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Protection or Infringement of Property Rights? Addressing Concerns Regarding Nonfederal Forest Lands in Utah

by

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Protection or Infringement of Property Rights? Addressing Concerns Regarding Nonfederal Forest Lands in Utah

*Joanna Endter-Wada and Lisa Dennis-Perez**

I. INTRODUCTION

Utah legislators currently are wrestling with how to address problems regarding forest practices on nonfederal lands within the state. They have before them the findings and recommendations of the Utah Forest Practices Task Force which studied the issue in 1996.¹ The Task Force report contains an integrated set of recommendations which include the suggestion that the state legislature pass a forest practices act.

Proposing legislation to enable the state to exercise administrative oversight of forest practices on nonfederal lands is controversial in Utah because of the state's generally conservative composition, support for private property rights, and aversion to government regulation. Yet, a bill containing a forest practices act will likely be introduced in the 1997 session. This article explores the practical realities that are leading some Utah legislators to consider taking the political risks involved in supporting such legislation. The findings, recommendations, and rationale of the Utah Forest Practices Task Force are presented here in an effort to explain what the Task Force feels is necessary to address the current situation. This approach is then analyzed within the current political context.

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¹ UTAH FOREST PRACTICES TASK FORCE, STEWARDSHIP OF UTAH'S FORESTS, A REPORT TO THE ENERGY, NATURAL RESOURCES, AND AGRICULTURE INTERIM COMMITTEE OF THE UTAH LEGISLATURE (1996) [hereinafter TASK FORCE REPORT].

II. BACKGROUND—POLITICAL ATTENTION TO NONFEDERAL FOREST LANDS IN UTAH

A. Initial Call for Assessment of the Issue

Private forest landowners were the first to bring the issue of forest practices on nonfederal lands to the attention of staff members of the Utah Division of Forestry, Fire, and State Lands (DFFSL). Several landowners were not satisfied with the unforeseen results of timber harvesting on their lands and contacted the DFFSL for evaluation and advice. Some were disappointed with the physical condition and appearance of their lands after harvesting had taken place and others were upset to find they had been undercompensated for their timber resources.²

Experiences and observations of the DFFSL personnel supported landowner concerns. Division foresters observed alarming site conditions when visiting some harvested lands and noted many logging trucks bearing out-of-state plates loaded only with premium logs traveling on Utah highways, suggesting that timber operators were high-grading private resources.³ Division foresters generally "become aware of timber sales only after contracts have been signed or harvests have taken place, [leaving] them without an opportunity to offer educational information or technical assistance to the landowners."⁴

DFFSL personnel described this situation to the Utah Division of Natural Resources administrators and were encouraged to make a presentation to the Utah Legislature. In its 1996 session, the Utah Legislature called for a review of state timber harvesting practices, in hopes of assuring the perpetuation of forests on nonfederal land for continuous benefit from those forests by present and future generations of Utah citizens. The issue was referred to the Energy, Natural Resources, and Agriculture Interim Committee which directed the DFFSL to establish an ad hoc task force to assess forest practices in Utah and make recommendations. State Forester, Arthur DuFault,

² See TASK FORCE REPORT, *supra* note 1, Appendix A; Director Arthur DuFault, Remarks at the first Task Force Meeting (June 10, 1996) (minutes on file with author).

³ See Jim Woolf, *Logging on Private Land Lacks State Regulation*, SALT LAKE TRIBUNE, Nov. 6, 1995 at B1.

⁴ TASK FORCE REPORT, *supra* note 1, at 10.

subsequently convened the Utah Forest Practices Task Force in the spring of 1996.⁵

B. Utah Forest Practices Task Force

The Utah Forest Practices Task Force was designed to represent a diversity of interests and expertise associated with forest practices in Utah. It was composed of fourteen members with a variety of backgrounds and affiliations who came from different areas of the state.⁶

The Task Force was given general direction by the DFFSL to assess the need for programs dealing with timber harvesting and management on nonfederal lands. In addition, the Task Force members collectively developed the following statement to define their objective: *"[D]evelop an effective mechanism to encourage sound management to sustain forest lands in Utah, recognizing the interests of private landowners, industry, and the public."*⁷

Task Force members conducted their assessments and deliberations by holding formal meetings, making site visits to different areas of the state,⁸ interviewing people involved in forest issues in Utah, reviewing published information,⁹ and relying upon data compiled by several faculty members at Utah State University specifically for use by the Task Force.¹⁰ The Task Force members focused on understanding

⁵ See Letter from Arthur DuFault, State Forester, to Joanna Endter-Wada, Task Force Chairperson (May 3, 1996) (on file with author).

⁶ Members of the Task Force were Joanna Endter-Wada Chairperson, Assistant Professor of Forest Resources at Utah State University from Logan; Bryant Anderson, Emery County Zoning Administrator from Castle Dale; Paul Anderson, timber harvester and owner of Fishlake Lumber Company from Beaver; Doug Austin, timber sale administrator for the U.S. Forest Service from Ogden; Rep. Bradley Johnson, cattle rancher and member of the Utah House of Representatives from Aurora; John Keeler, Southern Regional Manager for the Utah Farm Bureau from Manti; Stephen Ogilvie, Legislative Fiscal Analyst for the Utah Legislature from Taylorsville; Richard Oldroyd, professional psychologist from Salt Lake City; Ed Storey, Resource Management Planner for the Utah DFFSL from Monroe; Rep. David Ure, dairy farmer, cattle rancher and member of the Utah House of Representatives from Kamas; Mark Walsh, Associate Director of the Utah Association of Counties from Murray; Stuart Wamsley, cattle rancher from Laketown; Barney White, cattle rancher from Paradise; Brooke Williams, owner of Plateau Innovations from Salt Lake City.

⁷ TASK FORCE REPORT, *supra* note 1, at 1 (emphasis added).

⁸ See *id.* at Appendix A (reporting on site visits).

⁹ See *id.* at Appendix B (listing of publications reviewed by Task Force).

¹⁰ See Michael R. Kuhns and Thomas G. Van Niel, *Utah's Private Forest Land Characteristics*, TASK FORCE REPORT, *supra* note 1, at Appendix C; Aaron R. Kelson and Robert J. Lilieholm, *A Review of Private Forest Management Incentive Programs and Recommendations for Improving*

trends in the forest products industry, the nature of logging operations, characteristics of forest landowners, educational and incentive programs used in Utah and in other states, and the experiences of other states in dealing with forest practices.

After reviewing this information, the Task Force concluded that there is an urgent need for action to address forest practices on nonfederal lands in Utah.¹¹ The Task Force prepared a formal report presenting a comprehensive approach to management of forest practices which included thirteen specific recommendations. This report was presented to the Interim Committee on Energy, Natural Resources, and Agriculture at their September 1996 meeting. At that time, the Committee supported the report and most of its recommendations, and moved to have legislation drafted for introduction in the 1997 legislative session.¹²

III. FINDINGS OF THE TASK FORCE—IMPETUS FOR CONSIDERATION AS PART OF UTAH'S POLITICAL AGENDA

A. The Importance of Utah's Nonfederal Forest Lands

The following section discussing forest characteristics, harvesting pressures, stakeholder diversity, and potential consequences associated with timber harvesting is taken primarily from the report prepared by the Task Force for the Interim Committee of the Utah Legislature. It has been supplemented by additional citations to illustrate the use of secondary literature, as well as other sources of information in the Task Force members' examination of the current situation. The Task Force report provides an excellent summary of Utah's nonfederal forest lands:

Forested lands are an important natural resource in the [S]tate of Utah. Utah's generally high elevation forests are the principal source of water production in this arid state. Forests make an important contribution to Utah's way of life

Forest Management Incentives in Utah, TASK FORCE REPORT, *supra* note 1, at Appendix D; Mark W. Brunson, *Utah Forest Landowner Survey: Summary of Preliminary Findings*, TASK FORCE REPORT, *supra* note 1, at Appendix E.

¹¹ See TASK FORCE REPORT, *supra* note 1, at 11.

¹² See Energy, Natural Resources, and Agriculture Interim Committee of the Utah Legislature, (September 18, 1996) (minutes on file).

and to its quality of life by providing jobs, forest products, livestock forage areas, open space, wildlife habitat, critical watershed areas, scenic vistas, recreational experiences, and other social and economic benefits.

Forests in Utah are composed primarily of various species of spruce, Douglas-fir, pine, aspen, oak, maple, juniper, and cottonwood. They are generally located at high altitudes, have short growing seasons, and occupy relatively dry sites. Depending upon which way slopes face, these forests have varying amounts of exposure to sun, wind and water. Slope and aspect of these forests determine their exposure to threat of tree loss due to windthrow as well as their ability to regenerate. Each forest type in Utah responds differently to natural and human caused disturbances. Some forest types, particularly those with higher commercial value, are susceptible to disease, pests, and replacement by other species. Care must be taken in the way most of Utah's tree species are harvested in order to promote stand health and regeneration. Since conditions for growing forests in Utah are generally unforgiving, mistakes made in harvesting them can last a very long time . . . resulting in decreased economic, aesthetic, and recreational values for Utah's future generations.

Forest lands capable of producing crops of industrial wood products (called timberlands) represent approximately 3.4 million acres or about 21% of the state's total forest land. Approximately 75% of this timberland is in federal ownership, 6% in state and municipal ownership, and 19% in private ownership. Private, municipal, and state forest lands are generally interspersed with each other and with federal forest lands. Much of the private forest land forms a fringe around larger tracts of public forest

Most private forest lands in Utah were originally acquired for cattle grazing, agriculture, or mining development. Many of the best forest lands in Utah are in private ownership. These lands generally contain sources of water, are located near roads, and are proximate to towns and communities. Since these lands are strategically located, they are capable of providing benefits as well as posing risks for nearby communities if they are not properly managed. Private forest lands are most abundant in the Weber River, Bear River, and Jordan River watersheds.

Even though the majority of forest lands in Utah are in federal ownership, private and state lands are still of great importance for Utah's citizens. If these nonfederal forest lands

are well managed, they have the potential to provide continuing benefits to private landowners, to sustain a local timber industry, to help revitalize rural economies, and to contribute to the protection of Utah's natural resources and its renowned scenery.¹³

B. Utah's Vulnerability to Timber Harvesting Pressures

Decline in timber harvesting on federal lands combined with favorable timber prices has increased pressures to log private and state lands throughout the United States.¹⁴ The Task Force noted that:

Over the past 25 years, most states have implemented programs to manage and control logging on nonfederal land, making those few states without forest practices programs more desirable places for loggers to operate. Utah remains one of only four western states (along with Arizona, Colorado, and Wyoming) that do not regulate or monitor forest harvesting practices on nonfederal lands.¹⁵

Utah's geographic proximity to the Pacific Northwest makes it particularly susceptible to harvesting pressures.¹⁶ "This leads to concerns that Utah has 'put out the welcome mat for bad operators and that we are robbing our grandchildren by failing to provide for regeneration of healthy timber stands today.'¹⁷

"Timber harvesting on Utah's nonfederal forest lands has increased in recent years . . . [t]he proportion of the state's total timber harvest coming from private lands rose from 6% in 1966 to 12% in 1970 and 17% in 1992."¹⁸ Harvest activity on the part of private landowners appears to have jumped dramatically in response to high timber prices since 1993. "Because of recent increases in prices, more of Utah's private timber has been put under contract, making it more likely to be harvested in the coming years."¹⁹ Furthermore,

¹³ TASK FORCE REPORT, *supra* note 1, at 4-5.

¹⁴ *See id.* at 5.

¹⁵ *Id.* at 6.

¹⁶ *See* Jim Woolf, *Property Rights v. Public Good*, SALT LAKE TRIBUNE, Oct. 10, 1996, at

B1.

¹⁷ TASK FORCE REPORT, *supra* note 1, at 6.

¹⁸ *Id.* at 5; *see, e.g.*, CHARLES E. KEEGAN III ET AL., UTAH'S FOREST PRODUCTS INDUSTRY: A DESCRIPTIVE ANALYSIS (1992) (USDA, Forest Service, Sept. 1995).

¹⁹ TASK FORCE REPORT, *supra* note 1, at 5.

[p]ressures to harvest timber on private lands in Utah and other states are likely to continue in the future for many reasons. Population and wood product demand is increasing. The management focus of public lands has shifted from commercial to non-commercial uses. Growing restrictions on access to the vast timber resources of Western Canada reduces that source of wood for U.S. markets. The pre-mature harvest of many private timberlands in response to near-record stumpage prices will likely decrease that volume of supply in the future. Changes in milling technology and economics that allow for portable mills have increased access to private timberlands. Also, recognition is increasing for the fact that wood is one of our most cost-efficient and environmentally-friendly raw materials, since it is renewable and requires a small fraction of the energy inputs needed to produce other substitutes like concrete, steel, and aluminum. While the general trend is increasing demands and decreasing supplies, the potential availability of timber from the Russian Far East could dampen this imbalance, depending upon import restrictions on that timber for fear of importing diseases and pests.²⁰

C. Consequences and Risks Associated with the Present Situation

The Task Force Report also discusses the consequences and risks associated with the current private forest management in Utah.²¹ The Task Force Report indicates that:

Timber harvesting on nonfederal lands in Utah as currently practiced can lead to degradation of the physical condition of the land. The negative impacts of poor logging practices can include waste of timber resources, soil erosion, decline in water quality, decreased capacity of a forested area to retain and release snowpack, increased fire risks, increased susceptibility to insect infestation, spread of noxious weeds, restricted livestock movement and access to grazing areas, disruption of wildlife habitat and movement, and decline in visual qualities of an area Sensitive forested areas, such

²⁰ *Id.*

²¹ *See id.*

as riparian zones, steep slopes, and wind-prone locations are particularly vulnerable to poor logging practices.

Poor harvesting operations also can compromise the regenerative capacity of timber resources, having long-term implications for Utah's forests. If logging is not done in the context of silvicultural prescriptions designed for site regeneration, the productive capacity, natural rotation cycle, volumes of merchantable timber, commercial value, and alternative future uses of a site may be compromised. Regeneration is a challenge on Utah's forest lands because tree stands are not very dense or uniform and the sites are generally dry. In particular, greater care needs to be taken to regenerate Douglas-fir, spruce, and ponderosa pine, the species with the greatest commercial value. . . . [A] 10-15% harvesting rate over the last five years and over the next five years [was indicated by a recent survey of forest landowners.]²²

This harvest rate would place significant pressure on Utah's private forests. Assuming an 80-100 year rotation for many forest types in Utah, this rate results in an unsustainable harvesting trend.²³

Additionally, poor harvesting practices can have a variety of implications for landowners. Degradation of the physical condition of the land can reduce its economic value. Landowners can be held liable for off-site impacts of poor harvesting practices, such as degradation of water sources or ignition of a fire from untreated slash. Future options may be foreclosed in terms of alternative uses of the land, its sustainability, its marketability, or its desirability as part of an inheritance. Further, there may be severe tax liabilities for current owners and their heirs if no management plan or improper management plans are used.²⁴

Landowners often are not compensated for the full value of the timber removed because waste of wood generally accompanies poor logging.²⁵ Increasingly, landowners are being approached by timber contractors or brokers who scout good stands of timber, obtain landowner names from county recorders' offices, and then contact the

²² *Id.* at 5-6.

²³ See Ralph Wakley, *Is Logging Hurting Lands?*, STANDARD EXAMINER (Ogden, Utah), Apr. 19, 1996, at 3B.

²⁴ See UTAH FORESTLAND OWNERS ASSOCIATION, FORESTLAND NEWS, Nov. 1995.

²⁵ See TASK FORCE REPORT, *supra* note 1, at 7.

landowners in an attempt to negotiate timber contracts.²⁶ Limited market information on the part of landowners makes them susceptible to being offered what may appear to be high sums of money but which are, in reality, often below-market prices for their timber.²⁷ The nature of harvesting contracts leads to additional problems.

Timber operators generally use their own contracts, which are written to provide the harvesters with discretion on how logging operations are conducted and which seldom provide performance or payment protections for the landowner. Sometimes no contract is used . . . [in which case] loggers generally take the best merchantable timber and leave landowners with no legal recourse in instances where the land is left in a degraded condition or the landowners are not fully compensated for their resources.²⁸

The “consequences of poor harvesting practices may not be confined to the land on which those activities occur” or affect only those individuals who own that land.²⁹

Neighboring landowners can be affected through increased fire risk, soil erosion, and spread of insects, disease, or noxious weeds, as well as through negative impacts to aesthetic qualities. In instances where neighboring landowners may grant road easements across their property for harvesting activities, their land could be affected if the roads are not properly constructed. These risks can threaten management objectives being pursued by neighboring landowners and can lower the value of neighboring property.

Nearby communities may be affected, particularly by poor harvesting practices in watersheds that they depend upon for culinary and irrigation water . . . [L]ogging in uplands, if not done properly, can affect the ability of land to retain snowpack and release it more evenly throughout the spring and summer. This can negatively affect the amount and timing

²⁶ See *id.*; see, e.g., *Logging Interests Turn to Private Land*, HERALD JOURNAL (Logan, Utah), Dec. 3, 1993, at 3.

²⁷ See TASK FORCE REPORT, *supra* note 1, at 7; see Fredrick W. Cubbage et al., *Evaluations of Technical Assistance Programs for Nonindustrial Private Forest Landowners*, 'SYMPOSIUM ON NONINDUSTRIAL PRIVATE FORESTS: LEARNING FROM THE PAST, PROSPECTS FOR THE FUTURE,' 367, 374 (Feb. 18–20, 1996).

²⁸ TASK FORCE REPORT, *supra* note 1, at 7.

²⁹ *Id.* at 9.

of water available to downstream irrigators as well as the general stability of a river channel.

Local community viability may also be affected by poor harvesting practices in instances where scenic qualities are integral to a tourism-based economy. In addition, land transfers, conversions to non-forested lands, and/or land subdivision resulting from decreased property values or burdensome estate taxes may have serious implications for the quality of local community life. Community viability is also threatened by the transfer of economic benefits from timber harvesting and processing from local operators and mills to those operating from out-of-state locations.³⁰

Many of these impacts pose substantial costs to current and future generations of Utahns. Financial costs associated with increased fire risks or siltation of water storage facilities are simply enormous. Additionally, state fire fighting costs currently run into the millions of dollars on an annual basis.³¹ Costs for the rehabilitation or relocation of state reservoirs whose storage capacity is decimated by siltation would be even more staggering.³²

D. Understanding the Stakeholders

There are several groups of primary stakeholders with interests in how forest practices are conducted and monitored. These groups include those who own forested lands, those who harvest such lands, those whose jobs involve providing technical assistance to both of the previous groups, and those who stand to be affected by forest practice activities, whether now or at some point in the future. Within each of these groups, there is substantial diversity in their intentions, motivations, and resources, which in turn results in diverse attitudes toward forest practice oversight and the incentives to which they might respond.

Landowners in Utah are a diverse group, consisting of corporate owners and private individuals, owners of large and of small acreages, multi-generation owners and those who

³⁰ *Id.* at 9–10; see also KEEGAN, *supra* note 18, at 20.

³¹ See TASK FORCE REPORT, *supra* note 1, at 5.

³² See *id.*

have recently acquired forest land, and resident and absentee owners. These people own land for different reasons and respond to varying incentives. Many owners wish to exercise land stewardship but may be inexperienced in dealing with harvesting operators and timber brokers, uninformed about silvicultural prescriptions and timber harvesting methods, and unaware of various incentive programs that can increase their choices for managing their land. Some owners may disregard stewardship concerns or professional advice when faced with the possibility of substantial short-term financial gains.

There are direct and indirect economic benefits for landowners to ensure that timber harvesting is well conducted. If landowners have a proper contract, they can protect themselves against waste of timber and loss of stumpage value, limit their liability for injuries to loggers that may occur on their land, limit their liability for off-site impacts from poor harvesting, preserve the productive capacity of their forest resource, and increase the potential for future timber sales. Properly constructed and drained roads can reduce future costs related to road maintenance and prevention of soil erosion. Slash properly treated when heavy equipment is on the site for timber harvesting can reduce future costs of site clean-up. Good silvicultural prescriptions can enhance natural regeneration and reduce costs of replanting. Even in instances where logging operators may be the cause of problems, the landowner is the one who is ultimately liable for off-site impacts, posing the potential for substantial costs

As with forest landowners, timber operators also are a diverse group of people that respond to different incentives. Out-of-state loggers generally come from the Pacific Northwest, where the greatest reduction of timber harvesting on federal lands has occurred in recent years. They often haul logs back to mills in the Pacific Northwest and, in order to justify their transportation costs, they take only the most commercially valuable trees, a practice which is referred to as "high-grading." Douglas-fir, spruce, and ponderosa pine are targeted for harvest more frequently than other tree species because of their commercial value. High-grading contributes to waste of timber and is not conducive to forest regeneration.

Timber harvesters hauling to local mills often have higher rates of resource utilization because it can be economical to haul less-valuable timber shorter distances. Loggers who are residents of Utah communities are often concerned about staying in business without having to

relocate. They generally care about their reputation, being honest with landowners, and exercising stewardship for the future of Utah's forests. Some established Utah harvesters, however, rely on traditional practices and lack knowledge about new and improved harvesting methods.

Since most forests in the Intermountain West are federally owned, many operators have harvested timber on federal lands and have complied with the standards set by the U.S. Forest Service. Some [operators] prefer to harvest timber for the Forest Service out of recognition that federal standards and procedures clarify responsibilities and offer them some important protections. Their experiences lead to the conclusion that timber harvesting can meet fairly strict standards and still be profitable for the contractor. [Also, s]ome operators who harvest timber for the federal government voluntarily follow the federal standards when operating on nonfederal land. However, they can find themselves at a disadvantage when bidding on contracts to harvest on nonfederal land against operators who do not abide by these same standards. Even operators who are familiar with good harvesting practices and who normally harvest responsibly may cut corners in instances where they are not monitored or held responsible.

Utah's Division of Forestry, Fire, and State Lands [DFFSL] has had a forest management program for about thirty years, which has included a variety of landowner assistance and educational efforts. For over five years, the [DFFSL] has administered a forest stewardship program which provides landowners with advise and action-oriented technical assistance intended to help them develop stewardship plans and manage their forest lands to meet their desired objectives. The [DFFSL] has held informational meetings in communities throughout the state, but low attendance indicates that the effectiveness of generalized educational efforts is limited. A few years ago the [DFFSL] sent a letter to all forest landowners informing them of the services available through the [DFFSL.] They received some responses and have worked closely with many of those landowners.

The one-on-one assistance that field staff can offer to individual landowners appears to be the most effective educational tool and can prove to be invaluable to landowners. However, field staff for the [DFFSL] have a wide range of responsibilities and large geographic territories. Due to constraints on their time, [DFFSL] personnel primarily work

with landowners that come to them and are not able to actively seek out landowners who may be in the most need of assistance. Staff time allocated to forest practice issues and management efforts is further limited by the fact that much of the field season is often consumed by fire fighting responsibilities.³³

Some mention has already been made to the stake current and future generations of Utahns have in forest practice issues. This interest ranges from current concerns of neighboring communities regarding the immediate quality of their culinary water supply to more nebulous, yet substantial costs to future generations of Utahns in the event that water storage facilities have to be relocated sooner than expected due to sedimentation problems.

IV. RECOMMENDATIONS OF THE TASK FORCE—BALANCING LANDOWNER, INDUSTRY, AND PUBLIC INTERESTS

A. Major Considerations in Program Design

The main objectives of the Task Force were to protect “forest landowners, to reduce hazards and risks that timber harvesting can pose to neighboring lands and to other resource values, and to promote stewardship of forest lands.”³⁴ The intention of the Task Force was not to prohibit harvesting on nonfederal land, but rather to ensure that it is done properly and in a way that protects land values and the rights of property owners.³⁵ “In addition, Task Force members did not want to inhibit the activities of landowners and timber operators who are responsibly managing and harvesting forest lands, but instead, wanted to find a means to require those who are not already doing a good job to do so.”³⁶

Participation and cooperation of all affected parties was another major concern in the design of the overall approach.³⁷ In an effort to make the approach fair, equitable, and reasonable, Task Force members

³³ TASK FORCE REPORT, *supra* note 1, at 6, 8–11; see also Cindy Yurth, *Private Logging Studied*, HERALD JOURNAL (Logan, Utah), Apr. 26, 1996, at 1.

³⁴ TASK FORCE REPORT, *supra* note 1, at 8–11.

³⁵ See *id.*

³⁶ *Id.* at 11.

³⁷ See *id.*

thought the various interests should share in the responsibilities of addressing the situation.³⁸ Support for government efforts and involvement by private landowners, industry, professional organizations, and public interest groups was believed to be necessary to improve the efficacy of the approach.³⁹

During deliberations concerning alternatives for addressing forest practices in Utah, Task Force members became aware of inconsistencies in protections afforded to property owners in urban vs. rural areas. Owners of private property in urban areas are subject to zoning classifications and restrictions intended to protect their interests, as well as interests of adjacent property owners, in terms of aesthetics, property values, etc. Alterations of private property in urban areas, such as building additions, must be performed to meet certain codes and specifications intended to ensure the property owner's safety and protect property values. Individuals and companies contracted to perform these alterations, such as plumbers, builders, and electricians, are subject to performance and licensing requirements.

In contrast, owners of rural property are not afforded the same protections, and the application of zoning classifications are much less stringent than in urban areas. Adjacent landowners and communities often have little recourse in instances of negative impact resulting from activities on their neighbor's lands. Those contracted to work on rural private property, such as timber operators, are currently free from any performance and licensing requirements. This lack of oversight and protection for owners of rural private property became another major concern in design of the forest practices recommendation package.

In this design, the Task Force also recognized the opportunity to address and enhance efforts associated with various state initiatives and priorities. Incentive programs and educational efforts that emphasize active management were viewed as an opportunity to encourage preservation of open spaces, currently a strong focus of the state administration. Efforts to protect the interests of in-state timber operators, by leveling the playing field between in and out-of-state operators, it was thought, would contribute to community revitalization through rural development.

³⁸ See *id.*

³⁹ See *id.*

*B. The Three-Legged Stool—Education,
Incentives, and Oversight*

Task Force members decided that the general approach for dealing with forest practices should include a combination of educational efforts, incentive programs, and administrative procedures and oversight. Each of these components was considered necessary in order for the overall approach to address the diverse interests of different stakeholders and balance the needs of forest landowners, the forest products industry, and the public.⁴⁰ The analogy of a three-legged stool was used by one of the Task Force members: it has “to have three, equal-length legs in order to stand up and would collapse with only one or two of the legs.”⁴¹

The overall program was designed to rely on educational efforts as much as possible.⁴²

Educational efforts are considered the primary approach needed for forest landowners since most landowners are believed to be well intentioned, wishing to manage their land responsibly. Educational efforts are key to enabling landowners to make informed choices and decisions regarding forest practices on their lands and to helping them optimize opportunities from harvest operations. In addition, educational efforts should be targeted at harvest operators. Educational efforts require voluntary response on the part of landowners and operators, and should be considered a longer-term approach.⁴³

Educational efforts were not seen as sufficient to address the problem independent of the other program components because educational efforts may not reach all landowners and operators, and some of the information would likely be ignored.⁴⁴ Additionally, these types of efforts require funding at much higher levels than generally occurs if they are to be effective.⁴⁵

⁴⁰ See TASK FORCE REPORT, *supra* note 1, at 13.

⁴¹ *Id.*

⁴² See *id.*

⁴³ *Id.*

⁴⁴ See *id.*

⁴⁵ See TASK FORCE REPORT, *supra* note 1, at 13.

[Fiscal and tax incentives were] perceived to be acceptable and effective ways to encourage responsible management of forest resources. Participation in incentive programs is voluntary for landowners and operators and should be considered a longer-term approach. Landowners presently are not taking full advantage of various incentive programs that are already in place, such as the Stewardship Incentive Program (SIP), Agricultural Conservation Program (ACP), and Forestry Incentive Program (FIP). Neither are they receiving full benefits from existing income tax, estate and gift tax, and property tax options. Promoting these incentive programs is seen primarily as an educational issue.

As federal funding for existing incentive programs declines, states are challenged to increase their funding for such programs when they choose to promote or rely on them. New incentive programs to encourage forest stewardship can be created for both landowners and operators such as the expanded use of conservation easements or [the] develop[ment] of new markets for wood products certified as being produced [through] sustainable [management]. Several organizations work nationally and internationally to provide guidelines for sustainable forestry and to certify forests and wood products as sustainably managed and harvested. These efforts provide landowners with additional and substantial financial incentive to manage their forested lands responsibly, since wood products from certified forests command a higher price and [demand for them is growing].⁴⁶

Promising opportunities for cooperation are seen to exist between government and the private sector in the expansion and creation of incentive programs.⁴⁷

State oversight is the *only* element of the general approach to dealing with forest practices that goes beyond elements that already are largely in place.⁴⁸ Since Utah does not oversee forest practices in any way, a serious and urgent need exists for Utah to act on this issue.⁴⁹

⁴⁶ *Id.* at 13; see also Sheila Polson, *Cutting with Conscience: Sustainably Harvested 'Certified' Wood Is Gaining Popularity*, E MAG., May/June 1996 at 42; see, e.g., VIRIGILIO M. VIANA ET AL., CERTIFICATION OF FOREST PRODUCTS: ISSUES AND PERSPECTIVES (1996).

⁴⁷ See TASK FORCE REPORT, *supra* note 1, at 13.

⁴⁸ See *id.* at 16.

⁴⁹ See *id.*

The primary purpose of the oversight approach, as [designed] in [the Task Force] proposal, is to increase the effectiveness of the educational and incentive-based components. The harvesting notification procedure provides a critical point of contact between the [DFFSL] and landowners, enabling the [DFFSL] to focus its educational and assistance efforts on the landowners with the greatest immediacy of harvesting potential. This is the most cost-effective way to deliver educational and incentive programs. Other reasons for state oversight are to address the hazards and risks posed to other resource values, to address the urgency of the situation and to give the overall approach some "teeth."

[State oversight] is considered to be primarily a safety net for reaching those landowners and operators who have not responded to educational efforts and incentive programs. The approach has been designed to limit requirements for those landowners who generally have a history of conducting responsible harvesting, while focusing on those landowners and operators who need additional incentives to harvest land in a responsible manner.⁵⁰

C. Specific Recommendations and Rationale

The Task Force offered the following thirteen specific recommendations, each followed by its rationale, which are categorized under the three components of education, incentives, and administrative oversight. These thirteen recommendations were designed to work together as a comprehensive package in ways designed to encourage responsible stewardship of Utah's nonfederal forest lands for the benefit of present and future generations of Utahns.⁵¹

1. Educational Recommendations

One. The [DFFSL] should be provided with points of contact with landowners intending to harvest timber.

Rationale. Educational efforts are key to enabling landowners to make informed choices and decisions regarding forest practices on their

⁵⁰ *Id.*

⁵¹ See *id.* The recommendations and rationale contained in this section are excerpted directly from the TASK FORCE REPORT, *supra* note 1 at 17–23 (footnotes omitted).

lands. State foresters have often become aware of timber sales only after contracts have been signed or harvests have taken place, which has left them without an opportunity to offer educational information or technical assistance to the landowners. These points of contact are intended to help focus educational efforts toward the landowners with the greatest immediacy of harvesting potential. This is a cost-effective method for delivering educational materials.

Two. Three additional forest stewardship positions should be provided for areas of the state that currently are not covered. Consideration should be given to the possibility of requiring at least one of these foresters to meet criteria necessary to engage in certification of forests and forest products as sustainably harvested or managed.

Rationale. The one-on-one assistance that field staff can offer to individual landowners appears to be the most effective form of education, however, field staff have a wide range of responsibilities and cover wide geographic territories. There are three areas currently without stewardship foresters (Northeastern Area, Central Area, and Wasatch Front Area) whose primary responsibilities would be to inform and work with landowners to encourage their stewardship efforts. The Division needs personnel whose time can be dedicated to working with landowners, particularly during the summer months when Division employees are often pulled from other assignments and deployed to fight fires.

Three. Funding should be allocated for the development of educational materials for distribution to landowners and operators, and for the maintenance of an updated list of Utah's forest landowners and operators in order to facilitate distribution of these educational materials. The development and dissemination of educational materials should be a cooperative venture between agencies of the state (Utah State University Extension Service and the [DFFSL]) and private groups representing landowners and industry.

Rationale. A comprehensive, focused educational effort requires sufficient funding in order to be effective. Educational materials are needed in order to reach landowners at critical points in the process of considering or planning a harvesting operation, to promote professionalism in the timber industry, and to increase the general public's knowledge of forestry issues. Such a program needs to [provide]:

- a) seminars and workshops for landowners and operators;
- b) technical assistance for harvest or management plan preparation;
- c) sample contracts and advice regarding contract components and contractor bonding options;
- d) information packets for landowners describing minimum standards, administrative procedures, tax incentives and implications, financial incentive programs, resource impacts, and potential liabilities;
- e) information on replanting and regeneration opportunities after a harvest operation and other strategies for enhancing the qualities of forest land.

2. Incentive Programs Recommendations

Four. The Utah Farmland Assessment Act of 1969 should be administered to include forest land under the grazing land classification. Active involvement in management as well as an implemented management plan for forest lands should be required for those lands to qualify under the forest land classification.

Rationale. This recommendation is an effort to offer economic incentives for landowners to engage in responsible management of forest resources. Administering the grazing land classification to include forest land would extend preferential tax treatment to forest production.

Lands which can produce commercial timber and provide other public benefits, such as watershed protection and open space preservation, currently cannot qualify for preferential tax status unless timber harvesting is secondary to other agricultural activities, usually grazing. As a result, some inefficient grazing operations may be encouraged while benefits associated with active forest management may be lost.

Five. The Division's ability to provide technical assistance needs to be enhanced to encourage development of management plans and activities which may qualify landowners for various incentive programs and tax benefits.

Rationale. Active management and management plans are

required for eligibility for many of the incentive programs currently available. Tax liability reductions associated with forest management planning may be substantial. In addition, landowners are often able to enhance long-term economic returns even in the absence of incentive programs through professional management planning. Any assistance the state can offer in the development of these management plans would help landowners take advantage of such benefits and potentially increase the value and returns they see from their forested lands, while at the same time promoting active and responsible land management. **Six.** Provisions should be made for the Division to assist landowners in obtaining information regarding a variety of incentive programs.

Rationale. Many landowners are unaware of incentive programs that can increase their options for utilizing the productive potential of their lands. In some instances, incentive programs can enable families to retain ownership of their land when they might not otherwise be able to do so. Given the apparent aging of forest landowners in Utah, issues regarding the implications of estate taxes for forest land could prove critical to protecting their heirs. Incentive programs could include:

- a) capital gains, income, property, estate and gift tax protections or benefits;
- b) eligibility for Agricultural Resource Development Loan programs;
- c) federal cost-sharing programs such as the Agricultural Conservation Program and the Stewardship Incentives Program;
- d) value-added programs, such as forest and timber certification;
- e) conservation easements and greenbelt programs.

3. Administrative Oversight Recommendations

Seven. The state should develop minimum standards for activities related to timber harvesting and management, excluding Christmas tree harvests and harvest activities for non-commercial personal use. These standards should apply to all private, municipal, and state-owned forested lands supporting commercial species.

Rationale. Minimum standards need to be developed to provide guidelines for responsible forest practices in order to protect landowners from potential liabilities, to standardize requirements by

which all operators will abide, and to preserve the quality of other resource values that could be affected by harvesting operations. Legally established minimum standards would alleviate some of the burden that now rests with landowners to ensure that harvesting is done appropriately through contract provisions and, if those provisions are not met, through legal action.

The state needs to be involved in setting the minimum standards. A county-by-county approach risks injury to counties with limited educational and financial resources that are not in the position to be able to effectively administer and monitor forest practices. In addition, some counties may not feel the need to exercise oversight of harvesting activities when those activities primarily impact a neighboring county. County standards would place an undue burden on industry to be informed on different and potentially inconsistent sets of standards and would create confusion in cases where areas being logged are located in one or more counties.

The Task Force recommends excluding Christmas tree harvests because such harvests are generally more akin to agricultural crop production where those trees are grown on intensively managed plantations. When landowners choose to harvest Christmas trees from a forest understory, those harvests are generally part of a thinning or timber stand improvement operation. Harvest activities for non-commercial personal use should be excluded because these harvests are generally small and do not have the same on-site and off-site impacts as large, commercial timber harvesting activities.

(a) These minimal standards should specifically address timber harvesting activities (road construction, slash treatment, soil erosion, damage to residual standing timber, reforestation) and areas warranting special concern (riparian areas, steep slopes, water courses).

Rationale. Oversight of these activities can help to protect landowners against liabilities, protect the long-term value of forest lands, and reduce off-site impacts that affect neighboring landowners and other residents of the watersheds in which these lands are located. These timber harvesting activities are the ones commonly monitored in other states that oversee forest practices.

Harvesting in areas of special concern (such as riparian areas, steep slopes, and water courses) generally poses the highest potential risks to off-site and downstream parties and leaves landowners subject to the greatest liabilities. Most states consider these particular areas

to be of special concern and have developed sets of standards for activities occurring there.

(b) The primary responsibility for meeting these minimum standards should rest with the timber products industry.

Rationale. The burden for complying with these standards should rest with the timber products industry (timber harvesters, contractors, mill owners, timber haulers). This would, in effect, assure landowners that harvesting operations conducted within the state are meeting some minimum requirements. Representatives of the timber products industry with whom we spoke supported this requirement as necessary and reasonable, since many of them voluntarily comply with higher standards already.

Timber harvesters or operators (who actually harvest the trees) should carry the burden of responsibility for compliance and be accountable for their work through on-site inspections. Timber harvesters, operators, or brokers should not negotiate timber contracts that do not meet at least the minimum standards and should take the costs of compliance into account when negotiating prices to be paid to landowners. Mill owners should not be allowed to accept timber from harvesters who are not registered with the state or to accept timber cut from land in instances where the state has not been notified. Procedures should be established to monitor timber being hauled out of state through load ticketing and cooperative monitoring agreements established with other states (this also will help to control timber theft).

The state should enforce these minimum standards but industry should be encouraged to develop further standards at their discretion and to certify harvesters based upon higher standards should they so desire.

Eight. All timber operators who wish to operate within the State of Utah should be required to register with the state. Registration should include the name and address of the operator and may require a log of past operations. A minimal processing fee should be assessed.

Rationale. This information would enable the state to monitor commercial timber activities and, in particular, to exercise some oversight of out-of-state timber harvesters. This recommendation also is intended to allow the state to assist and protect landowners by providing them with reference information on potential operators in the absence of a better business bureau for timber harvesters and by allowing them to monitor harvesters who have not operated

responsibly. Representatives from the timber industry with whom Task Force members consulted agreed that this was a reasonable and acceptable requirement.

Nine. Landowners should be required to notify the Division of intent to conduct a forest practice operation. Notification should include the name and address of the landowner and a legal description of the area in which the forest practice is to be conducted. A minimal filing fee should be required at the time of notification. Upon notification [DFFSL] should be required to immediately send the landowner an educational packet, and to determine whether a harvest plan is required within 30 days or less.

Rationale. This procedure will provide the state with a critical point of contact with landowners who intend to harvest in order that the state may provide them with educational materials and technical assistance if they have not already received them. This will help focus the educational efforts of the state on those landowners with the greatest immediacy of harvesting potential. It will be of greatest benefit to those landowners who have not sought out that information on their own. A minimal filing fee should be required in order to help offset the costs of processing the notification. The limit of 30 calendar days for a response from the [DFFSL] protects landowners from unnecessary delays, but it is anticipated that actual response times will be much shorter.

Ten. A harvest plan should be required only in situations warranting special concern, such as sites that pose significant risk to other resource values (i.e. water quality) or that risk extreme hazards such as fire, pest, and disease. The plan may be prepared by the landowner or operator who may seek assistance from the state or from a private consulting forester. The resulting harvest plan should be subject to approval by the state before operations may begin. If such a plan is deemed insufficient, a revised plan may be resubmitted to the state for review.

Rationale. The harvest plan is intended to address performance criteria, help to ensure that minimum standards regarding forest practices are met, protect landowners from potential liabilities, and prevent detrimental impacts to off-site resources. This plan also could be beneficial to landowners in meeting eligibility requirements for various incentive programs. Task Force members anticipate that landowners who have received educational materials and who are participating in incentive programs may already have timber

management plans in place, thus decreasing any burden this provision would place on them.

Eleven. The [DFFSL] should be designated as the agency responsible for overseeing timber harvesting and management. The duties, authorities, and powers of the [DFFSL] should be expanded and delineated in order for it to develop, implement, administer and enforce the recommendations made above.

Rationale. The [DFFSL] is the agency of state government most involved in these issues at the present time. The [DFFSL] has the greatest technical expertise to oversee forest practices as well as a generally positive working relationship with forest landowners and operators.

Twelve. County governments should be allowed to exercise review and oversight over individual activities regarding forest practice operations through local ordinances as long as these ordinances are consistent with, and at least meet the state minimum standards.

Rationale. This recommendation is intended to provide a framework for a partnership between local and state governments in addressing forest practice concerns. This allows counties which have concerns about forest practices within their boundaries to exercise some review and oversight. A procedure should be devised whereby the [DFFSL] informs a county of pending forest practice operations, at which time the county may choose to review notifications and/or harvest plans originally submitted to the [DFFSL].

Thirteen. The Forest Stewardship Coordinating Committee, an existing advisory committee to the [DFFSL], should be charged with advising the [DFFSL] on rules developed to implement these recommendations and on general issues related to forest practices in Utah. This committee should be given sufficient resources to meet more regularly in accordance with this expansion in its charge.

Rationale. The Forest Stewardship Coordinating Committee advises the [DFFSL] about rural forestry issues, particularly the operation of the federal Forest Stewardship Program and the federal cost-share Stewardship Incentives Program. This is the logical group to charge with advisory capacity on forest practices due both to the expertise of its members as well as the fact that this committee can provide greater coordination between federal and state programs. In addition, this committee provides recognition incentives to landowners who have promoted forest goals through issuing three annual awards:

Utah Forest Stewardship Award; Utah Forest Landowner of the Year Award; and Utah Agroforestry Award.

V. REACTIONS TO PROPOSED RECOMMENDATIONS—IDEOLOGICAL QUANDARIES VS. PRACTICAL REALITIES

The findings and recommendations of the Utah Forest Practices Task Force have not been received without controversy. The controversy stems, in part, from classic issues of governance, such as how to reconcile individual freedom and social responsibility, and whether market mechanisms or government institutions are best suited to allocating natural resources. However, that controversy is further complicated by the particular context of Utah in the latter half of the 1990s.

The contemporary Utah context is shaped by the desire of many residents for state government to take action addressing problems related to the state's rapid growth. At the same time, suspicions of government held by many state residents have been heightened due to recent battles between the state and the federal governments over designations and management of public lands.⁵²

Controversy surfaced in the deliberations of the Task Force. Some ideological positions were articulated early in the process. However, the Task Force's investigations, which focused on understanding the practical realities involved in forest practices occurring on nonfederal land, led to modifications in Task Force members' initial positions and helped to create some common understanding of the situation as well as of the means for addressing it.

A. Infringement or Protection of Private Property Rights?

One of the critical questions that the Task Force wrestled with was whether its recommendations represented an undue burden on

⁵² President Clinton designated the highly controversial Escalante Grand Staircase National Monument in southern Utah on the same day, September 18, 1996, that the Task Force presented its findings and recommendations to the Energy, Natural Resources, and Agriculture Interim Committee of the Utah Legislature.

private landowners and intrusion into property owners' rights, or whether it was a sincere effort to protect property owners and their ability to make the most of their resources?

Infringement on private property rights generally means a reduction in the use or value of private property as a result of government action. Given the practical realities explained above, almost all of the Task Force members concluded that the set of recommendations would not reduce either the use or value of forest land in most instances and, thus, did not constitute infringement. Task Force members anticipated that land and resource use would likely increase as a result of the recommendations. Overall use of timber could increase by recovering more merchantable timber from harvesting operations and by producing a more sustainable yield of timber. Use of land could increase if harvesting operations are conducted in a manner that does not foreclose other management options. As rural landowners search for ways to maintain or enhance their livelihoods, diversifying their land management strategies offers promising possibilities. For example, Task Force members visited several sites where landowners are combining cattle ranching, the lease of private hunting rights (through posted hunting units), timber production, and other private recreational land use.⁵³

Avoiding the negative consequences of irresponsible timber contracting and harvesting was understood to be a way to help landowners maintain their property values. The Task Force recommendations were designed to help landowners maximize the value of their timber resources by curbing timber theft, waste of wood, and unjust compensation. In addition, the recommendations strive to facilitate landowners' abilities to increase the financial benefits of good harvesting operations,⁵⁴ and to reduce the financial costs involved in bad harvesting operations.⁵⁵ The market value of private timberland reflects a host of site characteristics that are desirable to potential buyers, which can include standing timber, productive capacity of the land, potential uses, or aesthetic qualities. Many of the factors contributing to property values can be compromised by poor timber harvesting practices.

Some people have interpreted a few of the administrative

⁵³ See TASK FORCE REPORT, *supra* note 1, Appendix A, at 11-16.

⁵⁴ For example, by receiving tax benefits and participating in various incentive programs.

⁵⁵ For example, subsequent on-site mitigations, increased risks and liabilities, reduced land values, and foreclosure of alternative land uses.

oversight provisions as infringement on private property rights. Under the recommendations set forth by the Task Force, landowners would be required to notify the state before they harvest timber and give the state 30 days in which to send them information.⁵⁶ Landowners might possibly be required to submit a harvesting plan in certain circumstances.⁵⁷ Objections to these provisions have been based upon resentment that a landowner would have to receive permission for and relinquish some control over what they do on their private property. However, most observers understand that the provisions are an honest attempt to ensure program efficiency and to protect landowners' interests by providing them with important information which may help to protect them from unanticipated costs and risks. Additionally, a delay of 30 days to harvest Utah trees that can take 80-150 years to grow (depending upon the species) seemed reasonable to most observers.

The Utah Forest Practices Task Force made a sincere effort to protect private property rights. Task Force deliberations were guided by the interests and concerns of its members, half of whom were private owners of timberlands or woodlands. The criteria used by the Task Force to judge the alternatives included several items pertaining to protecting landowners.⁵⁸ In addition, Task Force members wanted their recommendations to have political viability, and they realized that this would be impossible without attention to private property rights concerns.

The points of controversy on the forest practices issue revolve around the more fundamental difference of opinion as to whether private markets or government institutions are best suited to deal with the problems involved in current forest practices. One of four basic requirements for market institutions to operate effectively is for buyers and sellers to be well-informed about the characteristics of goods and services and the terms of market exchange.⁵⁹ Task Force members were particularly concerned about landowners' lack of basic information that market models assume buyers and sellers possess. As sellers of timber, landowners often lack information on market prices for timber and on tax benefits and incentive programs that could affect their decisions to

⁵⁶ See TASK FORCE REPORT, *supra* note 1, Appendix A, at 22.

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See Cabbage et al., *supra* note 27, at 51-52.

even sell timber. As buyers of harvesting services, many of them lack information on the nature of timber production, on contract provisions, and on the potential pool of operators with whom they could contract.

As several scholars of forest policy have noted, "the choice is between two imperfect institutions—market institutions *as they actually operate* or political institutions *as they actually operate*."⁶⁰ Landowners must confront this reality in choosing alternatives for dealing with forest practices in Utah. Do they place greater trust in their individual ability to manage forested lands and deal with the market imperfections of timber harvesting transactions, or do they trust their state government to enact programs to help them deal with market complexities, with the technical aspects of timber production, and with oversight and administration of timber harvesting activities?

*B. Environmental vs. Property Rights Interests—
Contradiction or Coincidence?*

A second question that the Task Force confronted was how to limit intrusion on landowner rights and still provide adequate protection against the potential hazards and risks that timber harvesting poses for other resource values, such as water quality, soil stability, and forest health. Private property rights and environmental concerns are seemingly often contradictory interests. In searching for an approach that would effectively deal with both areas of concern, Task Force members found a coincidence of interests between landowner rights and environmental interests in the Utah forest practices situation. Task Force members believe that this joining of interests should contribute to the comprehensive benefit/cost calculations that need to be used in timber operations. Landowners are generally concerned with the value of their private resources. The risks that negligent activities might pose to other resource values need to be part of the expanded cost calculations that landowners consider. An assessment of the cost of increased risks caused by private landowners would take into account some of the externalities about which environmentalists are most concerned, such as impacts to water quality, fire damages, and spread of disease. The translation of public risk into private cost was considered a very real possibility by Task

⁶⁰ *Id.* at 71 (emphasis in original).

Force members, given growing public intolerance for assuming costs for privately-generated risks. The general public as well as private insurance companies appear to be less willing to cover the cost of damages, even in cases of "natural disasters," but especially in cases where the cause of the damages can somehow be related to humans knowingly putting their property or their lives at risk. Scrutiny of losses from urban-wildland interface fires, building in flood plains, and beachfront properties in hurricane zones are prime examples.

Environmental interests, on the other hand, are generally concerned about activities which create externalities that affect resource values. A coincidence of interests is evident here as avoidance of such externalities, as just mentioned, is in landowners' best interests because such avoidance often enhances or protects the value of their properties. Measures that appeal to landowners' self-interests in this way need to be part of the expanded benefit calculations that landowners are allowed to consider without being accused of receiving subsidies for special interests. Offering landowners tax benefits and incentive programs is fair and reasonable because the benefits of enhancing forest resources are not captured solely by landowners, due to the common-pool nature of forest resources, but provide public benefits as well.

C. How Could This Happen in Utah?

The fact that forest practices on nonfederal lands has received even a modicum of attention on the state's political agenda has surprised some observers, especially given the conservative political climate in Utah. Some individual legislators and groups, including the Cache County Council, the Blacksmith Fork Soil Conversation District, the Utah Association of Soil Conservation Districts, and the Wasatch Front Chapter of the Society of American Foresters have supported the Task Force recommendations after giving the issues serious consideration. We believe the primary reason the recommendations have found support from these parties is that ideological positions have been challenged by practical realities. The risks of postponing action are high, given the limited extent of nonfederal forest lands in Utah, the fragile nature of Utah's relatively dry forests, the unsustainable harvesting rate, and the potential costs to the citizens of Utah.

While these realities are sufficient to call some parties to action, garnering support from a majority of Utah's legislators may prove more

challenging. There are several additional reasons that we hope will compel Utah legislators to support the Task Force recommendations. First, legislators should see the recommendations as a sincere effort to provide protections to private landowners, especially in cases where landowners not familiar with the intricacies of harvesting are duped by unscrupulous operators. Second, legislators in general are closely tied to and familiar with the financial burdens to the state's taxpayers for major outlays involving resource management, such as fire suppression costs or difficulties involved in locating and paying for water storage facilities. These types of costs constitute potential consequences that would eventually be borne by the public if poor timber harvesting were allowed to continue unchecked. Third, Utah legislators should understand the challenges facing rural constituencies and those factors that affect the decision-making of private property owners, since many own rural property themselves. They should understand that financial risk assessment is increasingly a part of individuals' decision-making; that rural landowners are searching for options and choices that will allow them to maintain a way of life that is connected to the land; that a sense of stewardship and not just profits should and does affect the behavior of most Utahns; and that if private property owners want to maintain their freedom over what they do with their resources, those owners need to be sensitive to the concerns of an increasingly scrutinizing public.

D. Is This Approach Sufficient?

Several observers have questioned whether this package of recommendations is sufficient to address current problems associated with timber practices on nonfederal lands, or whether the package was designed simply as all that is politically feasible at this point in time in Utah. To address this concern, it is important to note that the Task Force gave careful examination to approaches followed in other states.

Programs addressing forest practices in other states range from encouragement to utilize voluntary Best Management Practices to the enforcement of stringent forest practice standards, as well as requirements involving notification of forest practice activities and licensing of timber contractors.⁶¹ Of particular relevance is the degree

⁶¹ See, e.g., Paul V. Ellefson et al., *Regulation of Private Forestry Practices by State Gov't.*, University of Minnesota, Station Bulletin 605 (1995); Donald G. MacKay et al., *Registration*,

of restriction placed on forest practice activities in the states surrounding Utah. Washington, Oregon, California, and Idaho employ some of the most restrictive forest practice programs.⁶² For example, in the state of California, a harvest plan prepared by a registered, professional forester must be submitted prior to any harvesting activity.⁶³ Approved operations are then subject to on-site inspections and various enforcement penalties, including possible revocation of the timber operator's license if the harvest activity fails to meet standards set forth in the harvest plan.⁶⁴ In Oregon, the state forester must be notified of intent to conduct harvesting activities and a written harvest plan subject to approval may be required in some cases.⁶⁵ Again, penalties may be enforced if actions do not meet standards set forth in the plan.⁶⁶ In Washington state, minimum standards for harvesting activities have been established and must be met to varying degree, depending on the type of activity to be conducted.⁶⁷ In some instances, management plans or detailed environmental statements must be prepared and approved before the activity may begin.⁶⁸ Finally, in Idaho, notification or submission of a written plan is required and minimum standards must be met.⁶⁹ Also, bonds are required of nonresident timber operators.⁷⁰

Overall, the proposed recommendations for Utah fit within a model for dealing with forest practice issues that is typical in the western part of the United States. This model emphasizes a state-level, comprehensive approach as opposed to leaving the issues to local or county discretion, as is more typical in the eastern United States.⁷¹ In terms of the range of restrictions associated with potential and surrounding forest practice programs, the recommendations proposed for Utah rest somewhere in the middle.

The Task Force had several reasons for designing the seemingly

Certification, and Licensing: Creating Better Timber Harvesters, 94 J. FORESTRY 27, 29 (1996).

⁶² See Ellefson et al., *supra* note 61, at 151-84.

⁶³ See Z'Berg-Nejedly Forest Practice Act of 1973, CAL. PUB. RES. CODE §§ 4511-4628, 4531 (WEST 1984 & Supp. 1996).

⁶⁴ See *id.* § 4586.

⁶⁵ See Oregon Forest Practices Act, OR. REV. STATS. §§ 527.610-.770, 527.990 (1995).

⁶⁶ See *id.* § 527.990.

⁶⁷ See Forest Practices Act, WASH. REV. CODE ANN. §§ 76.09.010-935 (West 1994 & Supp. 1997).

⁶⁸ See *id.* § 76.09.060.

⁶⁹ See Forest Practices Act, IDAHO CODE § 38-1301-14 (West 1994 & Supp. 1996).

⁷⁰ See *id.* § 38-1306a.

⁷¹ See Ellefson, *supra* note 61, at 16.

middle-of-the-road approach. First of all, Task Force members were undeniably concerned about political feasibility. They believed there would be some opposition to any state oversight, yet they were convinced by the urgency of the situation that the state needed to take some effective action that could be implemented with due speed. Second, the experiences of other states indicate that approaches relying solely on voluntary efforts apparently have not been effective. Many of those states have had to revise their approaches over time to include more mandatory aspects.⁷² Third, more restrictive approaches, besides being politically vulnerable, might not be warranted given the strong belief of Task Force members that most landowners and harvesters are well-intentioned and will respond to educational and incentive programs. The mid-level degree of state oversight may be all that is required to pull back the "welcome mat" for the bad operators mentioned earlier.

Finally, the Task Force members envisioned the possibility that people with interests in forest practices would voluntarily work toward meeting even higher standards than the ones set forth in the proposed law. Landowners should be encouraged to seek the advice and assistance of professionally trained foresters. As has been done in other states,⁷³ industry organizations should be encouraged to set standards and to train, accredit and certify harvesters operating in Utah. Landowners and industry should be educated about and encouraged to consider the market advantages of certified forest products. Professional and educational organizations, such as the Society of American Foresters and Utah State University, should be encouraged to work more closely with landowners and operators in transferring knowledge and technical skills concerning forest practices. Environmental organizations and the public should be encouraged to support the efforts of landowners and harvesters who are managing their land and harvesting operations responsibly. Such cooperation in encouraging responsible stewardship of Utah's nonfederal forest land will benefit present and future generations of Utahns.

⁷² See *id.*

⁷³ See Patrick Heffernan, *Harvesting Technology, Safety, and Cooperation in Forest Management: The Montana Experience*, 94 J. FORESTRY 12, 12-15 (1996); see also Mackay et al., *supra* note 61, at 27-29; Wayne K. Clatterbuck & George M. Hopper, *Partners in Success: The Tenn. Master Logger Program*, 94 J. FORESTRY 33, 33-35 (1996).

VI. CONCLUSION—WILL A “UTAH FOREST PRACTICES ACT” BECOME REALITY?

During 1996, members of the Utah Forest Practices Task Force conducted an assessment of problems related to forest practices on nonfederal lands in Utah and presented their findings and recommendations to the Energy, Natural Resources, and Agriculture Interim Committee of the Utah Legislature. The Task Force found that increased pressures to harvest timber on nonfederal lands in recent years have had serious consequences for forest landowners, adjacent landowners, nearby communities, and future generations of Utahns. Concluding that the problems are urgent and that postponing action risks additional negative consequences, they urged the Interim Committee to support a package of recommendations designed to address the situation. Recognizing the interests of private landowners, industry, and the public, the Task Force sought to develop a fair and reasonable mechanism to encourage sound management of forest lands in Utah. Recommendations submitted by the Task Force included a combination of educational efforts, incentive programs, and administrative procedures and oversight.

These recommendations met with general approval upon initial introduction to the Energy, Natural Resources, and Agriculture Interim Committee in September of 1996. The subsequent draft of proposed legislation, however, received a substantially cooler reception from that same committee, thus precluding the possibility of a committee-sponsored bill. Plans are being made for a revised version of the proposed legislation to be introduced in the 1997 legislative session by one or more individual legislators. However, this version differs substantially from recommendations of the Task Force in the area of administrative oversight. While the proposed legislation requires that landowners and timber operators notify the DFFSL of their intent to harvest and that operators conducting forest practices in Utah register with the DFFSL, it relies primarily on education and voluntary implementation of best management practices. Without the development of minimum standards and enforced compliance on the part of the timber products industry as recommended by the Task Force, uninformed landowners will not be protected from bad contracts, poor harvesting operations, and subsequent liability.

As mentioned previously, solely voluntary approaches to forest practices in other states have met with limited success. If the legislature chooses to follow this path in dealing with the forest practices situation in Utah, special effort to support it will be necessary. For the educational and incentive-based components to be truly effective, substantial financial and personnel resources would need to be allocated to allow for a comprehensive educational program reaching the majority of landowners who need critical information prior to signing timber harvesting contracts. Without the safety net of administrative oversight and some degree of enforcement, the task of stemming poor harvesting practices on nonfederal lands in Utah will be more daunting. However, with a sincere commitment of resources, it is possible. Any "Forest Practices Act" in Utah would be a welcome change, a step in the right direction, and a message to those involved that poor harvesting practices on nonfederal lands are and will continue to be of concern to citizens of Utah.