Public Policy and Private Response: Perspective of A Private Forestry Entrepreneur
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Abstract
This presentation discusses the fact public policy of the 20th century was largely based on the premise of wood scarcity and discusses the foundation of that premise, policies implemented and reactions of non-industrial private forest owners (NIPF). The interplay of law and economics as motivators and the great debate over regulation of private forests is reviewed. Early “conservation laws” protecting private property rights are cited as significant encouragements. More recent “environmental laws” and the uncertainty of future regulations are described as posing real private property rights concerns and inhibiting enthusiasm, commitment and investment. Tax laws, the number one NIPF choice for incentives, are shown to be inconsistent and contradictory. Some ineffective or poor tax policies are listed and suggestions are made for research specifically addressing wood supply projections, NIPF and their needs, and the impact of global competition.

Timber Famine?
The United States Forest Service has a documented, proven record of underestimating the future annual net growth of the country’s timber. Not just once but consistently and continuously for nearly one hundred years.

The above graph by Marion Clawson does not include any projections made by the Forest Service since 1977, but my impression is there has been little change in their propensity to underestimate. Just last period of highest timber cutting in U.S. history. The Forest Service predictions gave credence at first to fears of timber famine and lately to concerns about cutting more than growth and undoubtedly provided a major consideration for any public policy. How could year in Alabama we were told volume was being depleted, but now emerging new Forest Survey numbers are showing large gains in our volume and in most of the Southern states and this during the analysts be so wrong? Their answer often is there was a response to predictions. It is true many public policies and private industry initiatives were prompted by expectations of shortages. But once instituted the contribution of such efforts could have


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been estimated. Economists might suggest supply like demand is elastic and responsive to the market. When demand is strong the existing timber supply can be considerably extended by better utilization. Periods of reduced demand and plentiful supply are characterized not only by lower prices but also lower utilization standards. Coupling this with the adaptability of timber users to shift between species, products and tree sizes leads to the conclusion that an adequate supply may exist in a wide range of currently estimated volume. I submit two factors that have been underestimated: (1) The capacity of natural forests to regenerate timber stands and the capacity of timber to grow even in the absence of man’s help and often in spite of his wishes, tend to be over-looked or ignored” and (2) the power of the profit motive in a free enterprise economy. In any event, despite constant forecasts to the contrary, current timber volumes, growth and consumption for the South are at the highest levels in a century. A study of what assumptions did and did not come true would be extremely informative and could contribute to more accurate predictions in the future.

The Debate Over Forestry Regulation
Those first Forest Service predictions came when regulation of forestry on private lands was one of the major topics in the profession and in the public arena. The debate was fierce, at times bitter, and not without political and special interest pressure and intrigue. “Cut out and get out” made economic sense to the lumbermen of the time, and helped satisfy the public need and appetite for forest products as well as agricultural and pasture lands. Based on the forest conditions in the early 1900s, there was justification for corrective actions. There was little disagreement over the need for improved forest practice on privately owned lands. The debate was over how to achieve it. Opinions on what actions were appropriate depended to a large extent on one’s political and social philosophy. At one extreme were those who believed in the virtues of private property and that free enterprise and self regulation would best serve the public interest. At the other were those who believed that public regulation would promote the welfare of the community as a whole. Gifford Pinchot expressed his view saying, “The need for governmental control on private timberlands is now self-evident. Compulsory nationwide legislation is the only method that promises adequate results.” On the other side an Alabama landowner said, “Protection from fire, fair forest taxation, and security of land ownership would contribute more to the cause of conservation than any form of regulation that could be devised.”

Conservation Laws Encouraged Forest Owners
The laws passed during this period designed to encourage conservation were instrumental in creating favorable conditions for forestry on private lands. Take for example the early efforts to increase wildlife populations. Imagine the difficulties you would have as a conservation-minded landowner, when there was no law to keep poachers off your land. Game managers today credit the no trespassing law as the most significant step in building the wildlife and game population. Timber trespass laws, stock laws and forest fire laws made similar contributions to encouraging timber growth and management. As the forests regrew and were protected from fire, industry responded to the available raw material and timber became valuable. Owners always respond to the prospect of economic reward, in this case by spending time, effort or money to care for and manage their forestland.

Land taxes are a good example of the law/economics relationship. Until the acceptance of sustained yield, buyers had to be careful not to get stuck with the land when buying timber. Ad valorem taxes on the cutover land was a liability. Later as owners began growing good volumes of timber, it was realized (at least in Alabama) that the annual ad valorem tax which included both land and timber was a disincentive to building volume. So a combination of annual ad valorem tax for land and severance tax, paid at the time of cutting for timber, was instituted. All of the above are examples of laws indicative of public policy directly affecting the economic value of land to an owner.

Another Avenue to Regulation
By the 1940s enough progress in fire protection had been made to allow the beginning of forest management. The last gasp in this push for regulation of timber production came with the introduction in 1949 of a subsequently unsuccessful bill “to provide for the establishment of forest practices for the conservation and proper use of privately owned forest land...”. This bill used the same avenues of control we have come to recognize so well today in the push for environmental regulation. That is if the states won’t do it, the feds will, and they may withhold assistance to landowners under any other government act or program. That same bill also included a regulatory device proposed not long ago by TVA, prohibiting disposal of “any forest product produced contrary to any rule of forest practice, regulation or order of the Secretary (of Agriculture)...” Concerning the 1949 bill, H. H. Chapman remarked, “What strange paths lead to totalitarian authority.” The efforts to control
activities on private forest land as of 2001 have made substantial progress through public policy affecting the environment.

**Environmental Laws Threaten Forest Owners**

Laws and regulations which limited the right to manage (National Environmental Policy Act-1969, Clean Air Act-1970, Federal Water Pollution Control Act Amendments-1972, Federal Environmental Pesticide Control Act Amendments-1972, Endangered Species Act-1973, Coastal Zone Management Act, National Historic Preservation Act) began to appear in the 1970s. Jimmy Carter’s Executive Order 11990 directing all government agencies to work for environmental protection appeared in 1980. Over time the definitions, interpretations, rulings, regulations, amendments, determinations and court cases are setting the boundaries for environmental laws. Forest owners have felt and seen real threats to their property and management rights. Listen to the major requirements in the 1992 “Working Draft Red Cockaded Woodpecker Summary for Private Lands” and you will see why. The policy would require landowners to:

**Document** an endangered species on their property and on adjacent lands.

**Determine** the status of an endangered species on their property.

**Protect** an endangered species on their property.

**Provide** habitat for an endangered species on or near their property.

**Maintain** habitat for an endangered species on or near their property.

**Seek** governmental approval for any activity that could affect the habitat of or cause harassment or stress to an endangered species on or near their property.

**Inform** (applies to ALL citizens as well as landowners) the USF&WS of past or present endangered species activity on their property or any property, public or private.

So far these 1992 draft guidelines have not been finalized, but the ideas are frightening to forest landowners. The recent work of Daowei Zhang at Auburn on Red Cockaded Woodpeckers provided quantitative measurements about the perverse economic incentives for private landowners from endangered species regulations and regulatory uncertainty. Concerns are heightened by examples from other parts of the country. A classic story was given by Dr. Robert Shaffer through his description of a California landowner’s attempts to sell timber from her 120 acres. He demonstrated the completeness of forestry regulation in that state through forest practice acts and other environmental laws.

Last year Oregon landowner, Sara Leiman, told an audience at Yale University, “Of a great concern to me is the fragmentation and shrinking of our family forest lands by law, regulation and governmental control. An owner’s property can be reduced in effective size without sale or subdivision, but by mandating areas of the property as non-working in no-touch conservation zones like extended riparian buffers and wildlife protection circles.” In Washington State Bruce Lippke and Bruce Bare found there is little question uncertainty in future regulations caused increased harvesting, early harvesting, shorter rotations, as well as disposal of timberland. I know those feelings. For our 235 acres of Longleaf Pine in Mobile County, Alabama, my wife and I have mild concerns about hurricanes, tornadoes, insects or wildfire, but major concerns about:

- not being able to continue the necessary prescribed burning as a result of air quality control regulations
- restrictions on activities because of the threatened Gopher Tortoise, whose habitat we are maintaining, or because of some new threatened or endangered species
- the possibility of EPA requiring point source pollution permits for activities
- restrictions to markets as a result of the chip mill controversy
- the calls from environmental quarters for Forest Practices Acts in Southern states
- local regulations which could affect logging
- too many references to Longleaf Pine as an endangered ecosystem

These concerns prompt us to question the wisdom of leaving such liabilities to our children and ponder the potentially greater economic rewards from developing the property for non-forest uses.

**Tax Incentives and Disincentives**

Some tax laws encourage aspects of forest management, others serve to discourage and some have destructive effects. For years, in conferences around the country, landowners have said tax change was one of their highest priorities. Numerous areas need attention. It is ridiculous for the owner of a
small property, harvesting once every ten years or once in a lifetime, not to be able to average this income. Allowing capital gain treatment of all lump sum sales (the Section 631(b) issue), in a bill vetoed last year by Clinton was even supported by the IRS. Why should non-industrial private forest owners not be able to expense their costs without jumping through numerous hoops? What about expensing reforestation costs or at least a higher reforestation tax incentive? Perhaps we need a separate section of the tax code for timber? Of course the no brainer and poster child for forestland tax damage is the death tax, which often causes death of the forest after death of the owner. Changes in these areas could go a long way to improving returns, which will intensify the level of care and investment, as well as environmental improvement.

**Lessons To Be Learned**
What lessons can we learn from this review of public policy and private response in the last one hundred years? The first effort to control forests on private lands was based on the public’s expectations of timber shortages. Concerns were ended by policies promoting protection of natural regrowth, cooperative action to educate landowners, private property rights laws, tax incentives and good markets. The next effort at controlling private lands was based on the public’s reaction to forestry practices and perception of a need for environmental improvement and is at present unresolved. We have seen once, that more can be accomplished with reward incentives than any form of regulation that could be devised. Perhaps eventually public policies can be constructed to give incentives to landowners to provide the environmental benefits society wants.

Private landowners respond to the incentives of fair taxes, security of ownership and good markets. Public policies should be aimed at using these incentives to motivate landowners. One of the most important and proven policies is providing information and education to landowners and more importantly the public about the environmental values and benefits of well managed forests, and the success story of U. S. Forestry on private lands.

**Areas For Research**
Research efforts should focus in the proven interest areas of taxes, markets and information. Other questions could include:

What assumptions were wrong in Forest Service predictions?

What impact will a timber surplus and possible build up of larger volumes and older trees have on (1) industry (2) national economy (3) carbon sequestration (4) management of private forest lands?

Are there multilevel regulatory problems?

What low cost management techniques can NIPF use?

What are the costs and benefits of forest certification for individuals and for the economy?

What are the cost/benefit ratios of environmental aspects of forest management?

**In Conclusion**
Just as free enterprise helped win the “Fight for Conservation” and the Cold War, it can protect our country’s environment and minimize the need for regulations that stifle the economy. Private property rights and freedom from excessive regulation and government control are part of the foundation of this great country. They have encouraged and fostered the individual initiative and spirit of independence which utilized our resources to build one of the greatest economies in the world. An economy including some of the finest forests and accompanying infrastructure anywhere, and a population which now can afford to be acutely aware of the value of protecting our environment.