the December 1999 ministerial – stated that only tariffs were slated for action at that time, opponents worried that discussion and action on non-tariff barriers would follow. Some sources at WTO and in Geneva said that ATL/FLA was too controversial and had not been cleared for the agenda.

On examining probable impacts on the world's and our region's forests by such trade liberalization, a global forestry consultant (2) predicted that removal of tariffs and import quotas on forest products, along with other economic factors, would bring about a three to four percent increase in consumption worldwide. After environmentalists raised alarms at this prospect, ATL/FLA proponents revised their predictions, now suggesting a more modest increase that would be seen in some logging regions but not globally. Industry spokespersons also maintain that the agreement would transfer more production to tree farms and plantations, thus relieving pressure on forests, and would tend to shift more production to the advanced or developed countries, where logging practices are said to be more responsibly regulated.

Currently, tariffs on forest products vary from the range of five percent or less in developed countries to as high as 25 percent in China. (3) The timber industry argues that eliminating tariffs will encourage efficiency in production by fostering more competition. But others dismiss this claim, citing the major paradigm of classical economic theory that lower prices foster higher – and, more likely, wasteful – consumption.

Removal of non-tariff barriers to trade is seen by ATL/FLA opponents as presenting a number of serious threats to our forests. For example, WTO's national treatment rule, which says that physically similar products must not be treated differently based upon how they are made or harvested, could mean that wood products and lumber cannot be labeled that they are harvested in a sustainable or ecologically sensitive manner. With this rule in place, the consumer cannot make an informed choice. Certainly some jurisdictions have been inhibited from imposing certain requirements such as the exclusive use of certified wood or recycled paper. The Appellate Body of WTO has, however, "held that how a product is made may well be a legitimate factor to take into account when deciding whether or not to import it." (4)

### **2. Export Bans**

WTO's prohibition on export bans, it is alleged, means that countries cannot limit exports of valuable resources. Although it has not yet been challenged before the WTO, probably the US ban on exports of raw logs from our national forests would be illegal under WTO rules.

### **3. Agreement on Government Procurement**

The WTO Agreement on Government Procurement says that governments must consider only commercial factors, not environmental or natural resources factors, when making purchasing decisions. This agreement probably invalidates poli-

cies such as those adopted by the City of Seattle requiring a certain percentage of post-consumer waste in their paper purchases.

#### 4. Invasive Species

With a brisk trade in logs and lumber, introduction of harmful exotic organisms may cause severe damage or destruction of forest ecosystems. US rules requiring safeguards for wood product imports may be found overly restrictive of trade. WTO requires that protection against introduction of exotic organisms be achieved in the manner least restrictive of trade and be based on scientific proof or “definitive evidence” of harm resulting from such exotics before restrictions can be imposed. These WTO requirements were cited by the US Animal and Plant Health Inspection Service in 1995 in its defense of standards challenged by environmentalists as posing too great a risk.

The question of invasive exotic species damaging our forests is important because of the greatly increased pace of log imports (as compared with past years when little wood was imported, except from Canada). The WTO scientific evidence requirement (instead of the “precautionary principle”) is particularly troublesome here because by the time such evidence emerges it may be too late to avoid extreme damage.

One of the WTO decisions often cited by opponents is that of a negative ruling on a shrimp-turtle fishing regulation of the US which required that all shrimp sold in the US be caught in a manner to protect sea turtles. Andreas Lowenfeld, a law professor at NY University, wrote that the WTO’s Appellate Body “ruled that the US legislation was consistent with the GATT provision allowing states to derogate from the rules of free trade in order to protect the environment.” The decision was based on the fact that the US had not considered allowing other equipment to protect the turtles. (5)

## D. Public Involvement and Trade Policy

### 1. Transparency

In recent years critics of the WTO have increasingly faulted it for its lack of transparency. Transparency in this context refers to the degree, or lack thereof, to which its deliberations are open to the public and the press. In fact, the official ministerial meetings attended by representatives of the 134 member nations are not open to the general public or media. The deliberations of the WTO’s dispute resolution bodies are also not open to public or media.

Trade negotiations at the WTO have been described by insiders as extremely dull and complicated. That may well be, but without public and media coverage of the actions of this highly important organization, the public is deprived of essential information and suspicions can flourish. In the past year, there have been more calls for openness and transparency in how the WTO operates. To date there have been a few changes in the direction of more openness. WTO/Geneva has been publishing results of deliberations more quickly, and they have re-designed their website to be more friendly to inquiries.

### 2. Decision-Makers

The WTO has legislative, judicial and executive powers. Legislative power is exercised by consensus setting of rules with which all member nations must comply. Executive power is exercised through its permanent headquarters in Geneva, which carries out the decisions of the ministerial meetings. Judicial power is exercised through its dispute resolution bodies; nations that are parties to the disputes must comply with these decisions or face substantial penalties.

Delegates to the WTO ministerial meetings are appointed by their governments; they are not

elected. Members of the dispute resolution panels are trade attorneys selected from a list of such attorneys from several member countries. Many are former trade ministers. The only appeal from a decision of these panels is to the WTO Appellate Body, also unelected, mostly composed of trade attorneys.

Charlene Barshevsky is the current US Trade Representative, appointed by President Bill Clinton. As one of her duties, she is our country's representative to the WTO.

### **3. Industry Sector Advisory Committees**

Critics complain that the membership on Industry Sector Advisory Committees (ISACs) all come from industry with no general public, natural resource, or labor representatives advising the US Representative of the effects of certain actions and policies on their fields. Several environmental groups sued to obtain representation on the ISACs, alleging that the composition of these advisory committees violated the Federal Advisory Committee Act rules, which require a balanced representation. The Federal District Court agreed with the plaintiffs. However, as of May 2, 2000, the lists for the two ISACs pertaining to forest products still appear to be composed entirely of industry representatives. (See Appendix A)

It is apparent that there are legitimate and serious concerns with the processes and the composition of the decision-making bodies of the WTO. The fear is that voices for global environmental and human rights issues will not be heard and that only economic interests will be served.

## **E. Environmental Agreements and Trade**

Multi-lateral Environmental Agreements are treaties and agreements between countries, developed over time, which cover everything from move-

ment of hazardous wastes around the world to trade in endangered species, from the Kyoto Protocol on climate change to protection for biological diversity. In general, these agreements act to give increased protection for the world's natural resources, promote environmental quality, and reduce pollution. In many significant instances, the terms of these agreements are in direct conflict with WTO rules. The results of the WTO's dispute resolution process have confirmed the general trend that WTO rules may take precedence over national rules and regulations. This raises the likelihood that these international environmental agreements, to the extent that they conflict with WTO rules, will be held invalid unless they are determined to be public health and welfare exemptions under Article 20 of GATT/WTO rules.

Because of the nature of WTO practices of the past four years and WTO rules, the environmental activists in Seattle let it be known that, in their opinion, the world's forests were being harmed in the WTO globalization process. They contended that there is greatly increased logging in old growth forests due to pressures to relax rules against foreign investors. They contended that with increased competition for the world's forests, timber companies sought to reduce their costs by pressuring countries to weaken or eliminate environmental regulations, thus further harming the forests. They argued that the WTO rules moved decision-making power over natural resources from local communities and countries to multi-national corporations and the World Trade Organization. (6)

The proponents of further liberalization of world trade at the Seattle conference argued that by reducing or eliminating barriers to trade all countries and their peoples benefit economically through the resulting increased production and sales. Also, proponents cite increased trade as a deterrent to conflict between nations. Environmentalists' concerns are largely precautionary in nature. Many of their concerns have not yet been realized.

## F. Forests and Washington's International Trade

### 1. Trade Overview

Washington is the fourth largest exporting state in the country (after California, Texas and New York). With two percent of the country's population, Washington ports process seven percent of all US exports and six percent of all imports. Seattle/Tacoma is the third largest container load center in the US (after Los Angeles/Long Beach and New York/New Jersey). One third of

Washington's work force is dependent on international trade, 25% with exports, and seven percent with imports. (7)

### 2. Trade in Forest Products

Forest products are the second highest export in the state as measured by dollar value, \$2.5 billion (after aircraft with \$23.8 billion). Forest products are the state's second highest import at \$4.1 billion (after high tech with \$9.4 billion). Most of our forest products exports go to Japan. Forest product imports come primarily from Canada.

#### ONE COMPANY'S INVOLVEMENT WITH WORLD TRADE

Washington-based Weyerhaeuser Company is the largest forest products exporter in the US and among the top US exporters overall, based on sales. In 1999 company sales to customers outside the US totaled \$2.3 billion. Today Weyerhaeuser exports to 70 countries primarily in North America, Asia and Europe. Weyerhaeuser exports include logs, chips, finished lumber, wafer board, pulp, paper, bleached paperboard, newsprint and wastepaper. The company also imports building materials, including pine from South America, as well as other softwoods, hardwoods, and finished wood products. The company has invested in joint-venture forestlands operations in Australia, New Zealand and Uruguay. Through another joint venture, the company operates two box plants in China. In early 1999, Weyerhaeuser opened its first packaging plant in Central Mexico. Weyerhaeuser's Canadian operations through Weyerhaeuser Company Limited holds renewable, long-term licenses on more than 13.8 million hectares (33 million acres) of forestland in five Canadian provinces.

Weyerhaeuser is the third largest paper recycler in the country. The company's 24 recycling facilities collect over 4 million tons annually, the equivalent of 665,000 train cars. In addition, the company uses the equivalent of 2 million newspapers each day to manufacture 700,000 metric tons of newsprint annually at its NORPAC facility in Longview. NORPAC, or North Pacific Paper Corporation, is a joint venture between Weyerhaeuser and Nippon Paper Industries of Japan.

While tariffs represent the company's primary barrier to trade, potential non-tariff barriers to trade include:

- tariff escalation where higher tariffs are imposed on value-added products;
- collusive business practices;
- exclusive certification rules;
- phyto-sanitary requirements;
- government subsidies;
- export controls and bans;
- irregular customs practices; and
- overly stringent, non-science based standards and building codes.

Source: Personal interview with Moira Hanes, Manager, Government Affairs, Weyerhaeuser Company, 1/12/00

<b>Top Exports</b> ("Pass-through," millions of \$US)	<b>Top Imports</b> ("Pass-through," millions of \$US)	<b>Forest Products Exports</b> (in millions of \$US)
1. Aircraft .....23,869.9	1. High Tech .....9,450.4	1. Japan.....1,182.8
2. Forest Products.....2,517.0	2. Forest Products.....4,124.1	2. Canada.....630.4
3. High Tech .....2,442.0	3. Motor Vehicles .....3,400.0	3. China .....114.4
4. Data Process Machines .....970.9	4. Aircraft Engines .....2,560.4	4. South Korea.....134.4
5. Aircraft Parts .....931.0	5. Motor Vehicle Parts.....2,247.6	5. Hong Kong.....44.9
6. Corn.....824.8	6. Petroleum Gas .....2,201.2	6. Other.....406.8
7. Wheat .....688.8	7. Aircraft Parts .....1,930.0	<b>Total Exports .....\$2,513.7</b>
8. Seafood.....577.1	8. Arcade Game Parts.....1,744.2	
9. Motor Vehicle Parts.....549.8	9. Data Process Machines ..1,685.8	
10. Typwtrs/Office Parts .....413.3	10. Toys .....1,117.3	
11. Other.....12,728.1	11. Other.....29,214.7	
<b>Total Exports .....\$46,512.7</b>	<b>Total Imports .....\$59,675.6</b>	

**Table 2:** Washington State Trade.

Source: "The Year in Trade 1999, The Washington State Trade Picture," Washington Council on International Trade.

The above data and accompanying charts include pass-through trade. Pass-through trade may originate in another state, or may be destined for another state, but trade statistics count all trade passing through the state regardless of origin or destination. (8)

### 3. Trade with Canada

Both the 1989 Free Trade Agreement (FTA) between the United States and Canada and the 1994 North American Free Trade Agreement (NAFTA), signed by the US, Canada and Mexico, reduced trade barriers for timber. Almost 80% of Canada's forest products are exported to the US. This Canadian lumber makes up over 34% of that used in the US, with almost 70% of it coming from British Columbia (BC). It is estimated that between 30 - 40% of logs used in Washington state are imported from BC.

Almost 95% of the forested land base in BC is owned by the province, which grants the forest industry rights to log a prescribed volume of timber off public lands. Government revenue is derived from the "stumpage" payments, paid by the logging companies for the trees that are cut. These stumpage rates are set by the provincial govern-

ment and have traditionally been about one half of what US timber companies paid for trees cut from US national forests.

The US lumber industry protested that, counter to NAFTA, the BC stumpage rate system, setting stumpage fees independent from market forces and thus reducing the cost of logs to BC timber companies, was a form of government subsidy, giving the Canadian logging industry unfair trade advantages. This dispute led to negotiations between the US and the Canadian/BC governments. In 1996, the Softwood Lumber Agreement (SWLA) was signed for a five-year period, with an assigned limited quota of lumber that could be exported duty-free to the US. For BC, that quota was set at ten billion board feet (bbf), which compares to an annual total Washington State cut of approximately four bbf. Amounts above the quota are subject to a sliding scale of fees, paid by the exporting company and collected by Canada.

When the BC government lowered their stumpage fees in 1998, the US protested and they negotiated a settlement which allowed additional categories at increased fees. Even with this fee system in place, total Canadian lumber exports to the US increased to 25 bbf in 1998. (9)

In addition to low stumpage fees, weak environmental regulations have given the Canadian timber industry a comparative trading advantage. Canadian forest policy, largely controlled by each province, is driven by economic needs of the industry and is not predicated on principles of sustainability or environmental protection. Neither Canada nor BC has endangered species protection laws and the BC Forest Practices Code offers little environmental protection for species habitat.

One effect on Washington State forests of this continued north to south trade is that some state trees may not need to be cut to meet the state's demand for lumber. A less positive effect is that competition from this imported timber has depressed US domestic wood prices to the point of industry slow-down and loss of jobs. The effect on BC's forests is that the last of their old growth forests is disappearing. By the BC government's own calculations, the province is cutting mostly old growth at 40 to 50% over sustainable levels. (10)

This longstanding trade dispute smolders on between the two countries. In each country, those supporting unrestricted free trade in lumber spar with those who want controls and protections for

its forests. These national internal positions are mirrored in cross-border discussion. With at least 80 cross-border watersheds between BC and Washington state as well as shared permanent and migratory habitat of trans-border vulnerable species, Canadian and American conservation groups are increasingly vocal with their common concerns.

The Softwood Lumber Agreement expires in March 2001. The FTA (1989), NAFTA (1994) and SWLA(1996/98) trade agreements, driven by purely economic goals with little consideration to the environmental consequences of the final trade policy, were negotiated by industry and government representatives. Conservation groups were not at the table. Many citizens from both countries, recognizing their ecological interdependence, no longer accept that trade treaties can be made without public participation and without serious acknowledgement of and responsibility for the consequences of these agreements on the non-economic values of forests. With the debate on renewing the SWLA well underway, the challenge now is to ensure that these negotiations include all forest stakeholders in policy formation, decision-making and treaty compliance. Some recent Canada trade activities are listed in Appendix B.

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#### Footnotes for Chapter II

1. *The State of the World's Forests 1999*, United Nations Food and Agriculture Organization
2. Multinational Monitor, Oct-Nov 1999. *WTO Trading It All Away*, p. 17
3. Victor Menotti, International Forum on Globalization, *Free Trade Free Logging*, 1999, p. 13
4. Andreas F. Lowenfeld, *The Amicus Journal*, Natural Resources Defense Council, Summer 2000, p. 4
5. *Ibid.*
6. Menotti, *Free Trade Free Logging*.
7. "The Year in Trade 1999, The Washington State Trade Picture," Washington Council on International Trade
8. *Ibid.*
9. Council of Forest Industries as quoted in "Trade Secrets: the Role of the United States in the Deforestation of Canada," Transboundary Conservation Project, Northwest Ecosystem Alliance, Bellingham WA, 1998.
10. BC Ministry of Forests, based on 71 Annual Allowable Cut determinations by BC's Chief Forester as of Dec. 1996.

### III. NEW STATE LEGISLATION AND RULE ADOPTION

#### A. Background

In 1974, the State Legislature passed the Forest Practices Act (FPA). It was designed to provide for a viable forest products industry and afford protection to forest soils, fisheries, wildlife, water quality and quantity, air quality, recreation, and scenic beauty by regulating forest practices such as timber removals, road construction and maintenance, reforestation, and the use of forest chemicals. The forest practices rules were first adopted in 1976.

In 1986, after many years of contention over protection of natural resources, stakeholders met in a negotiation process that resulted in the Timber, Fish, Wildlife (TFW) Agreement of February 1987, and it resulted in new forest practices rules, followed by additional rule packages in 1992 and 1996.

In 1997 the TFW participants began work developing a proposal to the Forest Practices Board (FPB) that would be the basis for new forest practices rules addressing protection for salmon and other aquatic and riparian species. After nearly two years of participation, representatives of the environmental community and some tribes withdrew from the negotiations because the negotiators had repeatedly missed self-imposed deadlines while timber cutting continued near streams, a number of central issues had not been seriously negotiated, and discussions on streamside buffers were limited to an industry proposal that fails to meet long-term conservation and recovery needs of fish. The remaining five caucuses continued and produced a document called the Forests and Fish Report in April 1999. That report was submitted to the FPB as one alternative to be considered for new rule making. The FPB also received proposals from Washington Environmental Council/National Audubon Society, Puyallup

Tribe, Muckleshoot Tribe, and the Yakama Indian Nation.

The Washington legislature, in April 1999, passed House Bill (HB) 2091, the Salmon Recovery bill, which incorporated the Forests and Fish Report. If the FPB chooses to adopt rules not consistent with the Forests and Fish Report, the bill requires the FPB to report the reasons for the inconsistencies to legislative committees and let the committees know if all parties to the Forests and Fish Report have agreed to the suggested changes. The FPB must defer adoption of rules that are inconsistent with the Forests and Fish Report for 60 days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.

#### B. Related Laws

Forest landowners and operators are subject to both federal and state laws. At present, a forest practices permittee can be in compliance with state forest practices rules, but in violation of other prohibitions. Beyond the state Forest Practices Act, there are **four principal related laws**:

1. The state **Shoreline Management Act (SMA)** was adopted in 1972 and applies throughout the state to all marine waters, submerged tidelands, lakes over 20 acres, and all streams with a mean annual flow greater than 20 cubic feet per second. Marshes, bogs, and swamps associated with the lakes, streams, and marine waters are also included, as is a 200-foot wide shoreline area landward from the water's edge. With regard to commercial timber harvest, the SMA has specific requirements: only

selective commercial timber cutting, and no more than 30 percent of the merchantable trees may be harvested in any 10-year period within 200 feet of the ordinary high water mark of shorelines of statewide significance.

2. In March and June 1999, seven species of salmon and bull trout were listed as threatened or endangered under the federal **Endangered Species Act** (ESA). Coastal and Puget Sound bull trout were listed as threatened in November 1999. Fifteen fish species have been listed as threatened or endangered in Washington, with a high probability of several more listings in the near future. The ESA prohibits the “take” of a federally listed endangered species, and authorizes the relevant agencies to extend this prohibition to threatened species by “4(d) rule” referring to that section of the ESA which requires development of regulations as necessary to conserve any species listed as threatened. The ESA provides non-federal landowners with an alternative to avoiding take of federally listed species through the development of Habitat Conservation Plans (HCPs) and issuance of an Incidental Take Permit.
3. Under the state's **Threatened and Endangered Species Act**, the Washington Department of Fish and Wildlife (WDFW) maintains a state list of endangered, threatened, and sensitive species of plants and animals. In 1990, the Washington Fish and Wildlife Commission adopted procedures which identify how species are listed, criteria for listing and de-listing, and requirements for recovery and management plans. These state lists are separate from the federal ESA lists because they deal with species’ status relative to Washington state only.
4. The federal **Clean Water Act** (CWA) is the principal federal legislation directed at pro-

tecting water quality. In Washington state, the Environmental Protection Agency (EPA) has delegated its CWA authority to the Department of Ecology. Forest practices can impact water quality and its beneficial uses such as water supply and fisheries. The forest practices rules must meet CWA water quality standards and objectives. The rules address these standards by requiring implementation of Best Management Practices (BMPs) for timber harvest and road construction and maintenance. Non-point source pollutants produced from forest practices may include elevated water temperature and sediment, and related parameters such as turbidity.

### C. State Forest Management: New Rules

The Forest Practices Board (FPB) was created by the Forest Practices Act (FPA) in 1974 and consisted of eleven appointed or designated members. An additional member, representing the Director of the Department of Fish and Wildlife, was added to the board by HB 2091 in June 1999. The board adopts rules governing forest practices on state and private lands under procedures consistent with the Administrative Procedures Act, the State Environmental Policy Act (SEPA), and the Regulatory Fairness Act. The rules are administered and enforced by the Department of Natural Resources (DNR).

#### 1. Need for New Rules

Concern has grown in recent years over the adequacy of forest practices rules for protecting riparian and aquatic resources. Four major indicators have identified the need for improved forest practices rules:

- **Inaccurate water typing** - Maps developed to categorize the state's streams were based

on aerial photo interpretation with limited field verification. Data from studies reported in 1994 indicated that 72% of streams classified as non-fish bearing actually contained anadromous and resident fish for part or all of their lifespan. Because water typing triggers riparian protection under the forest practices rules, the definitions used to determine water types must reflect accurate knowledge about fish use and habitat.

- **Discrepancy between watershed analysis prescriptions and current forest practices rules** - Watershed analysis is a process that looks at forest lands within a watershed, finds sensitive resources within that watershed and prescribes mandatory methods of protecting those sensitive resources. The FPB adopted watershed analysis rules in 1992. Through the years, watershed analysis prescriptions for riparian areas have consistently been more stringent than the current forest practices rules, indicating that the current rules are not doing an adequate job of protecting riparian functions.
- **The 1999 listing of some salmon species as threatened or endangered** - When a species is either federally or state-listed as threatened or endangered, the FPB is required to consult with the WDFW to determine if modifications to the existing rules are necessary. In anticipation of these listings, the FPB developed emergency salmonid rules, which were in place since May 1998 until March 2000.
- **State streams in violation of the Clean Water Act** - In 1999, the US EPA identified over 660 Washington streams as water quality impaired under the CWA. Forest practices are considered to be one of a number of factors contributing to these violations.

In the context of these indicators, in September 1998, the FPB stated four primary goals for the

proposed new rules:

- a. to provide compliance with the ESA for aquatic and riparian-dependent species on non-federal forest lands;
- b. to restore and maintain riparian habitat on non-federal forest lands to support a harvestable supply of fish;
- c. to meet the requirements of the Clean Water Act for water quality on non-federal forest lands; and
- d. to keep the timber industry economically viable in the State of Washington.

## 2. Emergency Rules

In response to threatened and endangered fish listings and water quality issues, the forest practices rules have been undergoing emergency revision since 1996. In November 1996 the Forest Practices Board adopted emergency water typing rules. In May 1998 the first salmonid emergency rules were adopted. These rules only applied to specific areas of the state that are occupied or potentially occupied by threatened or endangered fish. In January 2000, under the direction of HB 2091, the Forest Practices Board adopted many of the Forests and Fish Report recommendations as new emergency rules to replace the former salmonid emergency rules. These new emergency rules became effective March 20, 2000.

## 3. Permanent Rules: The Forests and Fish Report and Alternatives

Because of the strict constraints that the legislature put upon DNR in adopting permanent forest practices rules (as discussed in Background above), the Forests and Fish Report defined the rule adoption process. However, under the State Environmental Policy Act (SEPA), agencies must

prepare an environmental impact statement (EIS) on all rule adoptions which can have a negative effect on the environment and, within that EIS, the agency must consider and analyze the impacts of reasonable alternatives. DNR is currently in the SEPA process.

The Forest Practices Board identified three alternatives for the proposed rules:

Alternative 1 represents the **no action alternative**. It provides continuation of the existing permanent forest practices rules and does not include the revisions to these rules produced by the water typing, salmonid, or Forests and Fish emergency rules. Regarding proposed rules, SEPA requires that the No Action alternative in an Environmental Impact Statement (EIS) should be based on only permanent rules, not temporary rules. Permanent rules are in the Washington Forest Practices Rule Book, dated November, 1998.

Alternative 2 is defined by the Forests and Fish Report of April 29, 1999 and, as strongly encouraged by HB 2091, is the **preferred alternative**. The groups contributing to the development of the Report include state agencies (Departments of Natural Resources, Fish and Wildlife, and Ecology), federal agencies (US Fish and Wildlife Service, National Marine Fisheries Service, and EPA), the Colville Confederated Tribes, the Northwest Indian Fisheries Commission, the Washington State Association of Counties, the Washington Forest Protection Association, and the Washington Farm Forestry Association. (1)

Alternative 3 is a **composite of alternatives** produced by groups that were not among the authors of the Forests and Fish Report. Separate proposals were made by the Washington Environmental Council and the National Audubon Society, and by the Muckleshoot Indian Tribe, Yakama Indian Nation, and Puyallup Indian Tribe. Elements of those pro-

posals are incorporated into Alternative 3.

The focus of the EIS is a comparison of a reasonable range of alternatives and their environmental impacts. The three alternatives examined present a significant difference in the level of risk to salmon survival over the long term (50 years). The No Action/Alternative 1 has been demonstrated to not give adequate protection to salmon, hence the need for new rules. The Forests and Fish Report's Alternative 2 still affords minimal protection. Only Alternative 3 is designed to give low risk to salmon survival.

Economic impacts related to the proposed rule changes will be addressed separately by the Small Business Economic Impact Statement required by the Regulatory Fairness Act, and the Cost Benefit Analysis required by the Administrative Procedure Act. The Small Business Economic Impact Statement analyzes the disparity of the impact of rules on large businesses versus small businesses.

The FPB conducted the review of draft rules during Summer 2000. Public hearings will be held around the state in Fall 2000. The FPB will then finalize the rules using the following information: public comments on the Draft EIS, the Final EIS, the Small Business Economic Impact Statement; the Cost Benefit Analysis, and public comments on the proposed rules. The deadline mandated by the legislature (HB 2091) for permanent rule adoption is June 30, 2001.

See Appendix C for a categorical comparison of the risks to salmon of each alternative of the Draft Environmental Impact Statement.

#### **D. Summary of Independent Scientific Review of Forests and Fish Report**

Because the authors of the Forests and Fish Report provided no rationale and cited no evidence

to support the assertions and prescriptions in their report, the American Fisheries Society, Western Division, and the Northwest Chapter of the Society for Ecological Restoration jointly convened a technical review committee to evaluate the extent to which the scientific literature supports the recommendations of the Report. (A summary of individual points is found in Appendix D.)

While some provisions of the Forests and Fish Report represent improvements over existing regulations, most provisions decrease possible environmental protection. The minimum levels of protection afforded by the Report, although higher than those of current forest practice rules, do not approach the levels of protection considered necessary by science-based guidelines already prepared for use on private forest lands in the Pacific Northwest. Attainment of the Report's performance targets will not assure attainment of the overall goals described by the Report: higher levels of turbidity will be permitted than allowed by state water quality standards, and the cumulative effect of the adverse habitat changes allowed by the Report will be a likely decrease in survival for threatened salmonid species.

For instance, the Report states that desired future condition targets for riparian stands are those for 140-year-old stands, but the targets provided are actually for 80–90-year-old stands. This apparent error will lead to significantly higher rates of logging in the inner zones of buffer strips than appear to have been intended.

Because the Report's provisions are not contingent on assessment of the current level of impact in watersheds and, in fact, remove the ability to modify prescriptions for riparian buffers and slope stability on the basis of watershed-specific information, the Report's prescriptions will contribute to cumulative negative impacts on water quality and critical habitat. Unless the level of care in already-impacted watersheds is higher than that in unimpaired watersheds, habitat conditions will continue to deteriorate in the former, thus increas-

ing the level of harm to already threatened species.

## **E. Challenges to the Proposed Rules**

In June 2000, as required under the Endangered Species Act (ESA), the National Marine Fisheries Service (NMFS) issued its "4(d) rules" for the protection of certain listed species of salmon. The next day, five environmental groups ( Washington Environmental Council, Earthjustice Legal Defense Fund, Northwest Ecosystem Alliance, Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources) issued a notice of their intent to sue NMFS for failing to protect salmon and steelhead from the harmful effects of logging and urban development because of major loopholes for those industries in their final rules. Their notice cites 13 specific exemptions which cause the rules to fail to meet the requirements of the ESA.

The environmental groups are challenging the exemption for the Forests and Fish Report, claiming that it was "a political deal struck between the timber industry and government regulators" and was not based on science as the law requires. NMFS has 60 days to respond before the groups go to court.

In a separate but simultaneous action, the groups gave notice of intent to sue the EPA for granting timber companies a ten-year delay in preparing cleanup plans for streams polluted by logging. Such plans are a requirement of the federal Clean Water Act. (2)

## **F. Small Forest Landowner Issues**

In Washington, there are over 100,000 non-industrial private forests (NIPFs) with forest holdings of less than 1,000 acres with no primary manufacturing facilities. The NIPFs are responsible for approximately one-third of the state's lumber sup-

ply, more than all public lands combined. (3)

Part of HB 2091 deals specifically with small forest landowner issues. It states, "The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in this Act about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forest landowners as a result of the rules to be adopted under this Act will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources."

The concerns identified above are addressed with the establishment of the **Small Forest Landowner Office** (SFLO) in DNR. It will be a resource and focal point for small forest landowner concerns and have significant expertise regarding the management of small forest holdings and applicable governmental programs. An advisory committee has been established to assist the SFLO in developing policy and recommending rules to the Forest Practices Board.

The legislature directed that the state acquire 50-year easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements, provided they are not subject to unacceptable liabilities. Forestry riparian easements will preserve all lawful uses of the premises by the landowner consistent with the requirement to protect riparian functions during the term of the easement. Required leave trees to be left on the premises may not be cut during that time. No right of public access or use

of the easement premises is created by the easement.

Upon application by a small forest landowner for a riparian easement, compensation to be offered will be determined based on the volume of qualifying timber and data maintained by the Department of Revenue for the fair market value of the timber. Subject to available funding, compensation of 50% of the value determined will be offered. For approved forest practices applications where the regulatory impact is higher than average, the compensation offered will be increased to 100% of the portion that is in excess of the average.

The SFLO will assist in the development of options through alternate management plans or alternate harvest restrictions appropriate to certain small landowners. These alternatives are to meet riparian functions while requiring less costly regulatory prescriptions. The cumulative impact of such alternatives will be evaluated at the sub-basin or watershed level.

House Bill 2091 also provides that, on parcels of 20 contiguous acres or less, landowners with a total parcel ownership of less than 80 acres within the state will not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the Forests and Fish Report. Such landowners will be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams equivalent to no greater than 15% of the volume contained in a 50-year old stand covering the harvest area. The SFLO will work with landowners to develop alternative management plans for riparian buffers. HB 2091 states, "The plans shall provide for the removal of leave trees as other new trees grow in order to ensure effective protection of critical riparian function."

## **G. Salt Water Islands – Proposed Harvest Rules for Islands, April 2000**

The Saltwater Islanders for Timberlands (SWIFT) in 1999 requested rule changes for timber harvest on salt-water islands. (See *Washington's Dynamic Forests*, p. 28) The Forest Practices Board partially denied the petition in November 1999. While a number of issues which were addressed in the official letter were not in the SWIFT proposal, on the whole the response was encouraging to SWIFT since most of the rule issues proposed were acknowledged in some positive manner. The FPB indicated that the issues of pesticide use and of bond requirements for repeat vio-

lators of rules could be included in its current rules revision. The FPB said that it would continue to work administratively with interested parties on issues of clearcut size and forest practices applications (accuracy, completeness before the five-day approval period starts, posting on site.) The applicability of local critical areas ordinances would need continued work by the FPB Islands Committee and DNR staff, and with interested parties. The issue of earlier replanting was not addressed.

On March 22, 2000, SWIFT presented a letter to the FPB, with a summary of the effort from 1995 to date, asking to be involved in the development described above.

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### Footnotes for Chapter III

1. *Forests and Fish Report*, Timber, Fish and Wildlife, April 1999
2. Press Release, "New Federal Salmon Plan Paves Way Toward Extinction: Environmental and Fishing Groups Threaten Lawsuit," Washington Environmental Council et al, June 20, 2000
3. *Small Forestland Owners: To Be or Not To Be*, Washington Environmental Council, newsletter *Voices*, Spring 2000

## IV. GRANT LANDS AND SCHOOL FUNDING

### A. Federal Grant Lands

The link between Washington's public lands and the support of education is historic and significant. (This link is covered in more detail as "State Trust Lands" in the 1998 LWV report, *Washington's Dynamic Forests*.) The largest category of state owned lands is lands which were granted by the federal government at the time Washington was admitted as a state in 1889. The legislation for those grants is contained in the 1889 Enabling Act which also admitted Montana, North Dakota and South Dakota. It specified that the lands would be used for the support of education, for several other public institutions, and for capitol buildings, with the establishment of permanent funds for each purpose. Because those grants are contained in federal law, the state legislature does not have the authority to change those grants, only to direct the management within the principles of trust law. Those lands are referred to as the federal grant lands.

To gain admission to the union, Washington had to write and adopt a constitution. The granted lands were dealt with in two sections. Article IX dealt with education stating "It is the paramount duty of the state to make ample provision for the education of all children..." and it established the common school fund which shall remain "permanent and irreducible." This fund, referred to as the Permanent Fund, collects revenue from various named sources, including stone, minerals and sales of resources off the land other than timber and crops, but mainly from any sale of the land itself. During the early part of the century, portions of granted lands were sold off. Article XVI of the Constitution directed the terms and manner of disposing of federal grant lands. In 1965, the Legislature and the people approved a constitutional amendment which removed restrictions on the investment of the Permanent Fund and which established a baseline of the Fund as of

that date, thus assuring it be "permanent and irreducible." (1)

### B. Common School Construction Funding

#### 1. Common School Construction Fund

Article IX of the Constitution was amended in 1965 to established a separate fund, the Common School Construction Fund, "to be used exclusively for the purpose of financing the construction of facilities for common schools." The sources of this fund are from the sale of timber or crops off granted lands and, after 1967, the interest from the Permanent Fund as well as other sources the legislature decides.

The Common School Construction Fund has never covered more than half of the cost of school construction. Furthermore, this asset has diminished over time relative to population growth, inflation, and educational theories (e.g. smaller class size). Although revenues from the grant lands were originally intended to cover both operating and capital costs, they now fund only approximately 25% of school construction costs. (2) Even with additional direct state funds via complicated formulas, from 1986 to 1997 the state share of construction funding dropped from about two thirds of the total to one third, with local taxpayers' share doubling to about two thirds.

So, what is the role of lands federally granted for common schools? Our State Constitution requires that any revenues from them be used for the support of common schools and other named beneficiaries. Article XVI also says "All the public lands

<b>First Established</b>	<b>Trust Name</b>	<b>Beneficiary</b>	<b>Original Acres</b>	<b>Acres Today</b>	<b>Forested Acres</b>
<b><u>FEDERAL GRANT LANDS</u></b>					
1889	Agricultural School Trust	Washington State University	90,000	70,721	56,791
1889	Capitol Building Trust	State buildings in Olympia	132,000	108,234	100,362
1889	Charitable, Educational, Penal, & Reformatory Institutions Trust	Dept. of Corrections, Dept. of Social and Health Services	200,000	70,247	40,404
1889	Common School Trust Indemnity & Escheat lands	K-12 public school construction	2,432,600	1,774,460	1,130,702
1889	Normal School Trust	Eastern, Central & Western Washington Universities, The Evergreen State College	100,000	64,304	57,114
1889	Scientific School Trust	Washington State University	100,000	80,428	69,691
1889	State Aquatic Lands	Washington State residents & visitors	unknown	2,600,000	0
1889	University Trust, original & transferred	University of Washington	146,080	86,722	57,117
<b><u>FOREST BOARD TRANSFER LANDS</u></b>					
1921	Forest Board Transfer Trust	21 counties with Forest Board lands, for county services	539,173	545,819	600,548
<b><u>FOREST BOARD PURCHASE LANDS</u></b>					
1923	Forest Board Purchase Lands	21 counties with Forest Board lands, for county services	79,400	77,739	combined with above
<b><u>NATURAL AREAS</u></b>					
1972	Natural Area Preserves (48 sites)	Washington State residents & visitors		26,000	
1987	Natural Resource Conservation Areas (24 sites)	Washington State residents & visitors		56,000	
<b><u>TRUST FOREST RESERVE</u></b>					
1990	Community & Technical College Trust Forest Reserve	Community & Technical Colleges	3312	3,312	3,312

**Table 4:** Washington State Lands Managed by the Department of Natural Resources.

Source: Adapted from the Department of Natural Resources Annual Report, 1999.

**WASHINGTON STATE LANDS MANAGED BY THE  
DEPARTMENT OF NATURAL RESOURCES**

**FEDERAL GRANT LANDS:** Granted by the federal government at statehood to be used to support specified public needs. Because the grants are in federal law, the state legislature does not have the authority to change the purposes, only to direct the management with the principles of trust law.

**FOREST BOARD TRANSFER LANDS:** DNR manages lands which were obtained by 21 counties, mainly over time for delinquent taxes. The state Legislature transferred those lands to the state to be held in trust and managed by the department, with specified direction of the income. (RCW 76.12.030) Most of the revenue from these lands (75%) is returned to the counties. Because these lands are not tied to federal law or the state Constitution, the Legislature has complete authority over them, guided by common law trust principles. As state forest lands, and unlike federal grant lands, they are reserved from sale but may be traded or reconveyed to the counties for parks.

**FOREST BOARD PURCHASE LANDS:** DNR also holds state forest land that it acquired by outright gift or purchase. The relevant statutes provide for counties and other taxing districts to receive certain revenues from these lands but do not provide that they are held in trust. They have no constitutional or statutory trust status.

**NATURAL AREAS:** Established by the Legislature to preserve special high quality native ecosystems and outstanding scenic values for scientific and educational purposes.

**TRUST FOREST RESERVE:** Established by the Legislature

granted to the state are held in trust for all the people..."(3) As there is a shift toward managing school lands more for sustainability of the resource, for broader public purposes and for future generations, the gap between the revenue off those lands and school construction costs will continue to widen.

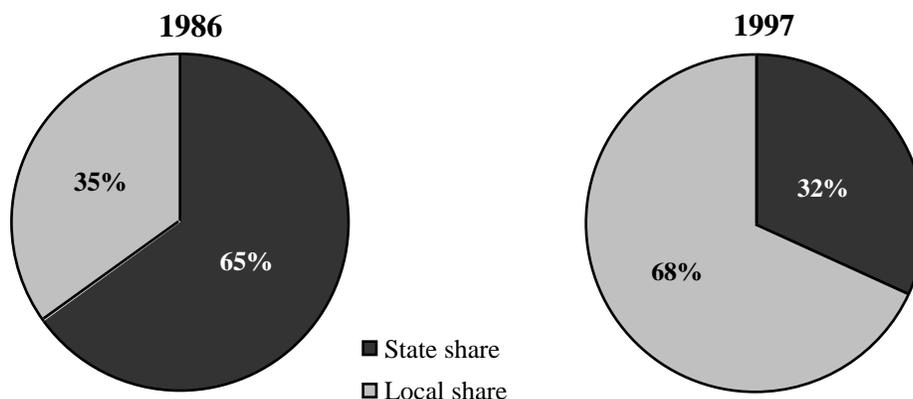
## **2. 1994 Common School Construction Funding Committee**

The problem of the shortfall between the revenue generated by the federal grant lands and the costs of common school construction has been recognized for many years. In 1994 the Commissioner of Public Lands appointed a committee to address that problem. The Common School Construction Funding Committee had broad representation from education, business, the legislature, the tribes, public interests and the trust beneficiaries. The charge of the committee was to develop ..."a proposal for a permanent supplemental source of funding for common school construction for the

children of the State of Washington." The Committee work resulted in recommendations which were presented to the 1995 Legislature.

The underlying recommendation from the committee was the creation of a new endowment fund. This was meant to be a reflection of and a continuation of the intent of the federal Enabling Act and the state Constitution. The endowment was to be funded from the cash surplus that was projected to be available at the end of the 93-95 biennium. But, since that would not be sufficient, the Committee asked the Legislature to find additional funds. The limitations under I-601 were recognized, and it was suggested that the Legislature amend I-601 to authorize transfer of funds from the Emergency Reserve Fund to the endowment. The committee also recognized that "bridge" funding was necessary until the endowment could generate revenue. Also, efficiencies in school construction costs were urged. (4) No action resulted directly from the recommendations of the Committee, but interest groups and the Legislature continued to consider the problem.

## Funding Sources for School Construction



Year	Local Spending	State Match	Other	Total	% Local	% State
1988	\$111,281,022	\$114,996,766	\$780,344	\$227,058,131	49.0%	50.6%
1989	\$153,539,375	\$135,759,189	none	\$289,298,564	53.1%	46.9%
1990	\$308,256,556	\$232,117,521	\$2,989,808	\$543,363,885	56.7%	42.7%
1991	\$181,418,798	\$153,912,757	none	\$335,331,555	54.1%	45.9%
1992	\$317,996,317	\$224,977,265	none	\$542,973,582	58.6%	41.4%
1993	\$150,867,103	\$135,629,866	none	\$287,496,969	52.5%	47.5%
1994	\$167,346,910	\$111,250,000	none	\$278,596,910	60.1%	39.9%
1995	\$366,271,031	\$228,504,810	none	\$594,755,841	61.6%	38.4%
1996	\$222,831,561	\$132,270,000	none	\$355,101,561	62.8%	37.2%
1997	\$295,335,724	\$138,763,081	none	\$434,098,806	68.0%	32.0%

**Table 3:** State School Construction Match.

Source: Daily Olympian, August 16, 1998 and Superintendent of Public Instruction

### 3. K-12 2000 Initiative: I - 728

The concept of creating dedicated funds for schools is currently being proposed by citizens concerned with the funding of on-going operating costs. The K-12 2000 Student Achievement Act is an initiative to the people; it will be on the November 2000 ballot. The proposal ties improvements in student achievement, reduced class size, and more local flexibility in the use of dollars to new state funding without increasing taxes. The three sources of monies would be the unrestricted lottery proceeds directed to K-12 and some school construction, credit for local school districts against the state property levy, and a re-

definition of the state's emergency fund as five percent of the *annual* general fund and dedication of a portion of any balance in excess of the five percent to a new Student Achievement Fund.

The initiative addresses both the need for more funding for operating costs as well as some construction costs. It addresses common school construction costs only if tied to the needs of the initiative. The new monies would be available from a dedicated fund rather than as proceeds from a perpetual endowment. LWVWA took no position on this initiative because it involves a dedicated fund and because it would lower the amount of budget funds for existing social programs.

#### 4. Legislative Budget Provisions, March 2000

The Supplemental Budget approved by the 2000 Legislature included money for common school construction. \$6.6 million in additional Educational Savings Account (ESA) revenues were appropriated to help fund the \$56.7 million K-12 capital supplemental budget. (The ESA, created in 1997, is made up of savings from efficiencies in state agencies. ESA funds can be used for education technology or for school construction.)

Separate legislation changed the calculation for the emergency reserve requirement from five percent based on the *biennial* budget to five percent based on the *annual* budget. (The emergency reserve is funded by revenue beyond the spending limit imposed by Initiative 601, with the excess of more than five percent spilling over to the Education Construction Fund which was established by I-601). This change will produce an estimated \$138 million for the Fund. These monies, some of which already have gone into higher education projects, can be used for K-12 or higher education construction. A total of \$35 million was appropriated from the Education Construction Fund to the common school construction fund. (5)

#### 5. Supplemental Funding for School Construction

In preparing this report, the LWV WA Forest Issues Committee has collected suggestions of how the state could provide a stable, predictable and increasing source of revenue to supplement the revenue from timber sales off state lands while still protecting the trust obligations of those lands.. All of these possibilities need to be examined for unintended consequences.

1. The original endowment could be replenished with either cash or income producing assets. A mechanism would be needed for that capital fund to be maintained at a sufficient level.

Possible funding sources:

- State General Obligation bonds
  - Dedication of state surpluses for a period of time
  - One-time property tax
  - Lottery or slot machine revenue for a period
2. The legislature could undertake any or all of the following:
    - Expand definition of Basic Education to include construction and include in the Budget
    - Follow Constitutional mandate to fund education
    - Allow school districts to borrow from State
    - Help school districts with debt service
    - Develop a school building authority to build and rent schools
    - Forgive sales tax on school construction
    - Put sales tax on commodities made in state and sold out of state
    - Sales tax on lottery tickets
    - Tax on intangibles and/or transactions
    - State General Obligation bonds for school construction
    - State purchase of school district construction bonds
    - Amend I-601 to lower trigger on surplus provisions, which already allows for an Education Construction Fund (This suggestion was enacted by 2000 Legislature)
    - Reform state tax system

3. Local school districts could try, or continue:

- Joint projects among school districts, or with parks, etc.
- Leasing and contracting
- Year-around school
- Reserve funds from local tax levies (might need state law)
- Realistic impact fees from development

Some of the above mechanisms involve dedicated funds. The rationale for dedicated funds is a secure source of money and avoidance of the limitations imposed by Initiative 601. The League of Women Voters generally does not support dedicated funds, believing that elected legislators should, in their wisdom, weigh, balance and fund needed public services. In the case of education, however, one should consider the language and intent of the writers of both the Enabling Act and the Constitution.

The federal government endowed the state with

the valuable resource of income-producing lands specified for the support of education, and the state responded by singling out education as the "paramount duty of the state" with those federal grant lands creating a source of funding that would be "permanent and irreducible." These words, which clearly imply a special trust obligation, separate education from the many other needed public services.

At the beginning of a new century with growing population demands of varied kinds, the value of the federal grant lands for "all the people" is ever greater. Indeed, keeping those lands in trust for education, as envisioned by the state founders, appears to be the most protective mechanism for the resource values of those lands. The challenge is to find additional sources of income to augment that trust.

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#### Footnotes for Chapter IV

1. Article IX, Section 3 in *Washington State Constitution* in Appendix E
2. Washington State School Directors Association, 1999 Legislative Summary, p.6
3. Article XVI *Washington State Constitution* in Appendix E, and Daniel Jack Chasan, *In Forests We Trust*, Seattle Post-Intelligencer, January 16, 2000
4. Common School Construction Funding Committee, Report and Recommendations, January, 1995
5. House Appropriations Committee, Senate Ways & Means Committee, Supplemental Operating and Capital Budget Highlights, April 26, 2000

## V. PUBLIC LANDS: ONGOING ISSUES

### A. Land Sales/Purchases and Trades

Sometimes it is in the public interest to acquire new lands, to sell lands or to exchange already owned tracts for more desirable ones. Land purchase, sale and exchange, however, are activities that must be carried out with great care lest the public trust be compromised.

#### 1. State Land Transactions

Differing rules govern the stewardship and disposition of several categories of land under the jurisdiction of the Department of Natural Resources (DNR) (see chart on p. 20.) The DNR's fiduciary responsibility to the trusts sometimes may impel it to sell federal grant lands that are not fiscally productive and to purchase lands that will bring a higher income to the trust. Current state law prohibits Forest Board Transfer Lands from ever being sold, but they may be traded or reconveyed to the counties for recreational purposes.

##### a. State Policy

DNR has a variety of options for improving the income-producing capacity of the trusts. *Block-ing-up* is a means to increase management efficiency through consolidation of isolated parcels. By *diversifying* trust assets, such as buying commercial lands and warehouses, DNR is able to reduce dependency on timber sales and thereby maintain a stable or growing income. The *Forest Resources Plan* of 1992 states that "DNR will maintain a diversified base of federal grant lands, including non-forest properties."

DNR operates under their Forest Land Acquisition Guidelines which include, among other criteria:

1. Properties designated as forest management areas under growth management are preferred.
2. Terrain should be suitable for wheeled or tracked harvesting equipment; slopes should have a low landslide potential.
3. Properties should have no environmental hazards or environmentally sensitive areas that limit harvest opportunities.
4. Properties should generally be bare land or have non-merchantable young trees because the high cost of timber reduces the amount of land that can be purchased.

These criteria do favor the buying of harvested or non-forested land rather than the protection of the environment. However, to maintain diversity, the purchase of high value land, such as commercial real estate on the one hand and of low-value bare land on the other, increases both income and a land base which should gain value in the years to come. Although it is possible for land trades to decrease the land base, trust value of forest resources increased by 14,577 acres and over \$22 million between 1995 and 1999. This trend could provide more extensive forest areas for future generations to manage as they choose. Generally, these sales and trades move sensitive ecosystems to a more protected status and harvestable timber lands to commercial interests. (1)

Land trades are a very complex process, subject to misunderstanding and misinterpretation as well as manipulation – and the possibility of fraud. Appraisals can vary widely and it is difficult, if not impossible, to place a monetary value on aesthetic, habitat, scenic and recreational values, es-

## State Policy on Sales and Trades

There are a number of legal and policy considerations and restrictions which influence land sales, and trades.

*The Enabling Act* and the *Constitution* require that all sales of trust land must be at market value, must be at public auction, and sale parcels must not be over 160 acres.

*The Land Bank*, enacted in 1977, created the means to sell land and use the proceeds to buy replacement land. *Land Bank, RCW Chap. 79.66.*

*The Real Property Replacement Account* enacted in 1992, allows the direct transfer of trust land to public agencies, and to public agencies and private utilities in lieu of condemnation. The department must obtain fair market value for these lands. It requires that land sale proceeds be used solely for the acquisition of replacement of real property. All proceeds from the sale of timber from federally granted lands are allocated to the Common School Construction Fund. *Real Property Replacement Account, RCW Chap. 43.30.265 & Chap. 79.01.009.*

*Statutes addressing land exchange permit* exchanges to consolidate and block up state lands or to facilitate marketing of forest products when in the best interest of the trust beneficiaries. Exchanges must maintain the publicly owned forest land base. *RCW Chap. 79.08.180-200 & Chap. 76.12.050-065.*

*General land transaction statutes* detail the criteria and procedures for the sale of public land. RCW Chap. 79.01. *Purchases* must not reduce publicly owned forest land base, not deplete the public land base and must maintain the real property asset base. "Publicly owned" land means lands owned by any public entity, such as State Parks, Fish & Wildlife or federal agencies. *RCW Chap. 79.66.010 & Chap. 43.30.265.*

*The Forest Resources Plan* of 1992 is significant in that it states that, in decisions affecting federal grant lands, DNR will "balance current economic returns and trust benefits with future economic returns and trust benefits." Further, it "will perpetuate a productive forest base of Forest Board lands."

*The Trust Land Transfer Program* provides for DNR to identify critical environmental or park lands and seek to remove them from trust ownership by conveying them to other state agencies. Twenty-four state parks were created or enlarged through this program. This program protects environmental resources without depriving the Common School Construction Fund. The Legislature appropriates to that Fund the equivalent dollars that would have been realized from the sale of the timber. The land value is then placed in the Real Property Replacement Account.

**Source:** "A Look at Land Exchanges and Other Types of Land Transactions," DNR, November 17, 1999

pecially when compared to the market value of timber. In addition, the political and personal biases of the managers of public land influence the particulars of any land sale or trade. In recent years, DNR has become more sensitive to environmental issues. The future of state land sales and trades will certainly depend on the political philosophies of upcoming DNR administrations.

## **b. Loomis Agreement**

The Loomis Forest Project, spearheaded by the Northwest Ecosystem Alliance (NWEA, a Bellingham-based conservation organization) was a unique citizen effort to protect 25,000 roadless acres of the Loomis State Forest. The campaign began in Spring 1998 to raise \$13 million, a figure set in a preliminary agreement with the state Board of Natural Resources (Board), by July 1999 to compensate Washington's Common School Trust for the value of the timber to be protected for the public. (For a discussion of the roots of the Loomis agreement, see p. 39 of *Washington's Dynamic Forests*.)

After the preliminary goal was reached, it remained for the Board to arrive at an exact figure and give final approval to the agreement. The state asked its appraiser to review the original \$13.1 million figure; most believed it would change little, although the market price of lodgepole pine had gone up since the initial appraisal. Meanwhile, opponents of the deal in the timber towns hired their own appraiser who came up with an estimate of more than \$30 million. This was thought to carry little weight, since the appraiser's qualifications were in question.

In October, the Board angered Loomis activists by upping the ante by \$3.4 million. As a Seattle Post-Intelligencer editorial put it, "Northwest Ecosystem Alliance members thought they had a deal with the board to buy 25,000 acres for \$13.1 million. State Lands Commissioner Jennifer Belcher says not so...Relying on controversial

formulas that estimate how long it would take to log the land, the board said last week that the price had moved to \$16.5 million." (2)

Even as environmentalists decried what they saw as their betrayal by the Board, philanthropist Paul Allen offered up another \$3.4 million to cover the deficit, and victory was declared once again.

While the Loomis deal has been widely applauded and is a source of pride to the many citizen activists who made significant financial contributions, it is not without its detractors. Most obvious are those who believe the function of state forest lands is to produce timber, not to look for alternative ways to feed the coffers of trust beneficiaries. But there are others who argue that the Loomis could have been adequately protected under the DNR's Habitat Conservation Plan and that a citizen fundraising effort might better have targeted some of the privately-owned old growth tracts that remain in the checkerboard legacy. Indeed, it may be that one of the Loomis project's major benefits is its role as a dress rehearsal or harbinger of just such an effort.

## **c. Cascade Conservation Partnership**

In May, 2000 a consortium of environmental groups, including the LWVWA (3), announced the beginning of a drive to raise \$25 million in private monies in order to leverage more than \$100 million from the Federal Land and Water Conservation Fund for the purchase of strategic checkerboard lands. The Loomis project demonstrated that the public is interested in preserving its forest and is willing to contribute funds voluntarily to make this happen.

The newer project, called The Cascade Conservation Partnership (TCCP), differs from the Loomis in several important ways. First, it targets private lands, and especially those within the checkerboard configuration that contain unique, rare and valuable ecological values, such as lowland old growth, that otherwise would be logged

and lost. Second, the funds, private and federal, will be used for outright purchase of land that will be placed in protected status under public ownership. In the case of the Loomis, only the timber rights were purchased, and the land ownership did not change; it remains with the state of Washington, under DNR management.

TCCP also presents questions that will require careful consideration as the project moves forward. One such question may be the very appropriateness of using privately raised funds to purchase land (given to the railroads a century ago by the federal government, with questions about legality of title still not entirely resolved) from private owners. More questions arise about how the land would be managed. The public would need to be assured beyond any doubt that this land would be adequately protected for public purposes, including watershed protection, habitat, and appropriate recreation.

## **2. Federal Land Trades**

There are 10.1 million acres of federally-owned forest lands in the state of Washington. Therefore, the subject of Washington's forests cannot be dealt with adequately without considering these lands. Land trades, especially, have a significant impact.

### **a. Background**

US Forest Service (USFS) land trades have many of the same problems and misunderstandings as have those of the DNR in Washington State. However, as federal lands have become increasingly attractive to powerful logging, mining, recreation, and development interests, the current regulations have been subjected to continual problems and abuse. Concern over the issue led the Seattle Times to do a six day series in October 1998 (4), exclusively devoted to land trades - the particulars, the problems and the proposed solu-

tions. They are far from simple good guy vs. bad guy situations, but instead are very complex transactions with right and wrong in the eye of the negotiators. Here are samples of a variety of perceptions.

The public often interprets the rush by timber companies to complete transactions as a ploy to avoid environmental restrictions. Company officials have a different perspective. Corporate entities must maintain their revenue stream. The time spent negotiating deals translates to money lost for that time period. According to Bill Brown, Vice President of Plum Creek Timber Company, "Deals that take two years are adequate, and five years is a stretch..."

The public often misunderstands some of the financial complexities and established practices of the logging industry. It is common practice in timber industry trades to give discounts for profit, risk, and capital costs. In the USFS/Weyerhaeuser Trade, for instance, the generous (some critics say overly generous) discount factor made the difference between profit and loss for the company.

Often the USFS has been attacked by a public that may not be aware of its severe budget cuts as well as the barrage of criticism they've had to face from many members of a conservative Congress. The public should also consider:

- Since 1990 the USFS has lost two-thirds of its appraisers, while their workload has increased by 50%. Often the federal appraisers are no match for those in the private sector.
- The USFS has been left with trading as a convenient option, partially because of the "we've already got too much land locked up by the feds" mentality among private citizens and public officials. Congress is less willing to appropriate money for public lands than at any time in decades.

- Many USFS personnel were trained to value tree growing and timber harvest as the highest priority of their agency. According to Everett White, chief negotiator in the USFS/Weyerhaeuser Trade, "I'm one of the few people in the Forest Service who thinks its better to get land than trees. You can grow trees, not land." (5)
- The Forest Service didn't adequately analyze cumulative impact of the Huckleberry and proposed I-90 (Plum Creek) exchanges under the National Environmental Policy Act (NEPA).
- The Forest Service EIS failed to consider the impacts on surrounding lands that would result from Weyerhaeuser's proposed harvesting as they should have under NEPA requirements.
- Weyerhaeuser provided inadequate mitigation for impacts to the Muckleshoot Tribe's Historic Huckleberry Divide Trail, as mandated under the National Historic Preservation Act (NHPA).

Two of the largest and most contentious land trades in Washington State have occurred in the decade of the nineties and one is still being litigated. A brief account of them follows:

### **b. Weyerhaeuser Land Trade History**

A recent US Forest Service/Weyerhaeuser land trade illustrates some of the complications of the issue. The Forest Service approved a land trade in which Weyerhaeuser got 4,300 acres of federal lands, while the Forest Service gained 30,000 acres of privately-owned land which primarily served to consolidate lands around the Alpine Lakes Wilderness area. The Sierra Club's Cascade Checkerboard Project supported the trade.

The Muckleshoot Indian Tribe, the Pilchuck Audubon Society and the Huckleberry Mountain Protection Society sued to stop the trade on the grounds that it didn't serve the public interest, was deficient in environmental impact analysis, and would destroy an historic Muckleshoot trail. The case was dismissed, by Judge William Dwyer in U.S. District Court, and the deal was completed in March, 1997.

The Ninth Circuit Court of Appeals reversed Judge Dwyer's decision in May, 1999 and made some critical rulings that will have an effect on future land trades:

- The Forest Service failed to examine a full range of alternatives and was ordered to consider non-exchange alternatives

The court further enjoined the Forest Service and Weyerhaeuser from undertaking any further activities on the ground until the NEPA and NHPA obligations are fulfilled. (6)

The Forest Service appealed the court's decision, and in July 1999 asked the Ninth Circuit to revisit the issue. The Court declined and ordered the USFS to issue a Supplemental Environmental Impact Statement by September 2000. As of this writing they are in the process of complying.

### **c. Plum Creek Exchange**

In 1996 Plum Creek Timber proposed to trade 60,000 acres of its land in the Central Washington Cascades north of I-90 for 40,000 federal acres that included some rare low-elevation old growth in the Gifford Pinchot National Forest. It became known as the I-90 Land Exchange, because one of the objectives was to "block up" checkerboard lands on Snoqualmie Pass, adjoining I-90. Plum Creek was eager to complete the deal by 1998. In the end Plum Creek exchanged 31,705 acres for 11,556 federal acres.

The Plum Creek Exchange was originally federally legislated through one of the dozens of riders tacked onto the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999. Highlights of the trade included:

*April 1998:* After doing an EIS, the Forest Service agreed to trade 17,000 acres of what the Seattle Times described as "prime public timberland" for Plum Creek's 60,000 acres of "alpine backcountry in the Cascades." (7)

*June 1998:* Several environmental groups led by the Sierra Club's Cascade Checkerboard Project strongly supported the exchange, while others and some community groups opposed it with equal vigor. Alarmed by the unexpected opposition and anxious to complete the deal, Plum Creek went to the Washington State Congressional delegation for help in legislating the trade. Sen. Slade Gorton and Rep. "Doc" Hastings introduced companion bills in their respective legislative bodies that would mandate the exchange.

*October 1998:* When it became apparent that the legislation would not pass before the session ended, the exchange legislation was prepared and added to the Omnibus Appropriations Bill for 1998, where it was passed. Illustrating the bipartisan nature of exchanges, Sen. Patty Murray's office, with help from the environmental groups which supported the trade, wrote most of the rider, while the Clinton administration opposed it.

*Early Spring 1999:* Several environmental groups and one community group appealed the Final EIS and the decision to proceed with the trade claiming violations in federal law, irreparable damage to rare ecosystems and potential harm to the community of Randle, Washington.

*June to September 1999:* Citizens in Randle became upset over the inclusion of Watch Mountain in the exchange and occupied trees to demonstrate their opposition. Mike Dombeck, US Forest Service Chief, met with the citizens and declared that the clear cutting of Watch Mountain would be a "tragedy." (8)

The Senate adopted an Interior Department appropriations bill that included the rewritten rider. Under the terms of the rider, the Forest Service would keep the 1,300 acres of habitat for the murrelet (a bird listed under ESA), while Plum Creek would put 3,000 acres of their land in escrow to balance the exchange. These lands would be reserved for public acquisition.

*October 14, 1999:* In an attempt to pre-empt the lawsuit filed in early spring, Plum Creek filed a motion in Spokane asking that the I-90 Land Exchange be declared legal and constitutional.

*October & November 1999:* After this threatened litigation from Plum Creek, environmental groups opposed to the trade agreed to negotiations. After some hard bargaining, the two sides agreed to drop all court actions and came to consensus on the details of the agreement. The final agreement was passed on December 29, 1999 as a rider to the Omnibus Consolidated and Emergency Supplemental Appropriations.

In the final settlement, the trade was reduced in size from 60,000 Plum Creek acres to 31,705. Watch Mountain and Fossil Creek, which were important to the town of Randle, stayed in federal ownership. Plum Creek agreed to extend one to four-year options-to-buy on lands that had been dropped from the trade, giving the public a chance to acquire them.

December 1999: Deeds were exchanged.

### 3. Perspectives on Land Exchange

With the controversy over public lands and land exchange has come a plethora of suggested changes to the process. A few of these are summarized here.

**Congress:** This Congress has generally pursued the goal of returning public lands to the private sector, or of giving control to local jurisdictions. Several bills have been introduced to that end.

**Bureau of Land Management (BLM):** In 1998, the BLM adopted a policy that all land trades of more than \$500,000 should be reviewed by the agency's DC office. The National Land Exchange Evaluation and Assistance Team (NLEET) was formed to provide oversight of exchanges and ensure that they are processed in accordance with applicable laws and regulations, and to give local officials assistance and advice.

**US Forest Service:** The National Land Ownership Adjustment Team was established in 1998 to make sure that trades are consistent with national standards, that trades are consistent with the public interest, that land adjustments are completed in a timely manner, and that a strong cadre of land adjustment specialists be developed. It provides a training program in appraisal and realty skills, including an apprenticeship program.

**Inspectors General:** The offices of Inspectors General of both the Departments of Interior and Agriculture (USDA) have conducted a series of audits that have resulted in a series of recommendations that apply to land exchanges. While they are too extensive to detail here, they apply to acquiring properties, disposing of public lands, appraisal and valu-

ation, third-party exchanges, conflicts of interest, and multiple transaction exchanges. Following the Seattle Times series on *Trading Away the West*, the USDA Inspector General announced that his office was investigating the land exchange program itself.

*Western Land Exchange Project* advocates replacing exchanges with purchases. Unfortunately, the Land and Water Conservation Fund, the primary sources of funds, has been directed by Congress to other causes and projects. Furthermore, much of the money that has been appropriated in recent years has gone to big corporations that were at least partially responsible for the environmental problem. (9)

**General:** A weapon at the disposal of all federal agencies is the Right of Eminent Domain. This gives them a legal procedure to prevent threatened or real activities on private inholdings that would adversely affect adjacent public lands.

And finally, some groups, notably the Western Land Exchange Project, have proposed a moratorium on land exchanges larger than 200 acres until a national programmatic review of land exchange law and policy can be performed. (10)

## B. Conflicts in Public Land Use

### 1. Recreation

During the years of mounting pressure from environmental groups and concerned citizens to curtail clearcut logging on the public lands, a major argument of logging opponents has been that a true economic reckoning would demonstrate the greater value of these lands for non-extractive uses. Among those uses often named are water quality protection, wildlife habitat maintenance, and recreation.

It is the latter use - recreation - that may be the most readily quantified in economic terms but the most problematic. Because recreational users can be required to pay fees to enjoy public lands, cash receipts can be realized on the spot. The use is problematic because there is no clear agreement on what defines "recreation."

While nearly everyone can support the concept of maintaining wild lands for present and future outdoor enthusiasts such as hikers, swimmers, fishers and campers, what about "recreation" on an ORV (off-road vehicle), ATV (all terrain vehicle), snowmobile, jetski, SUV (sports utility vehicle) or dirt bike?

As Public Lands Commissioner Jennifer Belcher has emphasized, the need for recreational opportunities in Washington State is growing rapidly and will continue to grow apace with population into the foreseeable future. The public lands, Belcher stressed, will become more and more valuable in this context. Among the growing cadre of recreational users, the great majority are "non-motorized" users. The conflict arises because most of these users are seeking respite from urban noise and confusion, and the presence of motorized activity impairs this aspect of woodland recreation.

In Washington State, as throughout the nation, the coalition of manufacturers, purveyors and users of motorized recreational devices is increasingly vocal and now seeks a major voice in the management of public lands. Demanding "equal access" for all users, these proponents' arguments often include equitable treatment for seniors and the handicapped – those unable to access wild places on foot (and unlikely to access them on dirt bikes). In advocating for motorized access, these advocates often purport to represent a wide range of recreation interests, including birding, hiking, camping, canoeing – with ORVs, jetskis and the like as a subset of recreational modes.

The conflict over the use of public lands for two

very different interpretations of recreation is predominately a federal lands battle. While the potential influence of the recreation lobby on forest policy may seem minimal at first consideration, its impact may be significant. A major change in management of public lands for recreational uses is now being pioneered with enthusiastic backing by the recreation industries. This is the "Fee Demo" program, in which users pay to use the public lands, with organized activities frequently the province of for-profit concessions. Federal land managers and the US Congress are now evaluating public responses to "Fee Demo." The question is complex because one implication of the fee program is that whoever pays the fees is entitled to whatever level of preferred use his/her group's money can buy. The position of the environmental groups is there should be no fees and, in specified areas, no motorized vehicles.

Now the question of motorized access in roadless areas has surfaced in the current dialog on the Clinton administration's roadless proposal (subject of public hearings in June, 2000 with completion anticipated by year's end). Environmentalists contend that roadless areas cannot exist when opened to ORV use; a potential "road" is punched into the wilderness with every ORV or dirt bike entry. Damage to the physical structure of the forest may be more severe at the site of use, but resulting noise and fragmentation effects on other human visitors and wildlife extend much further.

The administration's preferred alternative would leave this determination to local option. Motorized recreation proponents fear diminution of their terrain, while others fear motorized invasion and attendant damage of forestlands as well-organized ORV groups exert pressure on forest managers. It is considered unlikely at this writing that the administration will change its "local option" position. Beyond the hornet's nest of conflict on the policy issue, land managers acknowledge the serious difficulties inherent in enforcement of motorized prohibition. Although motorized users of the public lands are a clear minority, the industry's

wealth and infrastructure has the potential to exert a disproportionate influence on public policy. Citizen attentiveness and involvement will become ever more critical in the future.

Within Washington State, the Non-Highway Off-road Vehicle Allocation (NOVA) program provides funding from US gas taxes for trails on state lands, with 80% of this amount designated for ORV trails. During the 2000 legislative session, the legislature considered a measure that would have lowered the proportion of these funds by 30%, from 80% to 50% for motorized trails, and 50% for non-motorized trails. As groups supporting the change pointed out, the split would still not reflect the relative popularity and usage of trails by the recreating public; the non-motorized users greatly outnumber motorized. In any event, the legislation did not pass.

## 2. Roadless Areas

The Clinton Administration in October, 1999, announced the start of the scoping process for its initiative to protect roadless areas in the National Forests. The White House acted in response to strong public demand, as evidenced in a letter to the President signed by some 160 members of Congress. According to a Wall Street Journal article (January 21, 2000), "In a poll the GOP firm American Viewpoint conducted for the Heritage Forests Campaign, 76% of Americans said they favor the plan, including 62% of Republicans." Support was found strong across party and gender lines, and comment on the proposal throughout the vetting process has been both massive and overwhelmingly in favor of protecting roadless areas.

Indeed, there is significant sentiment that the plan is neither extensive nor decisive enough. While the proposal originally considered protection of over 60 million acres, to include tracts of 1,000 acres and above, it now seems likely to be limited to 45 million acres, to exclude the entire

Tongass National Forest of Alaska from protection, and to offer no decisive guidance on the use of off-road vehicles and other forms of motorized recreation within protected areas. Whether or not it will entirely ban logging in these areas is unclear; much of the protected land is in locales where timber values are not great and extraction would be costly and difficult.

At this writing, the roadless proposal seems likely to be completed in early Autumn of 2000, despite efforts by some western senators to derail the proposal. Public opposition appears to have come much more significantly from motorized recreation interests than from the resource industry spokespersons, who did register traditional concerns that public resources would be "locked up."

Public support for the measure has been high in Washington State as elsewhere.

## C. Long Term Contracts

During the last century several long-term contracts were established between government and private landowners. As more scientific information about forest becomes available the potential dangers of long-term commitments to a particular practice come into focus. Two examples follow.

### 1. Habitat Conservation Plans

Habitat Conservation Plans (HCP), approved by the US Congress in 1982 (discussed in *Washington's Dynamic Forests*, p. 23-25) were designed as an alternative to rigid enforcement of the federal Endangered Species Act (ESA). An HCP may permit "incidental take" of listed species in exchange for a large landowner's long-term commitment to protect habitat in specified ways. Nationwide, there are several hundred HCPs in effect or in progress, including one prepared by the Washington State DNR covering 1.6 million acres of state land.

The public was cautiously positive about the HCP concept at the outset, but forest landowners sought long-term assurance that the rules would not be changed. In early 1998, the Department of Interior spelled out the “no surprises” clause, reinforcing doubts harbored by those concerned about habitat and species protection. At the heart of the unease is the basic tension between guarantees of regulatory certainty for landowners over a 50 to 70 year period and the likelihood that altered circumstances will prove the protection measures inadequate.

“Adaptive management” is the standard response to the worry that changes in the environment and in forest ecosystems cannot be predicted reliably for decades into the future; the natural world, under insults from burgeoning human interference (for example, accelerated climate change), doubtless has many surprises in store. Presumably, adaptive management would assure the survival of listed species under altered conditions. The landowner has been promised “no surprises.” Would adaptations be considered “takings” from the landowner and require compensation from taxpayers’ coffers?

Environmentalists decried the “no surprises” ruling and complained that the goals of the ESA were being seriously compromised. In response, a year later (Spring 1999) the Department of the Interior presented a five-point plan purportedly designed to remedy inadequacies in the earlier rule. The points found in need of improvement were: biological goals; monitoring; adaptive management; public participation; and permit duration. Critics, however, found that the amended plan did little to improve the 1998 rule. Though higher standards for species protection are identified, they are largely advisory and voluntary rather than mandated, and the conflict between “no surprises” and assured protection for listed species is not resolved. (11) Suggested reforms for HCPs are found in Appendix F.

## **2. Simpson Timber Company and the US Forest Service**

In 1946 Simpson Timber Co. and the US Forest Service signed the Shelton Cooperative Sustained Yield Unit agreement. In April, 2000 Simpson Timber Co. sued the Forest Service for breaching the logging agreement.

In 1944, President Franklin Roosevelt signed a Sustained Yield Forest Management Act, which allowed the USFS to enter into timber harvest plans with private companies. This Act gave companies the exclusive right to harvest timber on federal lands but required them to process most of it (80%) at local mills. The stated intent of the act was to assure the stability of nearby timber communities. The only such plan ever established was with the Simpson Timber Company.

This 100-year contract included 111,466 acres within the Olympic National Forest and eventually 250,000 acres of Simpson-owned land. Other timber companies, farmers, labor and many communities opposed the plan. “In effect the agreement joined Simpson’s private land on the Peninsula with the public forest for the next 100 years. By the end of WWII Simpson was nearing the end of logging on its own land, and the purpose of the agreement was to ensure that federal timber could take its place for the next 40-50 years. By the time the national forest timber was exhausted, Simpson’s should be re-grown. Meanwhile, the towns of Shelton and McCleary would have stable employment.” (12)

From 1947-1976 more than 73 % of the timber logged under this agreement came from the Olympic National Forest. Beginning in the early 1980s, a serious reduction in the allowable harvest in this Sustained Yield Unit occurred (from 400 million board feet to 40 million in less than a decade) due to increased concerns about over-harvest in the Olympic National Forest and the loss of old-growth habitat for certain bird species dependent

upon them. (13) The Northwest Forestry Plan proposed by President Clinton went into effect in 1994. It increased lands set aside as wilderness.

Simpson lost an appeal of the Forest Service decision to reduce the allowable harvest, and Simpson also failed in an attempt to increase log exports from lands covered by the agreement. They have now filed a breach-of-contract lawsuit against the Forest Service in US District Court in Tacoma. A claim for unspecified monetary damages also was filed in US Court of Federal Claims in Washington DC. The chairman of Simpson Investment Co. has been quoted as saying, "Simpson has grown increasingly frustrated with the government's unwillingness to meet its obligations under this long-standing contract." (14)

### 3. Forest Products Certification

A different form of long term contract has arisen lately to encourage landowners to make a commitment to practice sustainable forest management in return for a certification which will influence consumers to purchase their products in preference to others.

The forest certification movement began over a decade ago. In 1989 the conservation group *Rainforest Alliance* founded SmartWood Network, an international coalition of nonprofit organizations working to improve forest practices world-wide by certifying sustainable forest management and wood products businesses. In Mexico in the early 1990s several environmental groups, hoping to slow the rate of global deforestation, organized the Forest Stewardship Council (FSC) with the goal of setting guidelines for forest certification so people could derive a living from a forest without jeopardizing its future.

The movement is now well established. Today the FSC is the international, nongovernmental watchdog group that accredits and monitors certifiers around the world. Their approved certifi-

cation guidelines include requirements for long-term management planning, logging techniques that minimize disturbance to soil, streams and vegetation, protect fish and wildlife habitat, and maximize benefits to local communities. At the forest site, a multidisciplinary team of local "experts" managed by regional affiliates of the FSC use these guidelines to ensure that ecological, social and economic criteria are met. On approval, companies may then use the internationally recognized FSC certification in their marketing and promotion efforts. Consumers who buy certified forest products are assured that these were grown, harvested and processed in an environmentally and socially responsible way. In the US, two entities work as FSC representatives: Smart Wood Network and Scientific Certification Systems (SCS) of Oakland, California.

In Washington, the SmartWood affiliate is the Northwest Natural Resource Group (NNRG – formerly the Olympia Peninsula Foundation). In developing and implementing a statewide market-based certification program for wood products, NNRG trains certification assessors, conducts outreach and education to promote the program, and certifies forest parcels and a variety of forest-related businesses in the state. In addition, NNRG has established an ecological training program for harvesters of non-timber forest products, such as edibles, decorative items and pharmaceutical extracts.

Certified forestry products face more than the usual challenges of value-added products. The evidence of added value to a market item is usually immediately obvious to the buyer from its tangible qualities. But the long-term success of forestry certification programs depends on the awareness of the consumer of the ecological benefits of buying environmentally sound products.

This success also depends on an informative label on all certified forest products. This latter condition for forest product certification to be effective is at serious risk if a WTO ruling that "no

product may be discriminated against for trade on the basis of manner of production” is interpreted to mean labeling as an “unfair trade barrier.” Complete and accurate product data on labels is essential for consumers to make informed choices. However, under WTO, any label, either mandatory or voluntary, that reflects how a product is produced could be vulnerable to a WTO challenge.

The final criteria of success for certification comes full circle from product to the forest it came from.

If consumers demand certified sustainably produced wood, then the forest industry will use more environmentally sound practices to supply such a product. Even large retail outlets such as Home Depot and Ikea have announced that they are planning to include certified wood products in their inventory. And, DNR is currently negotiating with SCS to conduct an audit of DNR forest land management to see if as much as 1.4 million acres of state timberland in Western Washington is eligible for certification. See Appendix G for a list of certifiers and certified operations in Washington.

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#### Footnotes for Chapter V

1. Information for State Lands Transactions came, in large part, from *A Look at Land Exchanges and Other Types of Land Transactions*, DNR, November 17, 1999 and conversations with Kit Metlen, DNR
2. Seattle Post-Intelligencer, October 11, 1999
3. Board action, LWVWA May 2000
4. Seattle Times, October 1998, *Trading Away the West*
5. *Ibid.*
6. Informational memorandum for James R. Lyons, Under Secretary, Natural Resources and the Environment, USFS, from Regional Forest Service Office, Portland, OR
7. Seattle Times, October 1998, *Trading Away the West*
8. George Draffan and Janine Blaeloch, *Commons or Commodity, The Dilemma of Federal Land Exchanges*, Western Land Exchange Project, Jan. 2000, quoting from Hunter George, Eastside Journal, Sept. 16, 1999
9. Of the 700 million in LWCF appropriated by Congress in 1998, almost half went to two corporations; Maxxams Pacific Lumber Company to save the redwoods of the Headwaters Forest, and Crown Butte Mines, to stop the company from using cyanide to mine for gold next to Yellowstone National Park. (*Commons or Commodity*)
10. Seattle Times, October 1998, *Trading Away the West*
11. The problem of promising "no surprises" for landowners while assuring habitat protection in the face of future uncertainties also plagues forestry rules and policy at the state level. See the discussions of Landowner Landscape Plans, p. 25, *Washington's Dynamic Forests*, and the *Forests and Fish Report*.
12. Wm. Dietrich, *The Final Forest*, p. 170 pp., New York, NY, 1993
13. *Ibid.*
14. The Olympian, April 18, 2000

## VI. SIGNIFICANT COURT CASES

From the earliest years of Washington statehood, there has been controversy over the management of federal grant lands and of all private and state forests. Often the conflicts had to be settled in the courts. Even when the issues were narrow and specific, court opinions reached broad conclusions regarding interpretation of the state constitution, of state laws and of state administrative rules. The following court cases give an indication of the gradual development over the years of land management policies and of the status of federal grant lands as determined by legal decisions. The actual cases were usually more involved than presented here in chart form, and the court opinions were often lengthy, citing specific decisions for specific points at issue. Although legal opinions rely on precedents, they do sometimes evolve according to contemporary definitions and perceptions.

### Cases

**State ex rel. Hellar v. Young (State Treasurer)**  
**(1899) upheld by Wn Supreme Court**

**At Issue:** Whether permanent school fund money could be used to redeem warrants issued by state, when no other state money was available

**Court:** The permanent school fund of this state is a trust fund because it was made such by the state constitution, and as a trust fund it was not allowed by the constitution to invest in warrants

**State ex rel. Forks Shingle Co. v. Martin**  
**(Comm., Public Lands)**  
**(1938) Wn Supreme Court**

**At Issue:** Whether the state could be forced to sell certain school grant lands or the timber from them.

**Court:** The state is not prevented from selling the

timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law.

Nothing in the state constitution required the state to sell the granted lands.

Upheld state statutes establishing a sustained yield plan with respect to these lands granted to the state for common schools.

**Tucker v. Brown**  
**(1944) Wn Supreme Court**

**At Issue:** Various disputes regarding a will.

**Court:** Many statements of trustee responsibilities including that the trustee must exclude from consideration not only personal advantage or profit, but also any advantage to third parties. Third parties would include other trusts administered by the trustee.

**Case (Commissioner, Public Lands)v. Bowles (US Office of Price Administration)**  
**(1946) US Supreme Court**

**At Issue:** Whether a federal law of general application applied to Washington's grant lands. The State challenged federal price controls regarding school-land timber.

**Court:** (There was no ) purpose on the part of Congress "to enter into a permanent agreement with the States under which States would be free to use the lands in a manner which would conflict with valid legislation enacted by Congress in the national interest."

**West Norman Timber v. State (Dept of Conservation and Development)**  
**(1950) Wn Supreme Court**

**At Issue:** If the Forest Practices Act applied to state school timber

Court: The Forest Practices Act applied to all forest lands in the state, including the trust lands, since the Act was for the general or public welfare and was a proper exercise of the police power.

**US v. 111.2 Acres in Ferry County, Wash. (1968 ) US Court of Appeals (1970)**

At Issue: US wanted to arrange to use state grant lands for an irrigation project.

Court: A legislative grant (thus) is both compact and law, and once accepted cannot be withdrawn or changed, except with the consent of the state and Congress. Granting state school lands to US for an irrigation project would without compensation constitute a breach of trust.

**US v. Wash (dubbed “Boldt II”) 1980 US District Court**

US includes a number of tribes.

Wash includes Atty Gen., Departments of Game and Fisheries, Reefnet Owners Assn., and Purse Seine Vessel Owners Assn.

At Issue: Disputes over treaty right for off-reservation fishing and the right of tribes to have treaty fish protected from environmental degradation (Boldt I allocated fish)

Court: 1) Hatchery fish to be included in computation of tribes’ treaty shares  
2) Implicitly incorporated in the fishing clause (of treaties) was the right to have fishery habitat protected from man-made despoilation  
3) The State is obliged to carry out federal government treaty obligations  
4) The duty imposed upon the State, as well as US duty on 3rd parties, was to refrain from degrading fish habitat to extent that would deprive tribes of their moderate living needs (treaty language)

(The ruling gave tribes unspecified authority over fish habitat, which resulted in negotiations between state and tribes on fish

management, which led to the first US-Canada treaty dividing fish, and ultimately to TFW process with limited effect.)

**Noel v. Cole et al (Comm. Public Lands, DNR) (1979) Wn Superior Court (“Classic U”)**

At Issue: Citizens sued to stop a 300 acre timber sale on university trust land on Whidbey Island in that forest practice regulations did not meet intent of FPA by exempting all forest practices from SEPA, and the buyer cross sued DNR for breach of contract.

Court: Found DNR in breach of contract with buyer for failure to prepare EIS.

All logging was enjoined. “While SEPA does authorize administrative exemptions, they are limited to those not major actions significantly affecting the quality of the environment.” (So, EIS was required here for granted lands.)

(see *Washington’s Dynamic Forests*, pp 24, 27, and Appendix)

**Noel v. Cole (1982) Wn Supreme Court (see case above)**

At Issue: Appeal of the breach of contract ruling in the 1979 Whidbey Island case  
That the sale was a major action with significant effect was not appealed.

Court: Lower ruling was upheld.  
The Court noted that the requirements of SEPA were found applicable to DNR’s decision to sell timber on land held in trust for educational purposes (in effect , to all Class IV timber harvest applications in that administrative exemptions to SEPA are limited to those not major actions significantly affecting the quality of the environment)

**2.1 Million Acres of Trees v. Cole (1980) (settled)**

At Issue: Environmental groups challenged the adequacy of the generic EIS for all state trust

lands prepared by DNR after the Classic U case.

Settled when a newly elected DNR commissioner negotiated a new plan for DNR land management, including a new EIS and a definition of “maximum income” from trust land. (See *Washington’s Dynamic Forests*, p 27)

**County of Skamania County v. State (DNR)  
(1984) Wn Supreme Court**

**At Issue:** Several beneficiaries of trust lands challenged the constitutionality of the Forest Products Industry Recovery Act of 1982, especially that modifying contracts for sale of timber from trust lands violated the State’s fiduciary duties to trust beneficiaries. (Companies which had bid on timber guessed wrong regarding the length of a recession and resultant decrease in prices and faced huge losses, with local unemployment.)

**Court:**

- 1) In managing and administering its trust lands, the State must comply with the same fiduciary obligations as private trustees.
- 2) The fiduciary duty of undivided loyalty prevents use of state trust lands to accomplish public purposes other than benefit to trust beneficiaries.
- 3) Article 16 Section 1 of the Constitution requires full market value from trust sales.
- 4) And, the fiduciary duty to act prudently prevents the State from releasing contract rights involving state trust lands for less than full consideration.
- 5) The Act violates the Constitution by breaching the State’s duties as trustee.

(This ruling has become influential in subsequent cases regarding the status of state owned federally granted lands. It referred in part to previous US Supreme Court decisions regarding the Enabling Acts of Arizona and New Mexico which specified that the federal grant lands were trusts. The Enabling Act for Washington does not con-

tain such specific language, which has led to some controversy about the exact responsibilities which exist in our state.)

**DNR v. Marr  
(1989) Wn Court of Appeals**

**At Issue:** Logger appealed Superior Court decision in favor of DNR that he stop violating FPA.

**Court:**

- 1) Residential lots from which the logger removed timber constituted “forest land”.
- 2) There is no “active timber growing” requirement in the definition of forest land.
- 3) FPA is civil in nature and need not be strictly construed. FPB is authorized to promulgate forest practices regulations to accomplish the purpose of the Forest Practices Act, which, stated broadly, is to foster the commercial timber industry while protecting the environment

**BNR (& State Board of Education) v. Brown  
(US Secretary of Commerce)  
(1993) US Court of Appeals**

**At Issue:** BNR challenged the federal Act which restricted the export of unprocessed timber from public lands in western states.

**Court:** “Valid legislation enacted by Congress” trumps the Boards’ ability to use the trust lands in whatever way they wish.

**Snohomish Cy. & WEC v. State et al (Forest Practices Appeals Board)  
(1993) Wn Court of Appeals**

**At Issue:** Appeal of decisions of two lower courts upholding decision of FPAB.

FPAB had approved issuance by DNR of logging permits for Lake Roesiger and Woods Creek watershed, even though FPAB held the rule for classifying Forest Practices Applications to be invalid. Appellants contended that SEPA required DNR to evaluate each application for substantial environmental impact; that cumu-

lative effects must be considered to fulfill FPAAct.

Court: Affirmed rulings of lower courts.  
FPAB does not have rule review authority.  
SEPA is not required for Classes I, II, and III Forest Practices.

**Okanagan Cy & WEC v. Belcher (1996) lower court (Loomis Forest)**

At Issue: Trust beneficiaries and environmental groups (for different reasons) both challenged the DNR Landscape Plan for Loomis Forest

Court: State Constitution allows financial return over time for the school trust.  
The Department has the duty to maximize revenues from the trust lands in perpetuity for the exclusive benefit of beneficiaries. "There is nothing in the law that requires the Department to maximize current income."

**Appeal (1996) Superior Court (settled)**

At Issue: Injunction against the Landscape plan's reduced cutting, based on need to reduce damage from bark beetle; and feared loss of income to beneficiaries

Court: While the court held that it could not or-

der a discretionary act, it could and did order DNR to exercise its discretion and to determine whether it is in the best interests of the trusts to harvest damaged timber in the Loomis State Forest. Petitioners' request for permanent and preliminary relief was denied.  
Unresolved issues were settled.

**Environmental Groups v. Belcher (1997-8) US District Court (settled)**

At Issue: The Landscape Plan for Loomis Forest re federal endangered species and water quality laws.  
Plaintiffs agreed to pursue purchase of the timber of Loomis Forest, with the intent of leaving it standing (which was later accomplished).

**Conclusion**

In the year 2000, new legislation and administrative rules are being developed to meet the challenge to natural resources, where there is a complicated series of interrelationships among forests, wildlife, water and humans. Undoubtedly, the courts will be influential in determining the direction of policies and the ultimate environmental consequences.

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Sources for Chapter VI

1. Attorney General Opinion to Senate and House Natural Resources Committees, August 1, 1996
2. Daniel Jack Chasan, Seattle University Law Review, article forthcoming
3. Marcy Golde
4. King County Law Library.

## APPENDICES

### Appendix A: Industry Sector Advisory Committees (ISAC) for Trade Policy Matters

#### OFFICE OF THE U.S. TRADE REPRESENTATIVE

##### Lumber & Wood Products ISAC 10

Hardwood Plywood Manufacturers Assn.  
American Plywood Assn.  
Indiana Hardwood Lumberman's Assn  
The Penrod Company  
Weyerhaeuser Co.  
Southern Forest Products Assn.  
Composite Panel Assn.  
Jeld-Wen. Inc.  
American Lumber Standards Committee  
National Kitchen Cabinet Manufacturers Assn.  
American Forest & Paper Assn.  
International Paper

##### Paper & Paper Products ISAC 12

Can-Am Converting  
Mead  
Fort James  
International Paper Co.  
Westvaco Worldwide  
Willamette Industries  
Georgia-Pacific Corp.  
American Forest & Paper States Industries, Inc.

### Appendix B: Recent US - Canada Trade Activities

**January 1999:** Several US conservation groups filed a lawsuit against the US Trade Representative and Departments of Commerce and Interior for their failure to consider endangered species protection and environmental impacts in negotiating the US-Canada Softwood Lumber Agreement (SWLA). As of June 2000, the case is still unresolved as to whether environmental interests will be included in future trade negotiations

**March 1999:** Northwest Ecosystem Alliance (NWEA) and Earthjustice Legal Defense Fund (EJ) filed a petition asking the Secretaries of Interior and Commerce to 'certify' Canada for its lack of any legal protection for endangered species; a certification could lead to trade sanctions under US law. (1) As of June 2000, with key senators and representatives supporting the petition, the Interior Department has agreed to look into the matter.

**July 1999:** NWEA and several other groups represented by EJ filed a suit to gain inclusion on the Industry Sector Advisory Committees (ISACs) for paper and wood products under the Federal Advisory Committees Act. The ISACs advise the US Trade Representative on trade policy relevant to each particular sector. In November a federal judge ruled in favor of the conservationists. This court victory will have a direct bearing on the softwood lumber issue.

**February 2000:** A group of US Congressional members supporting unrestricted trade in lumber introduced a resolution in the House of Representatives calling for an end to the US-Canada SWLA. The resolution is still under debate. Canadian and US conservationists have teamed up with the US timber industry and Canadian First Nations to fight the resolution. Indeed, this new alliance has welcomed the opportunity to educate Congress about the effects of harmful Canadian subsidies and the issues related to the SWLA.

**March 2000:** Several Canadian and American conservation groups filed a submission asking that the Council for Environmental Cooperation (CEC) investigate Canada for failure to meet its obligations under the Canada/US Pacific Salmon Treaty to protect salmon habitat. The CEC found that the submission warranted investigation, and as of June 2000 the investigation is ongoing.

**April 2000:** Canadian Parliament is considering, but has not yet enacted, its first federal endangered species legislation, the Species at Risk Act (SARA). It is inadequate in providing habitat and ecosystem safeguards. SARA's specific forest practice rules do not require riparian protection along smaller salmon-bearing streams and do not incorporate a science-based species listing process.

**April 2000:** Ninety-one environmental groups protested 'secret' NAFTA talks that could weaken wildlife protection under NAFTA. A NAFTA environmental side-agreement calls for public input in the development of guidelines for determining environmental problems from trade policies; in June 1999, the most recent guidelines were developed with public input. Activists contend that, since then, NAFTA ministers have been conducting 'secret meetings' to completely change key parts of these guidelines. Canada has denied that this was the case.

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Footnote:

1. Passed in 1971, the Pelly Amendment to the Fishermen's Protective Act of 1967 gives the President authority to impose trade measures upon countries that are not living up to international agreements for the conservation of endangered species. The 1999 petition claimed that Canada was violating the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere by failing to pass endangered species legislation.

Sources:

1. Canada-US Settlement. News Release. Office of the Minister for International Trade, Department of Foreign Affairs and International Trade, Ottawa, Canada, August 30, 1999
2. Implementing the Agreement to Settle the Stumpage Dispute. Serial No. 120., Export and Import Controls Bureau, Department of Foreign Affairs and International Trade, Ottawa, Sept. 3, 1999
3. "The Role of the United States in the Deforestation of Canada, Transboundary Conservation Project." NWEA, Bellingham, WA 1998. Also NWEA's website: [WWW.ecosystems.org/projects](http://WWW.ecosystems.org/projects)

## Appendix C: Summary of Draft Environmental Impact Statement Alternatives

The following chart summarizes the Draft Environmental Impact Statement (DEIS) by addressing the risks and uncertainty associated with each of the alternative proposals. The proposed rules have been categorized into nine specific topics.

### CHART OF RISK LEVELS IN DEIS ALTERNATIVES

Alternative 1: Status quo, current permanent rules

Alternative 2: Forests and Fish Report, which became legislation

Alternative 3: Amalgam of proposed rules from WEC/Audubon and some tribes

<b>Sediment</b>				
Specific Risk	Alternative 1	Alternative 2	Alternative 3	
risk of sediment delivery to streams and bank stability	high: inadequacy of rules and best management practices re roads	low to moderate: improved rules addressing road drainage, maintenance and abandonment, except for lack of riparian management zones along many steep headwater streams	low	
No alternative addresses drainage from roads along stable slopes onto unstable ones.				
<b>Hydrology</b>				
Specific Risk	Alternative 1	Alternative 2	Alternative 3	
risk of increases in peak flows	moderate	moderate	low	
All alternatives suffer from lack of provision for watershed analysis.				
<b>Riparian Habitat</b>				
Specific Risk	Alternative 1	Alternative 2	Alternative 3	
risk of less woody debris along fish bearing streams	high	low	low	
risk of less woody debris along non-fish bearing streams	very high	low along perennial high along seasonal	low	
risk of diminished shade along fish bearing streams	moderate to high	low	low	
risk of diminished shade along non-fish bearing streams	very high	moderate along perennial very high along seasonal	low	
risk of diminished leaf and needle litter along fish bearing streams	moderate	low	low	
risk of diminished leaf and needle litter along non-fish bearing streams	very high	moderate along perennial high along seasonal	low	
risk of microclimate effects along all streams	high	low to moderate along fish bearing high to very high along non-fish bearing	low to moderate	
Under Alternative 2, small landowners with less than 80 acres of forested land in Washington would be allowed to provide a lower level of environmental protection in riparian areas. Watersheds with a high proportion of these landowners could be impacted significantly.				
With all of the alternatives there is much uncertainty regarding the impact on downstream fish habitat of insufficient debris, shade, and microclimate protection.				

<b><u>Wetlands Habitat</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
risk of impacts from harvest adjacent to non-forested	low to moderate	low to moderate	low
<p>Alternatives 1 and 2 would not protect forested wetlands from harvest except for those portions inside of riparian or wetland management zones.</p> <p>Alternative 3 would protect forested wetlands by requiring minimum 70% canopy closure.</p> <p>Alternatives 2 and 3 would require the most stringent wetland mitigation for forest roads.</p>			
<b><u>Water Quality</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
risk of increases of temperature in fish bearing streams	low to moderate	low	low
risk of increases of temperature in non-fish bearing streams	high	moderate to high	low
risk of sediment related impacts	high	moderate	moderate
<p>The effect of temperature increases in non-fish bearing streams on downstream fish bearing systems is uncertain and the influence of these non-fish bearing streams could be important in watersheds with a high degree of past harvest.</p>			
<b><u>Fish</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
risk of habitat degradation	would likely continue and contribute to the declines in fish species	low to moderate	very low to low
<b><u>Wildlife</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
risk for amphibian microhabitat variables along larger streams	high	moderate	low
risk for amphibian microhabitat variables along smaller streams	very high	high	moderate
risk of impacts on target amphibians	high	low to moderate	low
risk to most other riparian	high	moderate	moderate
<b><u>Fire</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
fire initiation, fire spread, and suppression costs	similar to current conditions	slightly higher than 1	slightly higher than 2
<b><u>Cultural Resources</u></b>			
<b>Specific Risk</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
undiscovered resources in riparian and wetland management zones	minimal incidental protection	significant incidental protection	greater incidental protection than under 2
<b><u>Cumulative Effects</u></b>			
<p>All Alternatives address cumulative effects to a limited degree if watershed analyses are done.</p> <p>Under Alternative 3 some additional rules address cumulative effects, and the riparian rules would be substantially more protective than under 1 or 2, which make cumulative effects under Alternative 3 unlikely except in watersheds with the highest level of past harvest or other disturbances.</p>			

## Appendix D: Executive Summary Scientific Review of the Washington State Forest & Fish Plan

Jointly Administered by the American Fisheries Society & Society for Ecological Restoration, Northwest Chapter

**Background:** The Forests and Fish Report that is here reviewed was written to provide recommendations upon which revised forest practice laws could be established for private lands in Washington State. Stated goals of the Report are to keep the timber industry economically viable, recover salmonid fisheries, and achieve compliance with water quality standards and Endangered Species Act requirements.

The Report was accepted by the Washington state legislature in Spring 1999, and Draft Emergency Forest Practice rules were then prepared for review by the Forest Practices Board with the intention of codifying the recommendations of the Report.

While some provisions of the Forests and Fish Report represent improvements over existing regulations, most provisions decrease the maximum levels of environmental protection possible relative to previous forest practice rules in Washington. The minimum levels of protection afforded by the Report, although higher than those of the previous standard forest practice rules, do not approach the levels of protection considered necessary by science-based guidelines already prepared for use on private forest lands in the Pacific Northwest. Attainment of the Report's performance targets will not assure attainment of the overall goals described by the Report: levels of turbidity will be permitted to be maintained at values considerably higher than those allowed by state water quality standards, and the cumulative effect of the adverse habitat changes allowed by the Report will be a decreased likelihood of survival for threatened salmonid species.

**On improvements from existing conditions:** Aspects of the Report that represent significant improvements over previous standard forest practice rules include:

- Provision of no-cut buffers along fish-bearing channels
- Requirements for road maintenance plans
- Provision of some controls on salvage in riparian areas
- Requirements that road crossings be passable by fish

**On scientific evidence included in FFR:** A document that is intended to be based on sound science would provide documentation from the scientific literature to support each of the document's conclusions, but the FFR provides no citations and describes no rationale for its prescriptions. Where science-based information is described in the accompanying definitions, some of the basic information presented is inaccurate. Such errors undermine the technical credibility of the document.

**On water quality, shade and temperature:** The Report contains insufficient restrictions on riparian logging in non-fish-bearing reaches to ensure water temperatures flowing into fish-bearing reaches are low enough to support species at risk or to assure compliance with Washington State water quality standards for stream temperature. The Report's only mechanism for management of stream temperatures is provision of buffer strips along part of the stream system to provide shade. However, models show that stream temperatures are more influenced by air temperature than by shade, and a 50-foot buffer strip on 50% of perennial non-fish-bearing channels is insufficient to insulate those streams from increased air temperatures due to logging. Maintenance of shading alone will not assure attainment of water quality standards for stream temperature.

**On stream typing and protection levels:** Riparian zones are likely to be cut along some channels in which threatened or endangered fish are observed because observations of the presence of fish cannot be used to correct erroneous stream classifications. Streams will be classified as fish-bearing or non-fish-bearing using an as-yet-undeveloped model, and the level of protection provided depends on the stream classification.

**On slope stability and roads:** The Report's requirements for road maintenance and road standards represent significant improvements over previous rules. In contrast, measures for managing unstable slopes weaken previous provisions. Measures to assess and manage slope stability at a watershed scale have been replaced with a requirement to use state-wide

hazard maps and to evaluate slope stability at specific sites of concern. This approach makes it impossible to design watershed-specific prescriptions to avoid contributing to cumulative impacts.

**On riparian conditions:** Although the Report states that desired future condition targets for riparian stands are those for 140-year-old stands, the targets provided are actually for 80- to 90-year-old stands. This apparent error will lead to significantly higher rates of logging in the inner zones of buffer strips than appear to have been intended.

**On peak flows:** The Report's performance targets allow peak-flow increases large enough to reduce egg-to-fry survival of salmon by about 10%.

**On woody debris and in-stream habitat prescriptions:** Woody debris in non-fish-bearing channels is critical to the maintenance of adequate habitat in downstream fish-bearing channels because wood contributes to channel stability and traps sediment, and because a proportion of the wood is transported downstream. The Report provides for no woody debris recruitment in seasonal channels and limited recruitment in perennial non-fish-bearing channels. Fish-bearing streams could be deprived of as much as half the natural woody debris input. This level of input is considerably lower than that generally considered necessary for sustaining viable populations of salmonids.

**On sediment in streams:** The Report's provisions allow direct disturbance to seasonal streams and provide no buffer strips to protect them from upslope sediment inputs. Higher levels of protection are provided for perennial streams. However, the distinction between seasonal and perennial streams is irrelevant to sediment-related impacts because both stream types carry flow during periods when erosion and sediment transport are occurring. Rationales for reducing sediment input to perennial streams apply equally to ephemeral streams. Downstream sediment loads will be elevated due to inadequate protection of small channels.

**On meeting water quality standards:** The Report's recommended prescriptions will allow more sediment input to streams than is allowed by state water quality standards. Sediment inputs of 50% over background are to be permitted from the existing road system; effective methods for managing slope stability hazards are not to be allowed; 4% to 6% of the streambanks in a watershed can be left in a disturbed state; and peak-flows are allowed to increase by as much as 20%, thus increasing sediment loads by more than 20% and contributing to increased erosion on the disturbed streambanks

**On chemicals in water:** The Report allows direct application of toxic chemicals to non-fish-bearing channels if no water is present at the time of application. Because toxic residues can remain for months, downstream salmonids will be exposed to some level of these toxic chemicals when flow resumes.

**On cumulative impacts:** Because the Report's provisions are not contingent on assessment of the current level of impact in watersheds—and, in fact, remove the ability to modify prescriptions for riparian buffers and slope stability on the basis of watershed-specific information—the Report's prescriptions will contribute to cumulative impacts to water quality and critical habitat. Unless the level of care in already-impacted watersheds is higher than that in unimpaired watersheds, habitat conditions will continue to deteriorate in many of those watersheds, thus increasing the level of harm to already threatened species.

**On the meaning of "significant impact":** The Report indicates that the "significance" of mass-wasting impacts is now to be defined relative to the impact that might have occurred under previous regulations rather than with respect to the level of harm experienced by the impacted party. This redefinition is fundamentally unjustifiable and would prevent compliance with water quality and endangered species requirements. It is clearly unthinkable that provisions known to be inadequate could be accepted as having "no significant impact" simply because they are slightly better than pre-existing inadequate provisions.

## **Appendix E: Full Text of Washington State Constitution, Article IX (Education) Section 1 - 3 and Article XVI ( School and Grant Lands) Section 1-5.**

### **ARTICLE IX EDUCATION**

SECTION 1 PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

SECTION 2 PUBLIC SCHOOL SYSTEM. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

SECTION 3 FUNDS FOR SUPPORT. The principal of the common school fund as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of stone, minerals, or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or property other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund.

There is hereby established the common school construction fund to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from the sale or appropriation of timber and other crops from school and state lands subsequent to June 30, 1965, other than those granted for specific purposes; (2) the interest accruing on said permanent common school fund from and after July 1, 1967, together with all rentals and other revenues derived therefrom and from lands and other property devoted to the permanent common school fund from and after July 1, 1967; and (3) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section during the period after the effective date of this amendment and prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. [AMENDMENT 43, 1965 ex.s. Senate Joint Resolution No. 22, part 1, p 2817. Approved November 8, 1966.]

## **ARTICLE XVI**

### **SCHOOL AND GRANTED LANDS**

SECTION 1 DISPOSITION OF. All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

SECTION 2 MANNER AND TERMS OF SALE. None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: provided, that the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.

SECTION 3 LIMITATIONS ON SALES. No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905: provided, that nothing herein shall be so construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: and provided, further, that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

SECTION 4 HOW MUCH MAY BE OFFERED IN CERTAIN CASES - PLATTING OF. No more than one hundred and sixty (160) acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisal to exceed one hundred dollars (\$100) per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

SECTION 5 INVESTMENT OF PERMANENT COMMON SCHOOL FUND. The permanent common school fund of this state may be invested as authorized by law. [AMENDMENT 44, 1965 ex.s. Senate Joint Resolution No. 22, part 2, p 2817. Approved November 8, 1966.]

Amendment 1 (1894) - Art. 16 Section 5 INVESTMENT OF SCHOOL FUND - None of the permanent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds. [AMENDMENT 1, 1893 p 9 Section 1. Approved November, 1894.]

Original text - Art. 16 Section 5 INVESTMENT OF PERMANENT SCHOOL FUND - None of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county or municipal bonds.

## Appendix F: Suggested Reforms for Habitat Conservation Plans

According to Daniel Hall, Forest Biodiversity Program Director for American Lands, deficiencies in HCPs could be remedied through the following series of reforms:

1. Meaningful and mandatory HCP standards that are implemented as enforceable rules, instead of weak guidance in a handbook.
2. Full mitigation for all impacts to imperiled species, and full protection for imperiled species where mitigation is either not possible or lacks adequate scientific basis.
3. HCPs to be consistent with, and promote species recovery needs, as originally envisioned by the Endangered Species Act. In some cases, this will require active habitat restoration.
4. Real monitoring of each species populations and other key trends.
5. Real adaptive management that considers new information and that is not hamstrung by no-surprise guarantees that absolve landowners from supplementing their mitigation measures, should their original measures prove inadequate. No surprises should be thrown-out and replaced with a policy that gives balanced assurances to both landowners and endangered species.
6. Dedicated funding from both landowners and the government to pay for additional mitigation.
7. Real public participation and independent, academic scientific peer review during the development and negotiation of HCPs.
8. Mitigation measures that are implemented and proven effective before significant habitat destruction (or take) occurs, and that will continue to be provided for as long as needed to replace the lost habitats. Permanent mitigation will be needed in many cases.
9. Real enforcement provisions, including citizen suit provisions, meaningful penalties, and restoration requirements, should landowners violate the plans or fail to provide mitigation.
10. Honest and comprehensive assessments of the impacts of taking species, including cumulative effects analyses that consider other take permits and HCPs.

Source: Daniel Hall, white paper, "Bruce Babbitt's 5 Point Plan Avoids HCP Reform," March 9, 1999, e-mail posting

## Appendix G: List of Certifiers and Certified Operations in Washington State

### 1. Certified Chain of Custody Operations in Washington state

Builder Alliance L.L.C., Bellingham, WA 360-738-9000.  
Edenshaw Woods, Ltd. Port Townsend, WA 360-385-7878/ 1-800-745-3336  
Environmental Home Center, Seattle, WA 206-682-7332/ 1-800-281-9785  
Holloman Woodworking and Design, Sedro Woolley, WA 360-855-3376  
Kelly Stockton Furniture Artisan, Bow, WA 360-766-6370  
Mt. Baker Plywood, Bellingham, WA 360-733-3960  
Perfectionist Woodworking, Bellingham, WA 360-650-0964  
Randall Custom Lumber, Ltd, Shelton, WA 360-426-8518  
W.A. Smith, Bellingham, WA 360-398-7201  
Windfall Lumber and Milling, Olympia, WA 360-556-089

### 2. Certified Forest Management Operations in Washington state:

Lusignan Forestry Inc., Guy Lusignan, Shelton, WA  
Still Waters Farm, Mark Bisor, Union, WA  
Surface Road Associates, John Lee, Whidbey Island, WA  
Tree Shepherd Woods, Jean Shaffer, Olympia, WA

## Appendix H: Acronyms

ATL	Advanced Tariff Liberalization agreement. See also FLA.	NAP	Natural Area Preserves
ATV	All terrain vehicle	NAFTA	North American Trade Agreement
bbf	billion board feet	NEPA	National Environmental Policy Act
BLM	Bureau of Land Management	NHPA	National Historic Preservation Act
BMP	Best Management Practices	NIPFs	Non-industrial Private Forests
BNR	Board of Natural Resources	NLEET	The National Land Exchange Evaluation and Assistance Team
CEC	Commission for Environmental Cooperation	NMFS	National Marine and Fisheries Service
CWA	Clean Water Act	NOVA	Non-Highway Off-road Vehicle Allocation (state)
DEIS	Draft Environmental Impact Statement	NNRG	Northwest Natural Resources Group
DNR	Department of Natural Resources	NRCA	Natural Resources Conservation Areas
EIS	Environmental Impact Statement	NWEA	Northwest Ecosystem Alliance
EJ	EarthJustice Legal Defense Fund	ORV	Off-road vehicle
EPA	Environmental Protection Agency	SARA	Proposed Canadian Species At Risk Act
ESA	Endangered Species Act	SCS	Scientific Certification System
ESA	Educational Savings Account (state)	SEPA	State Environmental Policy Act
FLA	Global Free Logging Agreement. See also ATL.	SFLO	Small Forest Landowner Office
FPA	Forest Practices Act	SMA	Shoreline Management Act
FPB	Forest Practices Board	SUV	Sports utility vehicle
FSC	Forest Stewardship Council	SWIFT	Saltwater Islanders for Timberlands
FTA	Free Trade Agreement	SWLA	Softwood Lumber Agreement
GATT	General Agreement on Trade and Tariffs	TCCP	The Cascades Conservation Partnership
HB	House Bill (state)	TFW	Timber, Fish and Wildlife
HB 2091	The Salmon Recovery bill	USDA	US Department of Agriculture
HCP	Habitat Conservation Plan	USFS	US Forest Service
ISACs	Industry Sector Advisory Committee	USFWS	US Fish and Wildlife Service
IMF	International Monetary Fund	WDFW	Washington Department of Fish and Wildlife
ITO	International Trade Organization	WTO	World Trade Organization
LWVWA	League of Women Voters of Washington		

## Appendix I: Glossary

**ADAPTIVE MANAGEMENT** A forest management system based on an understanding of the unique biology and ecology of the area, of clearly identifying the goals (including affected ecosystems) of proposed forest activity, of studying whether the goals of the plan are being met during and after the activity and responding to changes to the site over time to meet these goals.

**ANADROMOUS FISH** Fish whose life cycles includes time in both fresh and salt water.

**BEST MANAGEMENT PRACTICES** Forestry practices aimed at prevention of environmental damage or pollution.

**BOARD FEET** A board foot is a piece of lumber one foot long, one foot wide and one inch thick or its equivalent. Standing trees and logs are normally measured in thousands of board feet (mbf), millions board feet (mmbf) or billions board feet (bbf).

**BOARD OF NATURAL RESOURCES** A six member state board that establishes policy for the DNR.

**CHECKERBOARD LANDS** A pattern of land ownership resulting from the 1864 federal railroad land grant to Washington state when land on either side of the proposed track right-of-way was granted in alternating square miles.

**EMERGENCY RULES** Emergency rules are valid for 120 days from filing with the Code Reviser's Office per the Administrative Procedure Act, RCW 34.05.350. Recent emergency forest practice rules adopted by the FPB have been those in anticipation of the federal listing of some salmon species as endangered or threatened.

**ENABLING ACT** The result of a successful petition for statehood from a United States Territory in which Congress would pass an enabling act authorizing a constitutional convention in the state-to-be which was to draft a governing document. If this passed a popular referendum in the Territory, the state constitution was sent to Congress for its acceptance, after which the state would be admitted on an equal footing with all others. Washington became a state in 1889.

**ENVIRONMENTAL IMPACT STATEMENT** A document prepared under the National and/or State Environmental Policy Acts (NEPA/SEPA) to assess the effects that a particular action will have on the environment.

**4-D RULE** That part of the Endangered Species Act that allows agencies to development emergency regulations as necessary to conserve any species listed as threatened.

**FEDERAL ADVISORY COMMITTEE ACT (FACA)** Requires U.S. policy making committees to have a balanced membership reflecting those stakeholders affected by the

decisions made. Environmental groups based their case for representation on WTO ISACs on the requirements of FACA.

**FOREST** A stand of trees whose critical qualities could include natural regeneration, biodiversity and, over time, self-regeneration.

**FOREST BOARD LANDS** These lands are divided into two categories: Forest Board Purchase land and Forest Board Transfer land. Most of the latter were logged or burned forest lands that were on county tax foreclosure inventories. They were transferred to the state in the 1920s and 1930s for reforestation, management, and protection from fires by the DNR. 96% of the over 600,000 acres of all Forest Board land is managed as timberland, with 75% of the revenue generated distributed to the 21 counties in which these lands are situated and to the state general fund for support of common schools. The rest of the revenue, 25%, is deposited in the Forest Development Account (FDA) for the state's share of management expenses.

**HECTARE** A unit of measurement equal to 2.471 acres.

**HOUSE BILL (HB) 2091** Sometimes referred to as the 'Salmon Recovery' bill, was passed by the Washington state legislature in April 1999. It references TFW's Forests and Fish Report, requiring the Forest Practices Board to go through a lengthy legislative oversight if the FPB adopts forest management rules inconsistent with the Forests and Fish Report.

**NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)** Under NEPA, all federal agencies are obligated to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment."

**NO SURPRISES** A clause in an HCP that guarantees a landowner there will be no substantive regulatory changes for the life of the agreement. Compatibility of this "no surprises" policy with that of long-term inclusion of an effective adaptive management component in habitat protecting forest practice rules has yet to be worked out.

**NORTHWEST FORESTRY PLAN** President Clinton's July 1993 "Forest Plan for the Sustainable Economy and a Sustainable Environment," a long-term policy for over 24 million acres of public lands.

**OLD GROWTH FOREST** Definitions vary with localities and species, but generally it is forests characterized by high bio-diversity with mature trees over 100 years of age.

**PASS-THROUGH TRADE** Goods which originate in another state or country or may be destined for another state

or country.

**PRECAUTIONARY PRINCIPLE** Generally it means take no action which is likely to result in harm. With regard to trade, it means trade agreements should not be concluded if it appears likely they will result in harm to humans or the environment.

**QUOTAS** Specific limits on the quantity or value of certain items which can be imported.

**RIGHT OF EMINENT DOMAIN** A law that allows federal agencies to prevent threatened or real activities on private inholdings that would adversely affect adjacent lands.

**SALMON RECOVERY BILL** Engrossed Substitute House Bill 2091 (ESHB 2091, known as HB2091), became law in June 1999. This legislation requires the Forest Practices Board to adopt forest management rules consistent with the requirements stated in the Forests and Fish Report.

**SANITARY AND PHYTOSANITARY MEASURES** Implementation of effective measures to protect against the impacts of introduced alien species upon native forest species and ecosystems.

**SMALL FOREST LANDOWNER** As defined for eligibility in DNR's Forestry Riparian Easement (FRE) program, a private owner of forest land in Washington state is one who harvests during the three years prior to the year of a FRE application an average annual timber volume of under two million board feet. A small forest landowner can be an individual, partnership, or any non-governmental corporate or other legal entity.

**STAND** An area of trees that has sufficient uniformity in species, age and density to distinguish it from other stands around it.

**SUSTAINED YIELD** Traditionally used to refer to tree harvest, the 1944 Congressional Sustained-Yield Forest Management Act defined sustained-yield forest production as growing the maximum volume of trees to sizes suitable for conversion to saleable forest products in the shortest possible time without damaging the productive capacity of the land over the long term. This focus of USFS of forest management policy to produce a continuous supply of logs and revenue, with priority on the economic stability of the timber industry, is under increasing criticism when compared to concepts of sustaining forest ecosystems and biodiversity. The Multiple Use-Sustained Yield Act (1960) requires lumber production to occur "in perpetuity, without impairment of the productivity of the land." Recent use of the term includes the concept that an annual cut not exceed

the annual or periodic tree growth increments of a forest.

**TAKE, TAKINGS** The killing or harming of a listed species or its habitat. The ESA defines take as "harass, harm, pursue, shoot, wound, kill, trap, capture or collect" any listed endangered or threatened species, or any attempt to do so. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

**TIMBER, FISH AND WILDLIFE (TFW)** In 1987, four caucuses (the Tribes, the timber industry, the state and the environmental community) agreed to meet on a regular basis to try to resolve contentious forest practices problems through negotiations. In 1998, the environmental caucus withdrew from TFW.

**TRANSPARENCY** Refers to the degree to which negotiations and/or decisions are open to the public. Transparency implies only observation, not participation.

**TRUST** a) a property right held by one party for the use of another, or b) a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another.

**TRUST LANDS (state)** Lands managed by the DNR with designated trust beneficiaries. These include the Common School Trust, Agricultural School Trust (WSU), University Grants (UW), Normal School Grants (EWC, CWU, WWU & TESC), Capital Building Trust, and Charitable, Educational, Penal & Reformatory Institutions Trust. Referred to as federal grant lands.

**WATER/STREAM TYPING** An inventory and categorization of the state's waterways, their ecological state, the site's role in the watershed functions and in particular, the water's current and fish-carrying capacity. The water/stream category type then triggers the application of specific riparian and uplands forest practice rules for protection and/or restoration of fish habitat and landscape watershed functions.

**WTO APPELLATE COURT** The internally appointed 3 member panel, usually trade officials or lawyers, who meet to resolve trade disputes. Their rulings carry the full legal authority of WTO treaty agreements. There is no public involvement or observation of the Appellate Court process. If the dispute panel finds a law in violation of the WTO rules and the country refuses to change the law to conform with WTO rules, WTO can, and has, authorized trade sanctions against the offending country.

## **Appendix J: List of Interviews and Acknowledgements of Help**

### **Interviews:**

Norm Winn, Gayle Rothrock and Stephanie Matheny, Sept. 10, 1999  
Pat Davis, Washington Council on International Trade, Oct. 27, 1999  
Kit Metlen and Jack Hulsey, DNR, Nov. 17, 1999  
Moirra Hanes, Weyerhaeuser, Jan. 12, 2000  
Joan Thomas, 1994 Common School Construction Funding Committee, Jan. 24, 2000  
Diane Dolstad, Tenino School Board, Feb. 8, 2000  
N. J. Erickson and Karl Denison, Olympic National Forest, Feb. 22, 2000  
Mitch Friedman & Hudson Dodd, NWEA and Joan Crooks & Becky Kelley, WEC, Feb. 24, 2000  
Marge Plecki, University of Washington, March 14, 2000  
Jon Owen, Washington Wilderness Coalition, March 29, 2000  
Jennifer Belcher, Commissioner of Public Lands, April 26, 2000  
Dale Togstad and family, Pierce Trail Club, June 14, 2000

### **The following gave assistance by telephone:**

Marcy Golde  
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Alan Gibbs  
Becky Kelley  
John Arum  
Barbara Hazzard  
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John Daly  
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### **Technical readers:**

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Joan Thomas  
Becky Kelley  
Marcy Golde  
Angela Stanton  
Kit Metlen

### **League readers:**

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Joyce Dennison  
Pat McCann