

GAO

Testimony

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Information on the Forest Service Appeals System

Statement of  
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Issues  
Resources, Community, and Economic Development  
Division

Before the  
Subcommittee on Conservation and Forestry  
Committee on Agriculture  
United States Senate



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Forest Service appeals system. My testimony is based on our recent report<sup>1</sup> in which we examined the number, processing times, and backlog of unresolved appeals nationally from fiscal years 1983 to 1988, as well as whether appeals filed in fiscal years 1986 and 1987 delayed timber sales in regions 1 and 6. We will also discuss additional work Senator Baucus asked us to undertake following our report, in which we examined the extent to which appeals may have prevented region 1 from preparing its planned volume of timber sales in fiscal year 1988. Finally, we will address the extent to which these problems may continue over the next few years.

First, I would like to summarize the findings of our report and our additional work.

#### RESULTS IN BRIEF

In our February report, we found that the number of appeals had been increasing nationally in recent years, and that, in the two regions we examined in detail, nearly all delays of appealed sales were due to problems the Forest Service had experienced in conducting environmental analyses, which are a required part of sales preparation.

In our follow-up work in region 1, we found that appeals and delays continued to increase in fiscal year 1988. Consistent with our findings for earlier years, these fiscal year 1988 delays were

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<sup>1</sup>Forest Service: Information on the Forest Service Appeals System  
(GAO/RCED-89-16BR, Feb. 16, 1989)

not due to the appeals process itself. Rather they were due to underlying problems with Forest Service environmental analyses that did not meet all requirements. These requirements have been evolving as a result of court decisions. Problems with Forest Service environmental analyses were the primary reason region 1 did not achieve its target volume of planned timber sales for fiscal year 1988.

To reduce the number of delayed sales, the Forest Service has undertaken substantial revisions in its environmental analysis procedures to ensure that analyses meet all requirements. It is also making use of negotiated settlements with appellants in conjunction with recent changes in appeals regulations. However, we believe problems with delayed sales and missed targets in region 1 will continue in fiscal year 1989 and for some time beyond. The major reason for this is the absence of a sufficient inventory of future year sales with completed environmental analyses that could be used to substitute for delayed sales.

To rebuild this inventory sufficiently to avoid further delays will likely take another 2 fiscal years, because of the length of time it takes to conduct environmental analyses, and will require that additional funding be dedicated to sales preparation. To maintain this inventory level in the future, given higher environmental analysis costs, the region will also need to dedicate additional annual funding to preparing its yearly target volumes.

Before elaborating on these findings, I will provide some background on the Forest Service appeals system.

## BACKGROUND

The Forest Service appeals system allows members of the public to appeal decisions of Forest Service officers to the officers' immediate supervisors, and, prior to recent changes in appeals regulations, to further appeal in most instances if the first-level appeal was denied. Appeals frequently assert that Forest Service decisions do not comply with one or more environmental statutes and fail to adequately document effects on the environment of planned actions. In most cases final decisions on Forest Service appeals may be judicially reviewed. In 1989 the Forest Service adopted changes to its appeal regulations which reduced the number of processing steps and their time frames for certain appeals and narrowed the bases on which timber sale and forest plan appeals could be filed.

Now I will discuss the findings of our recent report.

### THE NUMBER, PROCESSING TIMES, AND BACKLOG OF UNRESOLVED APPEALS HAVE ALL INCREASED IN RECENT YEARS

In our report we found that, nationwide, the number of Forest Service appeals filed annually, the average time required to process them, and the backlog of unresolved appeals all increased significantly in recent years. Specifically,

- appeals more than doubled nationwide between fiscal years 1983 and 1988, from 584 to 1,298.
- average processing time for appeals increased from 201 days in fiscal year 1986 to 363 days by March 31, 1988, which is more than 2-1/2 times as long as generally provided for processing appeals.

-- The nationwide backlog of unresolved appeals grew from 64 at the end of fiscal year 1983 to 830 by the end of fiscal year 1988.

Appeals of forest plans, which were prepared for the first time during this period and are comprehensive documents establishing each forest's basic management and land use goals for a 10- to 15-year period, accounted for the largest portion of all of these increases. For example, with regard to processing times, we found that about 80 percent of the forest plan appeals in region 1 (mainly Montana and northern Idaho), in fiscal years 1986 and 1987, had not been resolved and that they took an average of nearly 2 years to go through appeal processing steps. (Region 6 had not yet issued forest plans and thus had no forest plan appeals.) Processing of timber sale appeals there and in region 6 (Washington and Oregon), also exceeded the time then provided--generally 140 days--for processing appeals, but had taken less than a third as long to process as forest plan appeals. The Forest Service was responsible for about 90 percent of processing time overruns in both types of appeals.

Regarding whether appeals delayed timber sales, about 6 percent of the timber sale volume offered in regions 1 and 6 in fiscal years 1986 and 1987 was appealed. Less than 1 percent of the total volume was delayed by these appeals. By "delayed by appeal" we mean that (1) the appeals were not resolved in time for the timber to be offered in the year it was originally planned to be sold and (2) the appeals were found to have no merit. In about

a third of the cases in which the appeals were found to have no merit, the Forest Service contributed to the delays because it did not issue environmental analyses until the same fiscal year as the planned sales. Historically, environmental analyses had been issued 1 or 2 years before the timber was actually scheduled to be offered, allowing sufficient time for processing appeals.

Late issuance of environmental analyses and lengthy time overruns in processing appeals occurred because the Forest Service had difficulty responding to the increasing number of complex environmental issues raised in appeals, particularly with regard to documenting the environmental effects of planned actions. Requirements for documenting these effects have been evolving through court decisions. Region 1 officials told us that many of their environmental analyses had not met all of these evolving requirements. As a result, they had to expend considerable time and staff resources incorporating the new environmental study requirements into their responses to timber sale appeals already in process as well as incorporating them into environmental analyses not yet completed.

Because of having to revise numerous environmental analyses, regions 1 and 6 fell behind in needed advance preparation of environmental analyses for future year timber sales during fiscal years 1986 and 1987, and could not issue them until the year of the planned sales. However, despite delays in some appealed sales, both regions were able to meet their annual targets for these years because they still had sufficient inventories of future year sales

with completed environmental analyses that could be substituted for the delayed sales.

At this point I will turn to the findings of our follow-up work regarding the extent to which appeals, versus environmental analysis problems or other factors, may have prevented region 1 from achieving its fiscal year 1988 timber sale preparation target.

APPEALS AND DELAYS DUE TO PROBLEMS WITH ENVIRONMENTAL ANALYSES INCREASED IN FISCAL YEAR 1988

Our follow-up work in region 1 for 1988 showed that the volume of timber sales that were appealed or litigated (some sales were taken to court) increased. Sixteen percent of the planned fiscal year 1988 sales volume was appealed or litigated, and 12 percent of this annual target was delayed. (table 1.) About 85 percent of this delayed volume was concentrated in 4 of its 13 forests. (table 2.) Similar to the experience of the 2 prior years, 98 percent of the delayed volume was due to problems with Forest Service environmental analyses. (table 3.)

Three major decisions made during fiscal year 1988 -- one by a court and two by the Chief of the Forest Service -- were cited as a factor in most of the delayed fiscal year 1988 volume. Region 1 officials told us that these decisions required that additional analysis be done to (1) ensure that standards for old growth and grizzly bear habitat are met, (2) assess the cumulative effects of related Forest Service projects, and (3) determine whether further assessment of effects of projects on the ecological character of roadless areas are necessary. Moreover, they noted that these decisions also required revisions in other completed or in-process

environmental analyses for a substantial volume of future year sales in which these environmental factors were also considerations.

As a result of having to do additional work on numerous environmental analyses for fiscal year 1988 and future year sales, the region could not complete them all as planned, and its inventory of sales with approved environmental documents became seriously depleted during fiscal year 1988. It could no longer substitute other sales when a delay occurred in processing an appeal or when an appealed sale's environmental analysis needed revision. Consequently, region 1 did not meet its fiscal year 1988 timber sale preparation target of 1.1 billion board feet, falling short by about 12 percent. (table 4.) This was particularly acute in 4 of the region's 13 national forests.

About a third of the region-wide shortfall in achieving its target involved sales in which Forest Service regional officials withheld or withdrew issuance of completed environmental analyses. They took this action because they felt that, on the basis of appeal and court decisions during fiscal year 1988, these analyses no longer met current requirements and would be successfully appealed if they were not revised.

In addition to the Forest Service's difficulties in preparing environmental analyses that meet all requirements, we identified three other factors that contributed to the timber sale problem in region 1 in fiscal year 1988:

- reductions in the region's funding and staffing, which fell 15 and 22 percent, respectively, between fiscal years 1981 and 1986;
- forest fires, which required staff diversions that interrupted preparation of about 300 million board feet of fiscal 1988 and future years' sales; and
- the absence of wilderness legislation, which has made it difficult for the region to successfully offer timber in roadless areas.

Finally, I would like to briefly discuss the extent to which the problem of delayed sales might continue over the next few years.

PROBLEMS IN MEETING TIMBER SALE PREPARATION  
TARGETS WILL LIKELY CONTINUE IN THE NEAR FUTURE

We believe region 1's timber sale preparation target for the current fiscal year will probably not be met because of the problems with delayed sales. The administration proposed increasing the region's target for this year to about 1.14 billion board feet. Region 1 officials forests requested that the target be reduced to 967 million board feet, or about the same as was prepared last year, but Forest Service headquarters denied this request.

The absence of completed environmental analyses will probably continue to cause problems beyond this fiscal year. In January 1989 the Forest Service adopted changes in its appeal regulations that reduced certain time frames and steps in the process, and narrowed the bases for filing timber sale and forest plan appeals.

Although we believe that these changes may reduce the number and processing times of appeals, they do not directly address the problems the Forest Service has had with environmental analyses. However, Forest Service officials told us that they believe the changes will result in greater emphasis on addressing environmental concerns in original timber sale decisions and that new requirements for early meetings with appellants will foster quicker resolution of differences. They also told us the agency has been designing staff training courses to focus on these issues. The effectiveness of these regulatory changes cannot be determined until they have been implemented for a longer period. We did note, though, that in the brief time period since their adoption, a number of region 1 timber sale and forest plan appeals have been quickly resolved through negotiation, with the result in each instance that most of the planned timber volume involved was allowed to proceed without delay. Even so, new regulations cannot address the region's most pressing immediate need, which is to rebuild the depleted inventory of future year sales with completed environmental analyses.

The Forest Service attempts to maintain a 2-year supply of future year sales with completed environmental analyses. However, as of January 1989, region 1's inventory of such future year sales fell short of the desired 2-year supply by 1.3 billion board feet. In order to rebuild its inventory to the desired level, the region will need to dedicate additional funding to timber sale preparation beyond that required to achieve its regular yearly targets.

Moreover, the costs of preparing environmental analyses have increased because of more extensive requirements. As a result, the region will also have to dedicate additional funding to timber sale preparation in order to prepare its regular yearly target volumes. Even with dedication of these additional funds, the inventory of future year sales cannot be rebuilt immediately because it can take up to 2 years to complete the more comprehensive environmental analyses that are increasingly required.

Region 1's ability to rebuild its inventory could also be further complicated by the increased demand for its timber as a result of higher market prices. The timber industry harvested about 17 percent more timber from region 1's national forests than it purchased during fiscal years 1984 through 1988. (table 5.) Thus, industry's own inventory of uncut timber under contract has dropped sharply at the very time the region's inventory of sales with approved environmental analyses has been depleted. If the industry is allowed to significantly expand its purchasing in the next few years in order to rebuild its own inventories and maintain harvest levels during high market prices, region 1's task of rebuilding its inventory of future year sales will be more difficult.

This concludes my statement, Mr. Chairman. We will be happy to answer any questions you or the other Members of the Subcommittee may have at this time.

# GAO Appealed and Litigated Fiscal Year 1988 Timber Sales in Region 1

Volume in  
Percent of Annual  
Million Board Feet Preparation Target

Region 1's fiscal year 1988 sales preparation target		
Appealed sales	112	10%
Not delayed	41	4%
Delayed	71	6%
Litigated sales	61	6%
Not delayed	0	0%
Delayed	61	6%
<b>Total appealed and litigated</b>	<b>173</b>	<b>16%</b>
Total not delayed	41	4%
Total delayed	132	12%

Source: GAO analysis of Forest Service data.

**GAO Delayed Fiscal Year 1988 Timber Sales in Selected Region 1 National Forests**

	Volume in Million Board Feet	Percent of Regional Total
<b>Total Delayed in Region 1</b>	132	100%
<b>Delayed in:</b>		
Kootenai Nat'l Forest	60	45%
Idaho Panhandle Nat'l Forest	26	20%
Flathead Nat'l Forest	16	12%
Clearwater Nat'l Forest	10	8%
<b>Subtotal of above 4 forests</b>	<b>112</b>	<b>85%</b>
Delayed in remaining 9 forests in Region 1	20	15%

Source: GAO analysis of Forest Service data.

**GAO Reasons for Delays of Region 1 Fiscal Year 1988 Appealed and Litigated Timber Sales**

Percent of All Delayed	Volume in Million Board Feet	
100%	132	Total appealed and litigated that was delayed
0%	0	Delayed by appeals or litigation without merit
98%	129	Delayed by Forest Service environmental analysis problems
2%	3	Cause of delay unknown because appeal or litigation is not yet decided

Source: GAO analysis of Forest Service data.

TABLE 4

# GAO Region 1 Shortfall From Fiscal 1988 Preparation Target

	Volume in Million Board Feet	Percent of Annual Target
Annual Target	1,100	100%
Amount Prepared	968	88%
Amount not prepared (Shortfall)	132	12%

Source: Forest Service

## GAO Harvesting Compared to Purchases of Region 1 Timber, Fiscal Years 1984-1988

		(Volume in Million Board Feet)					
		1984	1985	1986	1987	1988	Total
Harvested		969	944	1,024	1,105	978	5,019
Purchased		846	833	818	906	872	4,276
Difference		123	111	206	199	106	743
Percentage difference		15%	13%	25%	22%	12%	17%

Source: Forest Service data.

May 18, 1989

Comptroller General Bowsher testified on DOD's automated information systems, before the Legislation and National Security Subcommittee, House Committee on Government Operations. He was accompanied by Thomas Howard, IMTEC.

John Harman, RCED, testified on the Forest Service appeals process, before the Subcommittee on Conservation and Forestry, Senate Committee on Agriculture, Nutrition, and Forestry. He was accompanied by Chester Joy, RCED, and Jill Lund, Seattle.

Lou Rodrigues, NSIAD, testified on implementation of military joint officer personnel policies, before the Subcommittee on Investigations, House Committee on Armed Services. He was accompanied by Karen Zuckerstein and Ray Cooksey.

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SPEAKERS' PLATFORM

Leslie Aronovitz, Chicago, spoke on "Government Auditing Standards--Their Relevancy to Internal Auditing," before the Department of Energy Contractor Audit Managers' Conference, in Chicago, April 19.

Susanne Valdez, St. Louis, moderated a panel discussion on current developments in government accounting and auditing, before the Missouri Society of CPAs' annual governmental seminar, in Lake of the Ozarks, Missouri, April 20.

Dave Jones, Kansas City, and Susanne Valdez, St. Louis, participated in a simulated public hearing on an IG audit report, as part of the Mid-America Intergovernmental Audit Forum's University Project, at the University of Iowa, April 21-22.

Carol Petersen, GGD, spoke on welfare programs and participated in a panel discussion on taxing employee fringe benefits, at the annual meeting of the Western Social Science Association, in Albuquerque, New Mexico, April 27.

Michael Speer, OPC, participated in a panel discussion on electronic publishing, at the Defense and Government Computer Graphics Conference/West, in Anaheim, California, April 27.

Charles Culkin, AFMD, spoke on "GAO Proposals for Restructuring the Federal Budget," and--with Douglas Carlisle, Nell George, Edith Pyles, and Renu Saini--demonstrated a computer-assisted exercise for balancing the federal budget, before the spring symposium of the American Association for Budget and Program Analysis, in Washington. April 28.