8/27/77

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memo w/att.	From Brzezinski to The President (3 pp.) re: Tomahawk testing/ enclosed in Hutcheson to Brzezinski 8/27/77	8/25/77	A
memo	From Brzezinski to The President (2 pp.) re: F-16s for Iran	8/26/77	A
memo w/att.	From Brzezinski to The President(3 pp.)re:EPS Protection for Selected UN Missions (2 copies) / enclosed in Hutcheson to Brzezinski 8/27/77 *Opened per RAC, 2/8/13*	8/24/77	A

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THE PRESIDENT'S SCHEDULE

Saturday - August 27,1977

9:00 Mr. David Aaron - The Oval Office.

2:30 Depart South Grounds via Helicopter
en route Andrews Air Force Base.

2:45 Meet Secretary Cyrus Vance Upon His
Return from the People's Republic of China.

THE WHITE HOUSE
WASHINGTON

August 27, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

AGRICULTURE POLICY DECISIONS

info
Stu sent copies to Sr staff 8-28

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

August 26, 1977

Mr. President:

Attached is the decision memorandum on the set-aside issue and on related matters. Secretary Bergland is in Minnesota for the weekend. Howard Hjort indicated that because they want to notify the World Food Council and the FAO in Rome as well as their own press corps, Agriculture would prefer to make the decision public Monday.

In response to my question, he indicated that delaying the announcement until Monday would have no adverse affect on farmers. I recommend that Agriculture be permitted to wait until Monday for the announcement.

Stu

ok
J

I want to see
text of statement =
Emphasize stock levels.
Commitment to reserve
final decision (before planting)
one year duration = reassessment

J. C.

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THE WHITE HOUSE

WASHINGTON

August 26, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu
LYNN DAFT LD

SUBJECT: Agricultural Policy Decisions
(At Your Request)

Your guidance is sought on the following issues:

1) The use of an acreage set-aside in 1978.

2) Implementation of an accelerated grain reserve.

3) Loan levels for 1977 and 1978 crops.

We will have a memorandum to you early next week outlining the Secretary's proposed steps in implementing a sugar program.

Acreage Set-Aside in 1978

Background

Pending enactment of a new farm bill, the Secretary of Agriculture has no authority to implement a set-aside program for the coming crop year. Still, as you know, planting decisions for the 1978 winter wheat crop are now being made. Some planting is underway and most will take place before the bill can be enacted.

If we are to influence these decisions, we must indicate our intentions with regard to use of the prospective set-aside authorities as soon as possible. We believe this can be done without prejudicing your eventual approval or disapproval of the farm bill. There is no dispute between the Congress and the Administration with regard to the need for or terms of the set-aside authority. Should you decide to veto the farm bill, an authority like that in the pending bill could be quickly sought.

Operation of the Program

Under the bill now awaiting final Congressional action, the Secretary of Agriculture is required to announce a set-aside for wheat not later than August 15 prior to the year in which the crop is harvested (in the case of the 1978 crop, as soon as practicable after enactment of the new farm bill). In the case of feed grains, the announcement is to be made by November 15.

In his determination, the Secretary specifies a percentage of the farm's acreage planted to the crop in the current crop year that is to be set aside and devoted to conservation uses. Compliance with the set-aside is required as a condition of eligibility for all loans and payments under the program, regardless of whether a set-aside is in effect for the individual crop. To illustrate, a farmer who plants 500 acres of wheat under a 20% wheat set-aside must divert at least 100 acres to approved conservation uses to maintain his eligibility for CCC loans and for deficiency and disaster payments. A cross-compliance provision ensures that if a farmer does not participate in the set-aside, but still grows wheat, he is ineligible for loans and payments for other crops.

The authority to divert acreage from production has not been exercised since 1973 when about 17 million acres were idled. For most of the 1961-72 period, 50 to 60 million acres were diverted from production each year.

The World Grain Situation

World and U.S. grain stocks have risen sharply this past year (see Table 1). World stocks of wheat and coarse grains rose from 114 million metric tons (mmt) at the end of the 1975/76 marketing year to 169 mmt at the end of 1976/77. U.S. carryover stocks rose at an even faster rate this past year, accounting for nearly half the increase in world stocks. As a result, the U.S. share of world stocks has risen from 24 percent in 1974/75 to 36 percent now and could reach 42 percent in 1977/78. The USDA argues that an equitable U.S. share is around 33 percent.

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The relative contribution of production and consumption trends to the rebuilding of world grain stocks over the past two years can be seen from the data in Table 2. Though production rebounded strongly in 1976/77, it is expected to be down slightly this crop year. Likewise, though consumption too has been on the ascent since reaching the very low levels of 1975/76, it is still below trend. Part of the increased ending stocks of coarse grains estimated for 1977/78 is due to lower expected levels of coarse grain consumption resulting from the recent liquidation of livestock herds.

Evaluation of the Options

There are two questions to be answered: (a) Should there be an acreage set-aside for 1978 and (b) If so, how large and for which crops?

Four options have been evaluated:

1) No set-aside
2) 15% wheat/10% feed grains
3) 20% wheat/10% feed grains
4) 25% wheat/10% feed grains

As was mentioned in the Tuesday meeting, any announcement for feed grain set-aside would be tentative and subject to final determination later in the fall. There is consensus that a 15/10 combination is as low as we can go and still have a measurable effect on production. We also feel that a combination of wheat and feed grain acreage diversion is necessary to avoid excessive shifts out of wheat and into feed grains. The results of our analysis of these options are summarized in Table 3 and in Figure 1. A brief description of the major effects follows.

Inflationary Impact. As you know, the major point of disagreement between the USDA and CEA is with their respective judgments as to the size of U.S. and world grain stocks required to avoid a rapid run-up in grain prices. This, in turn, hinges on their assessments of the likelihood of a severe shock to the world grain supply/demand balance. The USDA estimates the odds of a significant production shortfall to be comparatively low, perhaps 1 in 20. They feel that the world grain economy is now less vulnerable to a sudden tightening of supplies such as occurred during the early 1970's for several reasons -- larger stock holdings by other nations ... notably the USSR and India, the US/USSR grains agreement, greatly reduced livestock numbers around the world, the 3-year farmer-held reserve that is now being

Any increase very slow

created (in combination with a proposed international emergency reserve that is described below), and slower economic growth rates, worldwide. Furthermore, should bad weather in 1978 result in a production shortfall, the USDA estimates that world stocks would still be about 150 mmt or about as large as they were before the rapid drawdown in 1972/73.

As advisors to me, this much difference is inexcusable

In contrast to the USDA estimate of 1 in 20, CEA believes the chances of a severe shock in the grain supply/use balance to be nearer 1 in 8. There are two methodological reasons for the differences. First, USDA based its analysis on absolute amounts while the CEA analysis was in terms of relative variation. Second, the two agencies used different statistical methods in estimating the standard deviations that underlie these probabilities.

Beyond their different assessments of the probability of a serious drawdown in stocks, USDA and CEA also differ in their estimate of the effect such a drawdown would have on prices. On the basis of the historical relationship of grain prices to the stock/consumption ratio, CEA estimates that bad weather coinciding with set-asides could result in a price increase of around 55 percent. This compares with USDA's judgmental estimate of about 22 percent. The relationship on which the CEA estimate is based is depicted in Figure 2. You will note that the current stock/consumption ratio is about 16 percent, which is very near the "kink" in a curve fitted to the historical observations. Should the ratio remain near 16 or increase, prices can be expected to remain at or slightly below support (loan) levels. On the other hand, should the ratio fall only slightly, history would suggest a rather rapid and substantial inflation.

The relationship depicted in Figure 2 is for a composite of wheat and feedgrains. If wheat were shown alone, the current stock/consumption ratio of 25 percent would appear further out the right-hand tail than the composite figure.

It is worth noting that the run-up in grain prices under the CEA "worst case," though substantial, would barely be enough to trigger the release of farmer-held and CCC reserves. Thus, to the extent these reserves are being accumulated for such eventualities, it would seem that we should be prepared to occasionally have prices reach these levels and call them into the market.

True important point

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Budgetary Effects. The estimated outlays for the agricultural commodity programs appear in Table 3. Outlays are reduced $0.9 to $1.1 billion as a consequence of varying levels of set-aside, with comparatively little significant difference among the set-aside options. The other side of the budgetary consideration is matching the savings from a set-aside against the possibility (with a poor crop year) of higher budget costs for those programs affected, directly and indirectly, by higher retail food prices. CEA estimates that the total increases could reach $3 billion or more if the set-aside resulted in a 2.0 to 2.5 percent increase in the overall rate of inflation.

Sounds excessive for a $1.10/bu increase in grain prices

Farm Income Effects. It is estimated that gross farm income would be reduced by $1.7 to $2.0 billion as a result of a set-aside. Net farm income would be reduced somewhat less. To the extent a large set-aside is concentrated in one commodity -- such as the 25 percent wheat -- these income reductions will be concentrated in regions that are heavily dependent on the crop ... and, with the effects spilling-over into other parts of the local economy.

Domestic Farm Politics. As Secretary Bergland reported the other day, the set-aside is generally (though not universally) popular among farmers. Though most would prefer to be totally free to make their own planting decisions, they prefer to see supplies reduced through production cut-backs rather than through government acquisition and stockpiling. In part, this is an almost conditioned response to their past experience with the price-depressing effects of large government stocks throughout the 1950's and 1960's.

Not surprisingly, therefore, most farm groups have registered support for at least a set-aside for wheat. There appears to be an expectation within the farm community that a set-aside of 20 to 30 percent will be announced. However, we suspect that much of the support for set-aside is based on incomplete information and understanding about how the program in the new "farm bill" would work --in particular, a failure to appreciate that CCC stocks cannot be released until market prices reach 150% of the loan level. Thus, CCC stocks would not overhang the market as farmers remember from the 1960's; nor would they prevent modest rises of up to 40 or 50%. Instead, they would offer insurance against very large increases in grain prices.

All the farmers may not understand FB, NEG, NEW, etc do - Also this is a good provision

International Politics. The State Department is concerned that a set-aside will lessen the pressure on other exporter nations to work toward an international grains agreement.

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State argues that any unilateral U.S. action that reduces supplies and bolsters price will make an agreement less attractive to the other major exporters. State also expresses concern that importing nations might feel that a set-aside is endangering our reliability as a source of supply and, therefore, seek out other sources.

The USDA counters these arguments by noting that Canada and Argentina have already cut-back production and that they are expecting the U.S. to do its part in this regard. Still, it would seem that these cut-backs are more a result of jawboning and a response to lower prices than a result of government policy actions. They also argue that it is important for us to signal the world that food security is a shared responsibility for all nations that can afford the expense. And that a curtailment of U.S. production should provide additional incentive to importer nations to negotiate an international agreement.

Though admitting that it is largely a perceptual issue, State also argues that use of a set-aside appears contradictory to our avowed aim of helping feed hungry people around the world. Peter Bourne has expressed a concern in this regard. The USDA counters with a proposal to create an international emergency reserve to insure that the food aid needs of the LDC's are not jeopardized by the implementation of a set-aside (though this reserve would not raise stocks above what they would already be).

Be sure this is done

You have stressed to us your desire to emphasize the Administration's positive attitude in doing our part to help with the world hunger problem.

Finally, State is concerned that U.S. restrictions on wheat production in a period of still moderate stock/consumption ratios might be used successfully by the "hawks" in OPEC to raise the price of oil through coordinated OPEC restrictions on oil output.

Agency Recommendations

As you know, the sharpest difference of opinion is between USDA and CEA.

25/10

USDA concludes that a set-aside of 25 percent for wheat and 10 percent for feed grains is necessary to avoid: (a) excessively large world and U.S. grain stocks, (b) U.S. grain prices continuing to be depressed below loan levels, (c) large stock accumulations by CCC, and (d) the U.S. holding more than its "fair share" of world stocks.

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25/10 OMB sides with the USDA in recommending the 25/10 option. Though they had initially leaned away from a set-aside, they found Agriculture's arguments at the Tuesday meeting persuasive.

0 CEA feels that the consequences of a large price rise are so severe, economically and politically, as to merit no set-aside at all ... even though the odds of a large run-up of prices are a comparatively low 1 in 8.

0 State argues against a set-aside on grounds that: (a) a set-aside would jeopardize our efforts to negotiate a new international wheat agreement, (b) that restrictions on production would have the appearance of contradicting our leadership position in efforts to overcome world hunger, and (c) that a world stock/consumption ratio higher than that expected (17 percent) is required to assure world food security.

0 - 15/10 Treasury opposes a set-aside for a combination of the CEA and State reasons, though they are not strongly opposed and see the issue as somewhat of a toss up. Should a set-aside be approved, they would favor a smaller set-aside, say 15/10.

≤ 20 STR recognizes that a set-aside will have "a somewhat negative effect upon our negotiating posture as we move forward in Geneva" but nevertheless feels the argument for a set-aside "may somewhat substantially outweigh this aspect." Thus, STR feels that a restraint on production is needed but does not feel the diversion should exceed 20 percent.

The Domestic Policy Staff feels that a set-aside should be implemented. Politically, a set-aside of less than 20 percent for wheat will result in substantial criticism from the farm community. Substantively, it appears to us that U.S. agriculture continues to be more vulnerable to the effects of surplus than to those of shortage and that we should take steps to restrain production. Still, we feel that the combination of the inflationary threat and adverse international reaction is sufficiently important to warrant a set-aside smaller than 25/10. Although, you will note from Table 3 that the three set-aside options are only marginally different in their effect on production, budget costs, or farm income.

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Decision

_____ No set-aside (CEA, State, Treasury)

_____ 15% wheat/10% feed grains (STR)

__✓__ 20% wheat/10% feed grains (STR, DPS) JC

_____ 25% wheat/10% feed grains (USDA, OMB)

Accelerated Grain Reserve

Last April Secretary Bergland, using existing authority, announced a farmer-owned reserve designed to capture some of the excess 1976 crop wheat and rice. The "farm bill" requires a wheat reserve with terms and conditions essentially identical to those previously announced. In addition, the Conferees encourage us to establish a similar program for feed grains.

Secretary Bergland recommends that we announce our intention to place 30-35 million tons of grain (equal parts wheat and feed grain) in reserve prior to the beginning of the 1978/79 marketing year. The reserve would be accumulated through use of existing authority and new legislation as follows:

-- The farmer-held reserve announced in April will account for about 8 mmt of wheat and some rice. This reserve is held off the market until the price of wheat is at least $3.15 to $3.30 per bushel.

-- The USDA proposes to establish a similar farmer-held reserve for feed grains using existing authority. They propose to establish a minimum release price of 125 percent of the loan level ($2.50 per bushel for corn) and a loan recall price of 140 percent of the loan level ($2.80 for corn).

-- In addition, the Secretary recommends that new legislation be requested that would authorize direct purchase of 2 to 6 million tons of wheat for an international emergency food reserve. It would be similar to the one proposed by Senator Humphrey and once included in the Senate farm bill but deleted by the Conferees because of a jurisdictional dispute. The Administration and probably the majority of Congress supported this provision.

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In the absence of an international grains agreement, this reserve could only be released for noncommercial, food aid purposes. However, the legislation should also provide for this reserve to be used to meet U.S. obligations under an international reserves agreement.

We know of no opposition to the Secretary's recommendation for an accelerated reserve. OMB, although not opposed in principle to an international emergency food reserve, believes that the details of the reserve (e.g. countries eligible, conditions of release, replenishment of stocks) should be worked out before legislation is submitted.

Since grain prices are now at bargain levels, this is a good time to acquire stocks. Reserve acquisition would also partly offset the short-run loss in farm income associated with a set-aside. And, though State does not agree, it would seem to us that a further reserve build-up (particularly the international emergency food reserve) could be effective in blunting world hunger community criticism of a set-aside decision.

Decision

✓ Concur

_____ Do not concur

FC

Loan Levels

Feed grains: 1977. The farm bill now pending in Congress raises the minimum market support price for 1977 crop corn to $2.00 a bushel, and requires the support price for the other feed grains at comparable levels. A comparison between the levels previously announced and the required minimums is as follows:

	Previously Announced	"Farm Bill" Minimums
	$ per bushel	
Corn	1.75	2.00
Sorghum	1.70	1.90
Barley	1.50	1.63
Oats	1.00	1.03

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The 1977 marketing year for barley and oats began June 1, 1977; for corn and sorghum it begins October 1. Market prices for feed grains are now below the levels previously announced, and concern with prices below cost of production is becoming widespread among farmers. Raising the loan levels now would help protect prices and farm income.

Though we can wait for the farm bill to take effect before raising these levels, Secretary Bergland recommends that he use existing authority to raise these levels immediately. Though he cautions that doing so implies the farm bill will be signed, we believe it can be done and presented in such a way as to minimize this implication. To our knowledge, there is no agency opposition to this action. We recommend that you concur with the Secretary's recommendation.

Decision

___✓___ Concur

_____ Do not concur

JC

Wheat and Feed Grains: 1978. The Secretary also recommends that 1978 loan rates for wheat and feed grains remain at the 1977 levels. To keep the wheat loan at $2.25 a bushel the Secretary will have to use the authority in the new bill that permits the level to be reduced from $2.35 a bushel when supplies are excessive. The $2.00 per bushel loan for corn would be maintained and the other feed grain loans set in relation. Again, there is no agency opposition. We recommend concurrence.

Decision

___✓___ Concur

_____ Do not concur

JC

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TABLE 1.

TABLE 1

WORLD AND U. S. GRAIN STOCKS, AND WORLD GRAIN STOCKS AS A PERCENTAGE OF CONSUMPTION, 1966/67 THROUGH 1977/78 MARKETING YEARS

MARKETING YEAR	WORLD GRAIN STOCKS 1/		U. S. CARRYOVER STOCKS			
	QUANTITY	AS % OF CONSUMPTION	WHEAT	FEED GRAINS	TOTAL	AS % OF WORLD STOCKS
	(mil.MT)	(%)	(million metric tons)			(%)
1966/67	149.1	19	14.0	35.0	49.0	33
1967/68	165.4	20	17.1	45.1	62.2	38
1968/69	193.4	23	24.6	46.7	71.3	37
1969/70	177.1	20	26.8	45.5	72.3	41
1970/71	137.1	15	22.4	31.5	53.9	39
1971/72	157.2	17	26.8	45.4	72.2	46
1972/73	121.6	12	16.2	30.8	47.0	39
1973/74	125.3	12	9.3	21.5	30.8	25
1974/75	114.0	12	11.8	15.2	27.0	24
1975/76	113.7	12	18.1	17.3	35.4	31
1976/77 PRELIM.	168.8	16	30.2	30.4	60.6	36
1977/78 ESTIMATE	186.2	17	34.7	43.2	77.9	42

1/ Stocks of wheat and coarse grains at the end of the marketing year.

Source: U.S. Department of Agriculture

TABLE 2.

TABLE 2

WORLD GRAIN PRODUCTION, CONSUMPTION AND ENDING STOCKS
(in million metric tons)

Item	1971/72	1972/73	1973/74	1974/75	1975/76	1976/77	1977/78 Est.	1978/79 Projection 1/ Most Likely	Very Poor	Above Normal
PRODUCTION										
Wheat	348.2	343.3	371.6	356.4	349.4	412.7	397.6	413	x x	x x
Coarse grains	621.9	602.7	660.5	620.4	634.5	692.1	688.1	703	x x	x x
Total	970.1	946.0	1,032.1	976.8	983.9	1,104.8	1,085.6	1,116	1,051	1,142
CONSUMPTION										
Wheat	341.4	361.2	363.5	363.0	349.2	375.4	397.2	403	x x	x x
Coarse grains	608.6	620.5	664.9	625.1	635.0	674.3	671.1	693	x x	x x
Total	950.0	981.7	1,028.4	988.1	984.2	1,049.7	1,068.3	1,096	1,075	1,103
ENDING STOCKS										
Wheat	78.8	61.0	69.1	62.5	62.7	100.0	100.3	110	x x	x x
Coarse grains	78.4	60.6	56.2	51.5	51.0	68.8	85.8	96	x x	x x
Total	157.2	121.6	125.2	114.0	113.7	168.8	186.2	206	162	225

1/ Assuming no set-aside program in the United States; with a U.S. set-aside requirement of 15 to 25 percent for wheat and 10 percent for feed grains, ending stocks would be about 10 - 15 million tons lower.

Source: U.S. Department of Agriculture

NOTE: Figures may not add due to rounding.

TABLE 3.

TABLE 3

PROGRAM RESULTS UNDER VARIOUS SET-ASIDE OPTIONS FOR WHEAT AND FEED GRAINS

ITEM	1976/77	1977/78 ESTIMATE	1978/79 PROJECTIONS NO SET-ASIDE	15 - 10 1/	20 - 10 1/	25 - 10 1/
ACREAGE (mil.ac.)						
Planted -						
Corn	84.1	82.7	82.5	75.0	75.0	75.0
Sorghum	18.6	17.4	19.0	17.5	17.5	18.0
Barley	9.3	10.4	11.5	10.5	10.5	11.0
Oats	17.5	18.5	19.0	18.5	18.5	18.5
Wheat	80.2	74.4	74.5	66.0	63.5	60.5
Soybeans	50.3	59.3	58.5	59.5	59.5	59.5
Cotton	11.6	13.4	11.2	11.2	11.2	11.2
Total, 7 crops	271.6	276.1	276.2	258.2	255.7 Δ = 2.0	253.7
Set-Aside -	- -	- -	- -	19.8	22.5	24.7
Total planted & set-aside	271.6	276.1	276.2	278.0	278.2	278.4
FEED GRAINS AND WHEAT						
Production (mil. M. T.)	251.1	248.6	260	242	240 Δ = 1 mmt	239
Carryover (mil. M.T.)	60.7	77.9	99	88	86 "	85
Gross income (bil. $)						
Value of production	22.9	19.5	20.6	19.5	19.4	19.4
Deficiency payments	- -	1.5	3.3	2.7	2.6	2.5
Total	22.9	21.0	23.9	22.2	22.0	21.9
Government Outlays (bil. $):						
Deficiency payments	- -	1.5	3.3	2.7	2.6	2.5
Other	2.0	2.6	2.1	1.8	1.8	1.8
Total	2.0	4.1	5.4	4.5	4.4	4.3

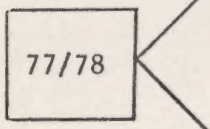
1/ Numbers are the percentages of required set-aside for wheat and feed grains, respectively.

Source: U.S. Department of Agriculture

8/24/77

FIGURE 1.

FIGURE 1.



1978/79	Probability of occur. at least as bad	Real Grain Price ($/bu)	% △ in CPI	Farm Income	Federal Outlays: Commodity Programs Payments (billion $)	Commodity Programs Other 1/ (billion $)	Other 2/ (billion $)	Total (billion $)
No Set-aside: Most Likely Weather	1 in 2	1.60	0	23.9	3.3	2.1	0	5.4
No Set-aside: Bad Weather	1 in 8	1.91	0.57	21.8	1.2	0.3	0.9	2.4
Set-aside: Most Likely Weather	1 in 2	1.72	0.23	21.9	2.5	1.8	0.3	4.6
Set-aside: Bad Weather	1 in 8	2.67	2.00 !!	20.7	0.9	0.2	3.0	4.1

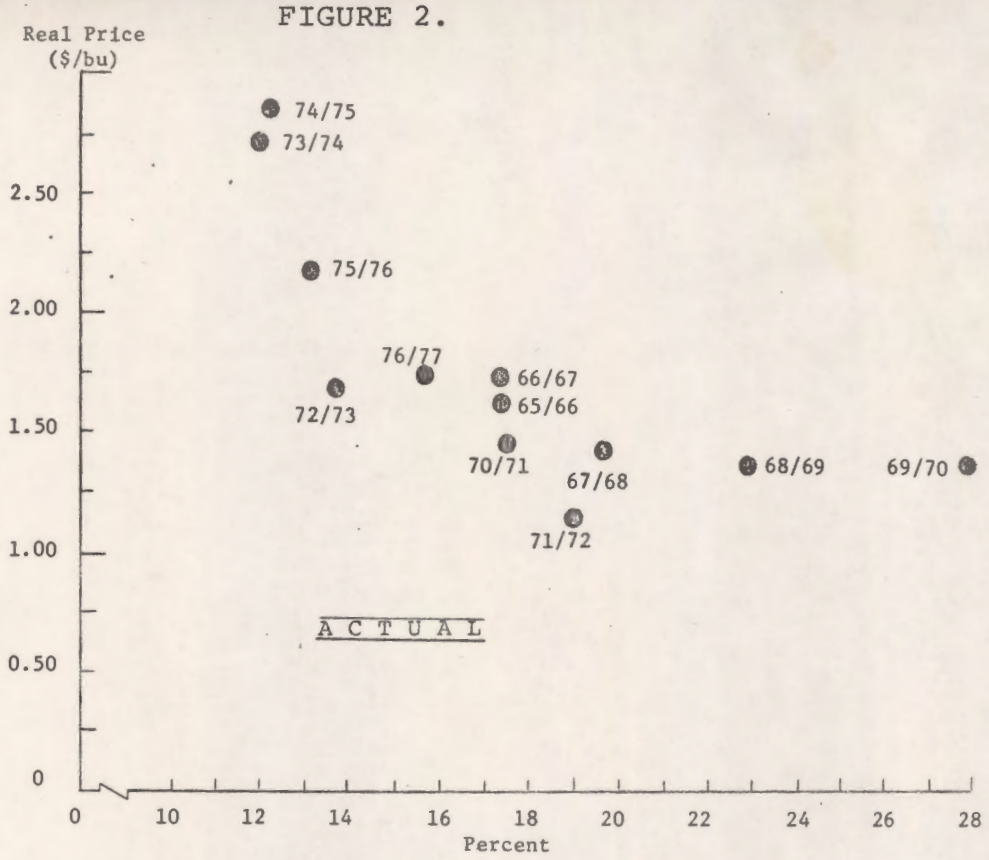
1/ Includes primarily loan and inventory outlays, most of which are recoverable.

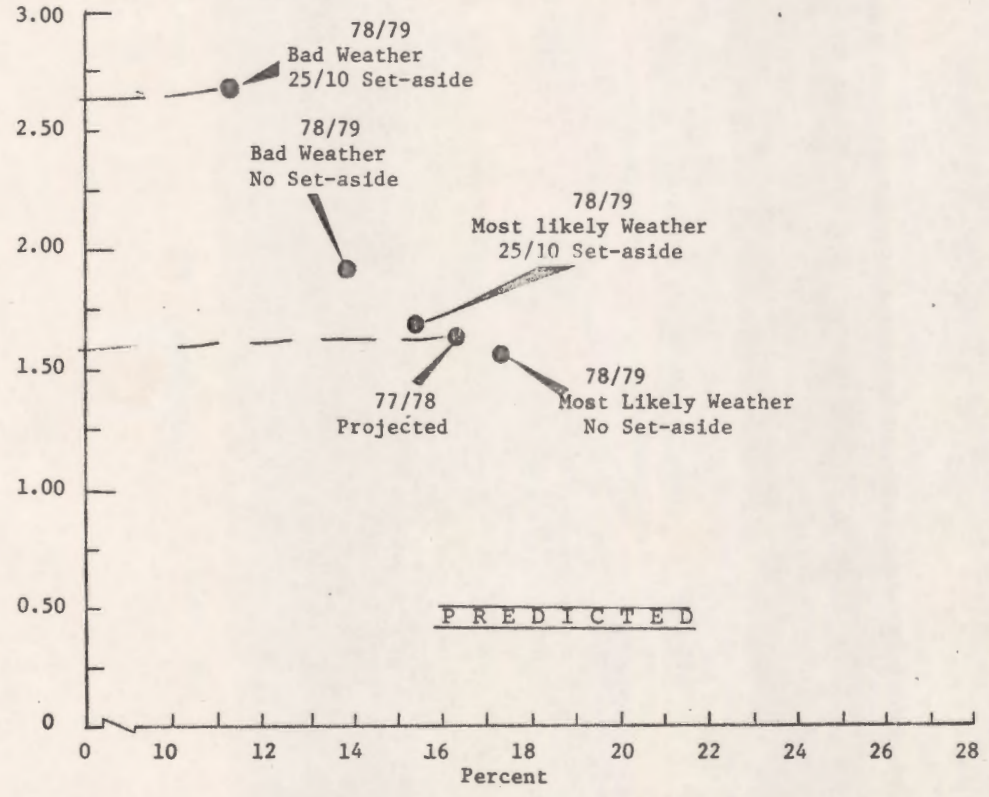
2/ All other Federal programs indexed to the CPI.

Source: Council of Economic Advisors

FIGURE 2.

FIGURE 2.





Source: Council of Economic Advisors

ENDING WORLD STOCKS AS A % OF WORLD CONSUMPTION
(Excluding the USSR)

THE WHITE HOUSE
WASHINGTON
August 27, 1977

Zbig Brzezinski

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

cc: Frank Moore
The Vice President

RE: INTERNATIONAL RELATIONS COMMITTEE

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

August 26, 1977

3615 -
Without delay, prepare one-page talking paper for me & V.P. Return this memo to me
F

TO: THE PRESIDENT

FROM: BILL CABLE Bill

THROUGH: FRANK MOORE F.M.

The issues in International Relations Committee were these:

1. Sen. John Culver made an award-winning presentation against the sale.

2. Security issues.

3. Cost effectiveness of AWAC versus alternatives

Sen. Culver can't be as good a second time and we will be better prepared to counter more effectively.

Although you had agreed to six substantive assurances requested by Sen. Humphrey, they were not clearly understood by the Committee. Adm. Turner's statements to the GAO to the effect that we can't sanatize the AWACs enough to make them safe were highly visable and there was a question as to whether Iran would want the sanitized system.

When we have a formal agreement from Iran regarding the sanitized AWACs, that announcement could effectively curb many of the security questions. I strongly feel that the timing of any announcement be coordinated with IRC consideration of a disapproval resolution.

Finally on the cost effectiveness issue we have a study under way the results of which are not final. We may have to admit that we should let Iran buy whatever price system we can deliver. This will not please Lee Hamilton.

After discussions with Chairman Zablocki, Committee staff and State Department Liaison, I feel the following people could be convinced to switch:

L.H. Fountain was unsure of his original vote and Chairman Zablocki feels he will switch.

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Helen Meyner has indicated disatisfaction and could be converted.

Don Bonker would like his vote back -- the Boeing people in his district didn't like his position. They are a potent political force.

Kiki de la Garza probably traded for a sugar vote with Gary Studds and now may be convinced to switch.

Leo Ryan was angry with a Zablocki staff guy and may have simply voted against the Chairman.

I feel that calls to the above to encourage them to reassess their position in light of the changes we have made to ease their fears would be helpful.

Broomfield should be called. He is sometimes partisan but I feel a call will help keep the Republican support solid.

I don't understand why Wyche Fowler shouldn't be with us on this issue. I think a call could make a big difference.

Brzezinski should ~~probably~~ keep the pressure on Solarz and Bingham.

I will be working with the Committee Chairman and staff over the next weeks to keep on top of the situation.

We will CALL Every Member of the Committee.

VOTE ON AWACS
House International Relations Committee

In favor of sale	Opposed to sale
Zablocki	**Fountain
Fascell	Diggs
Wolff	Nix
*Bingham	Fraser
Yatron	Rosenthal
*Solarz	Hamilton
Danielson	Harrington
*Broomfield	**Ryan
Derwinski	Collins
Findley	**Meyner
Buchanan	**Bonker
Winn	Studds
Gilman	Ireland
Guyer	Pease
Lagomarsino	Beilenson
Goodling	de la Garza
Pettis	**Fowler
	Cavanaugh
* need to be firmed up	Whalen
(Burke - absent -- could support with some encouragement)	**could support with some encouragement

5388

7721147

THE SECRETARY OF STATE

WASHINGTON

August 17, 1977

SECRET

MEMORANDUM FOR: THE PRESIDENT

From: Cyrus Vance cvd

Subject: EPS Protection for Selected UN Missions in New York

I am reluctant to reopen the question of EPS protection of diplomatic missions in New York, but I believe there are compelling reasons for doing so. You will recall that upon my recommendation, EPS protection was withdrawn on May 31 from the UN Missions of Israel, Syria, Jordan and Lebanon, and the Observer Offices of the Arab League and the PLO. I am requesting reinstitution of protection for the Missions of Israel and Syria, as well as the PLO Observer Office, until the end of the 1977 General Assembly.

There are special circumstances regarding these three Missions which argue for a continuous EPS protective presence. Briefly, these include:

Israel. Israeli citizens and property have been subjected to terroristic attacks throughout the world in recent years. We cannot be complacent about the capability of terrorist organizations or individuals to extend their activities to this country. The Israeli Mission strongly protested removal of EPS protection.

Syria. There have been three incidents in the past year at the Syrian Mission. At the direction of Foreign Minister Khaddam, Syria formally requested on June 23 that protective coverage in New York be resumed.

SECRET
GDS

DECLASSIFIED
Per; Rac Project
ESDN; NLC-126-9-6-1-5
BY lcs NARA, DATE 2/8/13

The PLO. Given the PLO's own involvement in terrorism and violence over the years, the PLO office in New York would appear to be a particularly likely target. U.S. efforts to contain international terrorism would be undercut if the PLO were itself attacked in this country.

Protection afforded these three Missions in New York can have an important effect on the security of our officials abroad. Our own diplomatic Missions are generally provided more protection by the host governments than we ourselves furnish in either Washington or New York. Specifically, in Syria and Lebanon (where the PLO has its headquarters) the U.S. chanceries and our Ambassadors' residences are protected 24 hours a day and the Ambassadors themselves have a 24-hour bodyguard. (A failure to maintain protection for the PLO Mission in New York could undermine special security arrangements in Beirut and put Ambassador Parker--in particular--in increased jeopardy.) In Israel both our chancery and the Ambassador's residence are protected 24 hours a day.

If you agree to reinstitute EPS coverage at these three Missions through the end of the forthcoming General Assembly, we can reconsider by that time what would be the best way to handle this problem over the longer run. I think such protection is particularly important during this period of our intensive peacemaking efforts following my Middle East trip, when elements opposed to a settlement may seek to disrupt our efforts.



THE WHITE HOUSE

WASHINGTON

Date: August 24, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat concur + comments
Bob Lipshutz concur
Jack Watson concur by phone
Hugh Carter attached

FOR INFORMATION:
The Vice President
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: SECRET Brzezinski memo dated 8/24/77 re EPS Protection for Selected U.N. Missions in New York

no explanation

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: Friday

DATE: August 26, 1977

ACTION REQUESTED:

_X_ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

DECLASSIFIED
Per; Rac Project
ESDN; NLC-126-9-6-2-4
BY KS NARA DATE 2/8/13

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

WASHINGTON

Date: August 24, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Bob Lipshutz
Jack Watson
Hugh Carter

FOR INFORMATION:
The Vice President
Jody Powell

482

Cary
Eizenstein
JH

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: SECRET Brzezinski memo dated 8/24/77 re EPS Protectio for Selected U.N. Missions in New York

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: Friday

DATE: August 26, 1977

Secret

ACTION REQUESTED:

_X_ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

I concur with the Secretary's request and with Zbig's remarks. I would also suggest that OMB give a cost estimate and that Secretary Vance prepare a memorandum for circulation and comment on future policy regarding EPS protection, so that these decisions are not made on an ad hoc basis.

Sth

DECLASSIFIED
Per; Rac Project
ESDN; NLC-126-9-6-2-4
BY KS NARA, DATE 2/8/13

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

5388

7721147

THE SECRETARY OF STATE

WASHINGTON

August 17, 1977

SECRET

MEMORANDUM FOR: THE PRESIDENT

From: Cyrus Vance CRV

Subject: EPS Protection for Selected UN Missions in New York

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SECRET
GDS

DECLASSIFIED
Per; Rac Project
ESDN; NLC-126-9-6-3-3
BY RS NARA DATE 2/8/13

The PLO. Given the PLO's own involvement in terrorism and violence over the years, the PLO office in New York would appear to be a particularly likely target. U.S. efforts to contain international terrorism would be undercut if the PLO were itself attacked in this country.

Protection afforded these three Missions in New York can have an important effect on the security of our officials abroad. Our own diplomatic Missions are generally provided more protection by the host governments than we ourselves furnish in either Washington or New York. Specifically, in Syria and Lebanon (where the PLO has its headquarters) the U.S. chanceries and our Ambassadors' residences are protected 24 hours a day and the Ambassadors themselves have a 24-hour bodyguard. (A failure to maintain protection for the PLO Mission in New York could undermine special security arrangements in Beirut and put Ambassador Parker--in particular--in increased jeopardy.) In Israel both our chancery and the Ambassador's residence are protected 24 hours a day.

If you agree to reinstitute EPS coverage at these three Missions through the end of the forthcoming General Assembly, we can reconsider by that time what would be the best way to handle this problem over the longer run. I think such protection is particularly important during this period of our intensive peacemaking efforts following my Middle East trip, when elements opposed to a settlement may seek to disrupt our efforts.

s8p3m

THE WHITE HOUSE

WASHINGTON

August 25, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT
LYNN DAFT

SUBJECT: Reaffirmation of Turndown for Emergency Declaration Due to Fire - California

In the attached memorandum, Secretary Harris recommends that we reaffirm our earlier decision of August 11, 1977 in which emergency assistance to the State of California due to a fire in the Santa Barbara area was turned down. Members of the Federal Disaster Assistance Administration (FDAA) Regional Office reassessed the situation but were unable to obtain any additional information which would change the original finding.

We concur with Secretary Harris and recommend your concurrence in the proposed reply to Governor Brown.

X

20678

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL DISASTER ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20410

OFFICE OF THE ADMINISTRATOR

IN REPLY REFER TO:

Honorable Edmund G. Brown, Jr.
Governor of California
Sacramento, California 95814

Dear Governor Brown:

This is in further response to your recent request for reconsideration of our decision not to recommend to the President that he declare an emergency for your State because of the impact of a fire in the Santa Barbara hills.

We have given your request careful review and consideration. However, we have been unable to obtain any additional information which would change our original finding that there were adequate temporary housing facilities within the affected area and that debris removal can be accomplished without Federal emergency assistance. Therefore, I must inform you that we have reaffirmed our original assessment and our decision not to recommend to the President that he declare an emergency in this instance.

Sincerely,

Thomas P. Dunne
Administrator

Concurrence:

J Carter

Date: August 27, 1977

THE WHITE HOUSE
WASHINGTON

/	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
	/	MONDALE
		COSTANZA
/		EIZENSTAT
		JORDAN
		LIPSHUTZ
/		MOORE
		POWELL
/		WATSON
		LANCE
/		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
/		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE WHITE HOUSE
WASHINGTON

August 27, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

RE: WEEKLY STATUS REPORT
PUBLIC WORKS ACT SETASIDE

Electrostatic Copy Made
for Preservation Purposes

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

August 26, 1977

C

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Domestic Policy Staff Weekly Status Report

LABOR

Humphrey-Hawkins: A redraft of our proposed bill has been received from Humphrey and Hawkins staff. We are reviewing with CEA staff.

Independent R & D: At your request, an assessment will be in to you September 6.

TRANSPORTATION

International Air Negotiations: I will be working with DOT, State, CAB and STR on further analysis of the responsibility in International Air Negotiations.

Concorde: Meeting with DOT on August 29 to discuss the options relating to a proposed national noise rule for supersonic transports which is scheduled to be announced in early September.

Urban Policy: We are working with DOT to develop the transportation component for the community and economic development portion of the urban policy statement.

MINORITY BUSINESS

Public Works Act Setaside: Meeting with representatives from surety companies, banks, minority trade associations and Commerce to ensure effective implementation of minority business provision of this law.

What is 8A status?

Minority Business Initiatives: Working with Fallows to prepare statement incorporating your decisions on Administration action in this area. Statement to be submitted to you by September 1.

Small Business Investment Act: Working with OMB, SBA and Commerce to prepare memo on the Administration's position on Parren Mitchell's bill to provide additional federal government support for minority enterprise small business investment companies. Memo to you by September 8.

HOUSING AND URBAN DEVELOPMENT

Urban Policy: We are working with HUD in formulating urban policy initiatives. Our initial objective is to identify proposals for the FY '79 budget by September 15. The initial reports of our task forces are due in September.

Citizen Action and Volunteerism: Working with Vice President's Staff, ACTION, CSA, HUD and Agriculture on suggestions for national voluntary initiatives and citizen action in cities and rural areas. Option paper by early September.

Neighborhood Commission: Appointments to be made before October 1. Commission can help in proposing policy options for city revitalization.

ECONOMICS AND BUSINESS

Tax Reform: We continue to consult with Treasury, CEA and outside experts such as Joe Pechman and Stanley Surrey.

Trade Adjustment Assistance: We are working with Commerce, STR, and the agencies on a general TAA program. The paper should clear interagency review within the next several weeks and we will have a decision memo to you shortly.

GSP-OPEC: We are working with NSC and the Vice President's office to coordinate consultation on the Mondale Option with Congress and some of the OPEC countries.

HEALTH

National Health Insurance: The next meeting of the HEW Advisory Committee on National Health Insurance will be in Canada on September 8 and 9.

COMMUNICATIONS

Telephone Interception: We have worked with NSC and other agencies on a policy to deal with Soviet interception of the domestic telephone system. The report has been submitted to the NSC.

Public Broadcasting: We have worked out proposals for reauthorization legislation with OMB and HEW, and the decision memo is on the way to you.

Reorganization: We are working with OMB and Commerce on the charter and budget of the new Assistant Secretary of Commerce, who will replace the Office of Telecommunications Policy. Commerce expects to get you a recommendation on that appointment in September.

ENERGY

Nuclear Licensing Reform: Working draft of legislation circulated for comment to interested outside parties on August 19. Working with small staff group to develop options for possible companion safety initiative.

Phantom Taxes: Review group including Treasury, OMB, DOE staff will be formed to examine problem and suggest remedies. Will also work with California PUC to evaluate their program which limits tax pass-through. Preliminary memo complete by September 15.

Alcan Natural Gas Pipeline: Staff level negotiations completed with Canadians. Schlesinger-MacEachen meeting set for today. The prospects for agreement on an acceptable Alcan route seem good.

Oil Imports: Working with Schlesinger's staff to draft statement of concern over import levels, and will continue to consult with Jody on timing and forum of statement.

Spent Fuel Policy: We will be working with Jim Schlesinger on this.

AGRICULTURE AND RURAL DEVELOPMENT

Setaside: A decision memo on this topic will be forwarded to you today.

Sugar: We are working with Justice and USDA to work out the details of an interim payment program. Decision memo to you by Tuesday.

CIVIL RIGHTS AND JUSTICE

Undocumented Aliens: We will consult with Justice Department as they write the legislation.

Handguns: We will review the draft legislation with Justice, OMB and others.

Morris Dees Memo on Death Penalty: We will meet with Justice and comment on the memo by September 1.

POSTAL SERVICE

Options memo on postal policy will be submitted today.

NATURAL RESOURCES

Water Projects: We are working with Frank Moore's office and OMB, Interior and Army to develop follow-up strategy on water projects funded in the Appropriations bill. Memo to you within a few days.

Mining Law Reform: Working with Interior, OMB and other agencies to put Administration Mining Law Reform bill in final form by early September.

National Heritage Trust Proposal: Working with Interior on proposal. Targeted date for completion is September 20.

EDUCATION

Expiring Legislation: We are working with HEW in formulating legislative proposals for expiring education legislation for elementary and secondary education. Initial proposals will be available in September.

Service Academies: We have received comments from NSC and will incorporate them into the study you requested of the curricular offerings and their relationship to future career opportunities at the service academies.

WOMEN

We are working with OMB and interagency and agency task forces concerned with equity for women. As proposals are ready they will be forwarded to you.

CIVIL SERVICE MATTERS

Hatch Act Reform: Hearings are being held in the Senate. We are working with the Civil Service Commission and Senate staff on policy development. Also coordinating with Frank Moore's staff on legislative strategy.

INTEGRITY AND OPENNESS MATTERS

Executive Order on Logging: Memo prepared by Justice has been reviewed. Justice draft has been redrafted by the Executive Office Working Group and circulated for comment to agencies. Target date is immediately after Congress' return in September.

Lobby Reform: House Committee is in mark-up, and we sent proposed language on executive branch lobbying developed with OMB and Justice to the Hill.

Revision of Security Classification System: We have consulted with NSC and the agencies on the questions you raised. We will send you a memo next week. A draft of the executive order will be ready to circulate to the agencies and to groups outside the government immediately thereafter.

Public Officials Integrity Act: We are working with Frank's staff, Justice, CSC and the Speaker's office to secure House passage this year.

Funding for Printing of Federal Register and Code of Federal Regulations: GSA has changed their position on this. They are working on a memo that will be in to you soon.

OSHA Reform: We are working with OMB, CEA and DOL to establish an interagency task force as approved by you.

CONSUMER MATTERS

Agency for Consumer Protection: We are working with Esther Peterson, OMB and Frank's staff to develop strategy for initiating House action.

Class Action: We are working with Esther Peterson and Justice to review recently-introduced consumer class action bills and to develop an Administration position. We are working with Esther Peterson, Frank's staff and Justice to help enact the FTC Improvements Act.

REGULATORY REFORM PROJECTS

Regulatory Reform: The Reorganization Project has redrafted the proposed guidelines on writing and "sunsetting" regulations to incorporate your comments as well as the comments received from the Cabinet. A draft Executive Order will be circulated next week.

Surface Transport Reform: Following your meeting with Secretary Adams, a task force is studying and preparing a decision memo for you on surface transport reform options.

Airline Regulatory Reform: We are continuing to assist the Senate committee in revising the air bill. The committee will probably report the bill in September. A member of our staff is traveling to many cities this month to increase awareness of the Administration's program.

Financial Institutions Regulations: We are working with Treasury, HUD, OMB and CEA to develop a format for approaching the new reform agenda in this area beyond NOW account legislation now on Capitol Hill.

HUMAN RESOURCES

Welfare Reform: HEW and Labor are working on the legislation to be submitted to Congress after Labor Day. Some technical changes may be necessary in the program as a result of this review, although nothing substantial. We are working with OMB in having the departments flash-out the administrative arrangements they contemplate for the program. OMB believes there may be a need for a meeting with the President in the middle of September.

H.R. 7200: This House-passed bill has become the vehicle for Senator Long's welfare-social security strategy for this session. We are working with interested parties of the EOP and HEW to indicate to the Finance Committee our disapproval of many features of the bill. We will keep you informed of progress including the relationship of H.R. 7200 to Social Security.

Indo-Chinese Refugees: A bill to implement your decision to extend and phase-out the refugee assistance program is currently being cleared by OMB and should be introduced when the Congress returns. The inter-agency task force working on the admission of the 15,000 new refugees and future refugee policy is continuing its work.

Veterans Hospital Study: The National Academy of Sciences has issued a report on the VA hospital system which makes a number of recommendations for improvements, including beginning to integrate the VA system into the local health delivery systems where they are located. The VA is required to send its response to the report to Congress by September 1. We are working with VA and OMB on the substance of that response. In line with your discussion several months ago with Max Cleland, we will be preparing a memorandum for your decision on the important issues involved here.

MISCELLANEOUS

Foreign Gifts: Working with GSA to prepare draft of guidelines for government agencies regarding receipt of foreign gifts. Memo to you within a few weeks.

THE WHITE HOUSE
WASHINGTON

August 27, 1977

Bert Lance

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

cc: Stu Eizenstat
Charlie Schultze

RE: FULL FUNDING POLICY FOR THE 1979 BUDGET

THE WHITE HOUSE
WASHINGTON

also

	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

did you send copy of my note - showed do so

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
		LIPSHUTZ
	X	MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

8/26/77

Mr. President:

Eizenstat, Schultze, Watson and Brzezinski concur.

Schultze and Eizenstat wish to emphasize two points:

1) It is wise that this policy applies only to future starts -- not retroactively.

2) They believe that it should be clearly understood that the full funding concept should apply only to physical projects and not to new social programs. (Thus, for example, when national health insurance is proposed next year, we would want to ask for budget authoritiy only for the first phase-in in the first fiscal year.)

✓ ____approve limiting the full funding proposal to procurement and construction contracts.

--Rick

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for Preservation Purposes

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 24 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: Bert Lance

SUBJECT: Full Funding Policy for the 1979 Budget

I. BACKGROUND

This memorandum outlines our plans for carrying out your decision to propose full funding of major procurement and construction projects in the 1979 Budget. It also discusses some pitfalls associated with full funding that must be avoided.

II. DISCUSSION

We have instructed the agencies to develop their 1979 budget requests for all major procurement and construction programs on a full funding basis. The full funding policy does not apply to level-of-effort activities, such as operation and maintenance or entitlement programs. Generally, research and development programs are considered to be level-of-effort activities. However, when practicable, specific projects and project phases are to be fully funded. Some agencies may need to have exceptions to this policy because the Congress may insist on annual funding for some programs. Provision for such exceptions is made in our instructions.

The principal risk of the full funding policy is the potential for abuse by the Congress when acting on the budget. For example, they might reduce the full funding budget authority requested to that required for the budget year alone, and use the amount "saved" for other purposes. A clear understanding should be reached with the leadership (and by the leadership with the Appropriations Subcommittees) before we fully implement the policy. Under the new Congressional budget process, members are beginning to see the need for full funding as they make their budget decisions. We are optimistic that they will not abuse the policy.

Implementing the policy retroactively would require an increase of budget authority on the order of $36 billion in 1979 for ongoing activities (including new starts approved for 1978). In contrast, limiting the policy to new starts in 1979 would require an increase of budget authority on the order of $3 billion above the current budget planning ceilings. Outlays would not change.

III. RECOMMENDATION

That full funding in the 1979 Budget be applicable only to new starts until Congressional acceptance of the policy is demonstrated. However, we plan to include in the budget summary information on the total cost to complete projects currently underway.

Approve ✓ Disapprove_____ See me_____

RECOMMENDATION

That OMB and White House Congressional Liaison officials initiate discussions with Congressional leaders on this subject during the current session to obtain their support.

Approve ✓ Disapprove_____ See me_____

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for Preservation Purposes

THE WHITE HOUSE

WASHINGTON

Date: August 24, 1977 MEMORANDUM

FOR ACTION:
Stu Eizenstat - attached
Frank Moore
Jack Watson concur by phone
Charlie Schultze concur
Zbig Brzezinski concur

FOR INFORMATION:
The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Lance memo dated 8/24/77 re Full Funding Policy for the 1979 Budget

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: Friday

DATE: August 26, 1977

ACTION REQUESTED:

__X__ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

Duplicate
Copy sent to
NSC - 3 PM - 8/26
for immediate turnaround

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

August 26, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT

SUBJECT: Lance Memo re Full Funding Policy for the 1979 Budget

I support both OMB recommendations. It would be a mistake to apply this policy retroactively to already authorized projects. It would require a large additional appropriation to little advantage. The proposal by OMB would not add to the deficit since it would not affect outlays but would give a more realistic picture of the costs of new programs and projects.

However, I have talked with Charlie Schultze about one point which should be made clear and with which he strongly agrees. That is, the full funding concept should apply only to physical projects and not to new social programs.

Thus, for example, when we propose our national health insurance program next year, while internally we should have an idea of its eventual costs, we would want to ask for budget authority only for the first phase-in in the first fiscal year.

I believe it is the intent of the OMB proposal to limit full funding to procurement and construction contracts. This needs to be made clear.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

August 26, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLIE SCHULTZE CLS

SUBJECT: Lance memo on full funding policy for the 1979 budget

I agree wholeheartedly with the proposal to fully fund major procurement and construction projects in the 1979 budget. I also agree that it is wise to apply this principle only to future starts. Retroactive application of full funding serves no purpose.

THE WHITE HOUSE
WASHINGTON

8/26

Cathy –

ZB's office claims that they never received this staffing. Would you please send them another copy for immediate turn-around.

Thanks,

IS

THE WHITE HOUSE
WASHINGTON

August 27, 1977

Jack Watson

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

cc: Frank Moore
Hamilton Jordan

RE: SOUTHERN GOVERNORS' CONFERENCE

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

Electrostatic Copy Made
for Preservation Purposes

Jack

David Pryor will help at SGC & in Ark. Same with Boren Get info to them J.C.

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson August 26, 1977

RE: Southern Governors' Conference

As I just mentioned to you, the Southern Governors' Conference will be held in San Antonio Monday, Tuesday and Wednesday of next week. Ed Edwards of Louisiana has proposed a resolution opposing ratification of the Panama Canal treaties. A copy of Governor Edwards proposed resolution is attached.

I have had conversations with Julian Carroll and George Busbee, both of whom will help us with the resolution. Julian is Chairman of the Resolutions Committee. I understand that the Resolutions Committee consists of the following Governors:

Mon. am 1:30

Julian Carroll ✓	George Wallace ✓
> David Boren	Ed Edwards ✗
David Pryor ✓	Jim Edwards ✗

I don't know if there's much we can do with Ed Edwards and Jim Edwards, but I am reasonably sure that a telephone call to Boren and Pryor asking for their help would work. Since Julian was at the briefing last Tuesday, and since I have talked to him several times about the matter, it is not necessary for you to call him. (A call to Busbee wouldn't hurt.) I understand that Reubin Askew, Jay Rockefeller and Cliff Finch will not be at the Southern Governors' Conference.

Other Governors who I expect will be in attendance are:

George Busbee	Ray Blanton
Dolph Briscoe	Jim Hunt

I have talked with Sol Linowitz and am trying to arrange for him to go the the National Governors' Conference in Detroit on September 8. The House Foreign Relations

Committee is considering a hearing on that day which, if held, could preclude Ambassador Linowitz's presence in Detroit. Making a presentation to all of the Governors at once on the issue seems to me to be a good idea.

5. PANAMA CANAL ZONE

Jack / This is proposed for passage next week in San Antonio. Julian is Chairman of Resolutions Comm. Let me know of your thoughts. Thanks Frank HARSCHAW 502-564-26

Whereas, at a cost of over five billion dollars, the Panama Canal was constructed and has been used for the benefit of international commerce and world trade by reducing the length of time within which ships can navigate between oceans and countries and

Whereas the United States of America, bearing the burden of such massive costs, entered into a treaty with the Republic of Panama to construct, maintain, operate and protect this vital interoceanic artery in perpetuity for the benefit of all free nations of the world, and

Whereas the strategic importance of the canal requires the protection of a world power and a major world nation, and

Whereas the economic stability of the United States and all other countries depend upon free and unrestrained access to the canal and its facilities, and

Whereas we have witnessed, with the Suez Canal, the proliferating problems which result from inadequate controls over such a vital link in international commerce when left in the hands of an unstable government without the wealth, technology and manpower to protect its operation, and

Whereas, the proximity of the canal to the shores of this country, and particularly of the canal to the states which comprise the Southern Governors' Conference, makes its continued control and operation under the terms of the existing treaty imperative.

Now, therefore, be it resolved by the Governors of the Southern Governors' Conference that the Conference hereby urges and requests the United States Senators representing the states of the Conference in the Congress of the United States to oppose vigorously any treaty which would alter, remove or reduce the existing control over and operation of the Panama Canal and the Panama Canal Zone as presently and historically exercised by the United States of America.

Be it further resolved that a copy of this resolution be transmitted without delay, to the United States Senators who represent the states of the Conference, to the Secretary of State, and to the President of the United States.

(Submitted by Governor Edwin W. Edwards - Louisiana)

MEMORANDUM THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO THE PRESIDENT

FROM: LANDON BUTLER

DATE: AUGUST 26, 1977

SUBJECT: STATUS OF PANAMA CANAL ENDORSEMENTS

For the last two days I have been working to pin down written endorsements of the new Panama Canal Treaty from prominent people in the public and private sector. Listed below are the people who have actually provided us with written endorsements:

--Irving Shapiro (personal endorsement)
President
The Business Roundtable

--Heath Larry (personal endorsement)
President
National Association of Manufacturers

--Max Fisher and Seymour Milstein
Chairman of the Board and President respectively
United Brands Company
United Brands is the largest taxpayer in Panama - they pay $16 million a year.

--Averell Harriman

--Robert Roosa
Partner
Brown Brothers Harriman & Company

With the help of Averell Harriman and Robert Roosa, we have also obtained endorsements from the following 13 people:

--Howard L. Clark
Chairman, Executive Committee
American Express

--Roger H. Morley
President
American Express

--Eugene R. Black
Former President
World Bank

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-- Richard M. Furland
Chairman
Squibb Corporation

-- Robert H. Knight
Shearman & Sterling
(former General Counsel of the Treasury)

-- Peter Solbert
Senior Partner
Davis, Polk & Wardwell

-- John W. Brooks
Chairman
Celanese Corporation

-- James H. Evans
Chairman
Union Pacific Corporation

-- James W. Wilcox
Chairman and President
Joy Manufacturing

-- Robert O. Anderson
Chairman
Atlantic Richfield

-- W.L. Hadley Griffin
Chairman and President
Brown Group, Inc.
St. Louis

-- Edward Bronfman
Seagrams, Inc.

-- Lewis Lapham
Former Chairman
Bankers Trust Company
Former President
Grace Line, Inc.

Other endorsements in hand now are:

--Jack Valenti
Former Special Assistant to the President. Currently, President of Motion Picture Association of America.

--Lincoln Gordon
Former Assistant Secretary of State for Inter-American Affairs, former Ambassador to Brazil, and former President of Johns Hopkins.

--Harry McPherson
Former Deputy Under Secretary of the Army for International Affairs and former Special Counsel to President Johnson

--Nicholas deB. Katzenbach
Former Attorney General, former Under Secretary of State and currently Vice President of IBM.

--Edwin M. Martin
Former Assistant Secretary of State for Economic Affairs, former Assistant Secretary of State for Inter-American Affairs, and former Chairman of the Development Assistant Committee of OECD.

--Helen Meyer
Chairman of the Board
Dell Publishing Company

--Maj. Gen. Robert Fleming
Former Governor Canal Zone and former President Panama Canal Company.

--Stephen Ailes
Former Secretary of the Army, former Chairman of Panama Canal Board and former President Association of American Railroads. Currently Director of Riggs National Bank.

--Burke Marshall
Former Assistant Attorney General, former Vice President of IBM and presently a law professor at Yale University.

--Robert Ellsworth
Republican.
Former Ambassador to NATO,former Assistant Secretary of Defense for ISA, former Deputy Secretary of Defense under President Ford, and former Congressman from Kansas. Willing to testify or form group of supporters.

--William Rogers
Former Assistant Secretary for Inter-American Affairs and Under Secretary of State under President Ford. Presently a partner in Arnold and Porter. Willing to do anything to help.

--General Brent Scowcroft
Former NSC Director.

A number of people have expressed an interest in endorsing, a number of potential supporters are on vacation until after Labor Day,and others will endorse but want to see a draft of the treaty first. I will keep you posted on further progress.

THE WHITE HOUSE
WASHINGTON
August 27, 1977

Frank Moore

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

RE: CONTACTING DICK BOLLING

THE PRESIDENT HAS SEEN.

done
8/27

THE WHITE HOUSE

WASHINGTON

August 26, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE FM

The following is the correct telephone number should you want to contact Dick Bolling:

809/863-2000.

That is the switchboard number at the base where he is staying but they will be able to ring his room directly for you.

All reports are that he is doing very well.

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THE WHITE HOUSE
WASHINGTON

August 27, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

cc: Tim Kraft
Frank Moore
Jack Watson
Bert Lance

re: Bidding Procedures for National Forest Timber

Letters to Sens. Church, Kennedy, Bumpers unsigned - attached

THE WHITE HOUSE
WASHINGTON

8/26/77

Mr. President:

OMB comments:

1. (p. 2, para. 2) Strengthening appraisal procedure in any way would be desirable, but we aren't aware of any promising approaches at this time.

2. Melcher-Church amendment would require monitoring bidding patterns to detect collusion rather than requiring a sealed bid to qualify for oral bidding. Sealed bids are already required to qualify.

No other staff comments.

TWO SIGNATURES REQUESTED.

--Rick

THE PRESIDENT HAS SEEN.

Stu -
See me re
Justice & Ag
making statements
J

THE WHITE HOUSE

WASHINGTON

August 25, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu
LYNN DAFT LD

SUBJECT: Bidding Procedures for National Forest Timber (At Your Request)

As you know, the Senate is considering an amendment to the National Forest Management Act that would have the effect of discouraging the use of sealed bidding in the sale of National Forest timber. Senators Bumpers and Kennedy have recently written you expressing their opposition to the amendment (Tab A). Senator Church has written in support of it (Tab B). Though your note to me indicated that you agree with the Bumpers/Kennedy position, as do we, we thought you should have the benefit of a more complete description of the issue and the options before we respond to the Senators.

BACKGROUND

There has been continuing controversy as to whether sealed or oral auction bidding methods should be used in the sale of timber from National Forest lands. The controversy arose from efforts to implement a provision of the National Forest Management Act of 1976, which requires the Secretary of Agriculture to take action to eliminate collusive practices in bidding for National Forest timber. That law requires sealed bidding on all sales except where the Secretary determines otherwise by regulation.

The central issue is how to achieve the effects of open and fair competition in the sale of National Forest timber, namely a competitive price for the public's timber, in a market that is frequently dominated by a single seller (the Forest Service) and comparatively few potential buyers. In other words, the issue is how to promote competition in a setting this is often not conducive to competitive performance.

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The Department of Agriculture feels that the present law is reasonably workable. This law directs the Secretary to use sealed bidding except where he determines otherwise by regulation. These regulations provide for up to 75 percent oral auction in areas tributary to dependent communities defined in a way that makes most of Western forest lands eligible. Where "outside" bidders have increased their share of purchases above the previous two-year average, they provide for up to 100 percent oral auction. And, they require oral auction where an individual sale is 20 percent or more of a year's quota of sales. There has been very little experience to date under that law, since the final regulations were only issued June 2. From a technical standpoint, the USDA reports very little evidence as to (1) whether oral bidding is, in fact, much help to dependent communities, or (2) whether the risk of collusion is substantially greater under the oral auction method of bidding. The Justice Department is of the opinion that it is easier both to initiate and to continue collusion under oral bidding.

Though the evidence is meager, we suspect that Forest Service receipts would be maximized and the opportunity for collusion minimized by greater use of sealed bidding. The drawback to sealed bidding is the increased uncertainty it creates for those small local mills that are dependent on successfully bidding for Forest Service timber near their mills. It also appears to us that these problems could be lessened by strengthening the appraisal procedure so that advertised prices more nearly approximate market prices. Bid prices consistently exceed appraisals by a wide margin, often by 70 percent or more.

Why not?

In recent weeks, complaints from western sawmills and dependent communities have mounted, to the extent that bills to repeal the sealed bidding requirements of the Act have been passed in the House Interior and Insular Affairs Committee (H.R. 6362), and the Senate Energy and Natural Resource and Senate Agriculture and Forestry Committees (S. 1360). The Administration is on record as opposing H.R. 6362 which would mandate an advisory committee on timber sales and repeal the anti-collusion provisions of the National Forest Management Act. The Department of Agriculture is on record as having no objections to S. 1360. The issue has not been presented to you before.

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In addition to the correspondence addressed to you, Senators Church and Melcher have recently asked the Department of Agriculture for its views on a proposed amendment to S. 1360 pertaining to methods of bidding. More specifically, the amendment requires that all prospective oral bid purchasers submit written bids and that these bids be equal to or in excess of the appraised value to qualify for participation in the oral bidding. The amendment's sponsors characerize it as simply providing the Secretary with needed discretion. They argue that with the proposed language the Secretary can use any bidding method he finds to be in the public interest. However, the Department of Agriculture cautions that upon passage the proponents would expect the Secretary to return to essentially 100 percent oral auction bidding throughout the West. In other words, they feel enactment of the legislation would leave the Department in the middle between those legislators who support oral auction and those who advocate sealed bidding.

THE ISSUE

What position should the Administration take on the Church/Melcher amendment to change bidding procedures for National Forest timber?

POLITICAL ASSESSMENT

Western members of the House and Senate, including Congressmen Ullman, Weaver, and Sims, and Senators Jackson, Church, Melcher, Hatfield, and Packwood, are strong supporters of S. 1360. Other Senators including Humphrey, Bumpers, Talmadge, Kennedy, and Metcalf plus Congressman Krebs oppose it. We expect a similar alignment on the Church/Melcher amendment. The Committee votes have been close -- 22 to 20 for reporting out of the House Agriculture Committee and 10 to 7 for reporting out of the Senate Agriculture Committee.

Though industry concerns seemed to be allayed by the June 2 Forest Service regulations, the Congressional debate has rekindled their concerns. Administration opposition to the amendment would therefore be greeted with alarm by much of the industry.

OPTIONS

(1) Continue to indicate no objection, provided the Secretary retains discretion to determine bidding methods.

PRO

-- Lets proponents of the amendment move ahead without Administration interference.

-- Generally consistent with the Department's prior position on S. 1360, i.e., no objection to repeal of sealed bidding requirement of the National Forest Management Act.

-- Avoids having the Administration support an amendment which will be viewed by some as accepting collusive practices.

CON

-- If the amendment becomes law, colloquy would probably state expectation that we would return to historic patterns, essentially 100 percent oral bidding in the West.

-- Present regulations would need to be revised just when they are becoming operational, resulting in further disruptions in sales procedures.

(2) Oppose all amendments on grounds that amending the National Forest Management Act is premature at this time.

PRO

-- Strong position that National Forest Management Act provides Secretary adequate authority to protect public interest.

-- Would aid those opposing legislation.

-- Would allow us to gain experience and data under new regulations.

-- Would protect your option to approve or disapprove enactment.

-- The USDA reports that on-going Justice Department investigations make it likely that supporters of changes in National Forest Management Act could be embarrassed by new indictments.

CON

-- Senators Church, Melcher, and the timber industry will claim they have been misled and the Department has shifted position.

-- We might lose our ability to influence report language.

Secretary Andrus asked for the opportunity to comment on this matter. He feels strongly that the Administration should support oral bidding as it is handled in the West because he believes it is necessary for the survival of small-to-medium sized operators in their competition against larger companies. He has noted that the charge of collusion has seldom been substantiated and that collusion is just as possible under a sealed bid as under oral bidding.

Secretary Andrus indicated that the situation in the West requires oral bidding because as much as 80% of the total timber supply available to an independent operator is owned and sold by the United States Forest Service. If they cannot compete for Forest Service sales, they cannot make up the difference through private timber. Under the oral procedure, Secretary Andrus indicated that an independent operator increases his bid against a competitor if he needs that timber to sustain his operation, while under the sealed bid technique, the large operator calculates the sales needed by the smaller companies and puts in one high sealed bid to put "the little man out of business." The large operator has his own timber to mix in which the higher priced timber which he is willing to bid for to drive the smaller man out of business. He therefore concludes that "oral bidding in the clear light of day is the best way to go."

The Department of Agriculture is on record as having no objection to the amendment, which might lead to more oral bidding, provided the Secretary retains discretion to determine bidding methods. The Department now indicates it is essentially neutral.

The Department of Justice would prefer opposition to the amendment for the reasons set out above in this memorandum. We believe, despite the anger this may produce among Western Congressmen and Senators, that the Justice Department position should be supported, stressing that we do not oppose the amendment on the merits at this time, but feel the changes are premature until we review the experience of the new regulations. This would be consistent with your note to me regarding the Bumpers / Kennedy letter.

Assuming you prefer the last option, we have attached draft replies to Senators Bumpers, Kennedy, and Church notifying them of your decision.

DECISION

_____ (1) Support objectives potentially leading to more oral bidding (Secretary Andrus)

_____ (2) No objection to the amendments (Agriculture, but with current position of "neutrality")

_____ (3) Take no position - neutrality (Agriculture does not recommend you take this position but feels neutral itself)

_____ (4) Object to amendments on ground of prematurity (Justice, Domestic Policy Staff)

TAB A

DALE BUMPERS
ARKANSAS

THE PRESIDENT HAS SEEN.

COMMITTEES:
ARMED SERVICES
ENERGY AND
NATURAL RESOURCES

United States Senate

WASHINGTON, D.C. 20510

August 4, 1977

Stu - I agree with them
J. C.

The President
The White House
Washington, D. C. 20500

ack-FM/SE
-9 AUG 1977

Dear Mr. President:

S. 1360, which would repeal Section 14(e) of the National Forest Management Act of 1976, P.L. 94-588, is currently on the Senate calendar. That law, among other things, directed the Secretary of Agriculture to take certain action to eliminate collusive bidding practices in sales of National Forest timber. S. 1360 seeks to repeal Section 14(e) in such a way that the Secretary is encouraged to permit oral bidding for timber sales, rather than the more time-honored sealed bids.

The Forest Service sells timber by sealed bidding and by oral auctions. The latter method is used predominantly in Oregon, Washington, and California, and is used substantially in other Western States. In the South and East, timber from the National Forests is sold mainly by sealed bids. Virtually all Forest Service timber was sold by sealed bid until about 1948. Within a few years almost all timber in Oregon and Washington was sold by the oral method. The system spread to California, and by the mid 1960's 50% of National Forest timber was sold by oral bidding. Oral sales then increased to 90% in recent years. These three states accounted for 87% of the timber revenue derived in 1975, when total income was $657 million from National Forest timber sales. Thus, these states are the key to the effectiveness of any bidding policy.

In the first half of calendar year 1977, the Forest Service sold 2.5 billion board feet of timber at a bid value of $402 million in Oregon and Washington. Under the interim policy adopted by the Department of Agriculture, 78% of the sales in Oregon and Washington were by sealed bid as compared to 99% by oral bid previously. A survey of National Forest timber sales in these two states by the Forest Service indicates that sealed bidding, among other things, may substantially enhance Federal revenues from the sale of timber. For example, sales at oral auction in the Douglas fir region of these two states were appraised at about the same price as those sold by sealed bid - $107.76

vs. $106.95 per thousand board feet. Bid prices received for oral auction sales were $172.42 per thousand board feet versus $185.00 for the sealed bid sales. Sales brought in $12.58 more per thousand board feet for the 1.485 billion board feet sold by the sealed bid method. Since the sales were appraised at the same value, it is possible that if this volume had been sold at oral auction, losses of $18.3 million in revenue would have occurred. Based upon total year sales, the difference is about $40 million in revenues in these two states alone.

On June 2 the Secretary of Agriculture issued new regulations governing the sale of timber under 36 CFR 223.6. He also issued older regulations on award of bids, 36 CFR 223.7, which contains ample safeguards for rejecting bids if monopoly, job loss, or mill closures are real and imminent for any reason whatsoever. Further the data available to us indicate that the industry in Oregon and Washington has 2.5 times the allowable cut under contract and further it draws only about 30% of its timber from the National Forests. In California, where the industry draws 45% of its timber from the National Forests, it has 2.9 times the Forest Service allowable cut under contract.

The regulations issued by Secretary Bergland provide that in June, 1978, there will be a review as to how effectively they are operating in all particulars, including timber bidding. We would recommend that the Administration take the position that it will support no change whatsoever in the law, or the current regulations, until the full year review has been made and analyzed. Certainly issues of community support are important. There are ample tools available in the existing regulations to meet proper public interest requirements in this vital area.

An early statement of the Administration position on this matter would be most beneficial. Thank you for your consideration of this matter.

Sincerely,

Dale Bumpers

Edward M. Kennedy

DB/epr

THE WHITE HOUSE

WASHINGTON

August 12, 1977

To Senator Dale Bumpers

Thanks for your August 4 letter regarding S 1360. I will review this legislation and have Stu Eizenstat do the same. You'll be receiving a further response shortly.

Sincerely,

Jimmy

The Honorable Dale Bumpers
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

August 12, 1977

To Senator Ted Kennedy

Thanks for your August 4 letter regarding S 1360. I will review this legislation and have Stu Eizenstat do the same. You'll be receiving a further response shortly.

Sincerely,

Jimmy

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

TAB B

August 4, 1977

To Senator Frank Church

Thanks for the memorandum on your timber sales bill. I'm forwarding the information to Stu Eizenstat for review.

Sincerely,

JIMMY

The Honorable Frank Church
United States Senate
Washington, D.C. 20510

bcc: w/copy of incoming to Stu Eizenstat for response

JC:RF:mlg

HENRY M. JACKSON, WASH., CHAIRMAN
FRANK CHURCH, IDAHO
LEE METCALF, MONT.
J. BENNETT JOHNSTON, LA.
JAMES ABOUREZK, S. DAK.
FLOYD K. HASKELL, COLO.
DALE BUMPERS, ARK.
WENDELL H. FORD, KY.
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SPARK M. MATSUNAGA, HAWAII
CLIFFORD P. HANSEN, WYO.
MARK O. HATFIELD, OREG.
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GRENVILLE GARSIDE, STAFF DIRECTOR AND COUNSEL
DANIEL A. DREYFUS, DEPUTY STAFF DIRECTOR FOR LEGISLATION
D. MICHAEL HARVEY, CHIEF COUNSEL
W. G. CRAFT, JR., MINORITY COUNSEL

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

July 27, 1977

ack 8/8
-2 AUG 1977

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As you know from our discussion at breakfast a few days ago, the bill I am sponsoring to return to traditional methods of selling Forest Service timber in the West will soon reach the Senate floor for consideration.

I have prepared the enclosed memorandum, which you requested, to present my concerns and those of other Westerners about this subject. I am also enclosing two background statements which further detail the importance of this legislation to communities in my part of the country.

Should this bill be favorably approved by both the House and Senate, a meeting with a group of Northwestern Senators might be helpful in providing you with additional information. I would be happy to help arrange such a meeting if you think it would be useful.

With best wishes,

Sincerely,

Frank

Frank Church

Enclosures

THE WHITE HOUSE

WASHINGTON

To Senator Ted Kennedy

This is in further response to your August 4 letter regarding S. 1360.

After reviewing the proposed legislation, I have concluded that it would be premature to amend the National Forest Management Act. As you know, there has been very little experience to date under that law, since the final regulations were only issued June 2. Thus, without judging the merits of the amendment, I believe we should refrain from changing the basic authority until we have had further opportunity to review the experience of the new regulations.

Sincerely,

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

To Senator Frank Church

This is in further response to your July 27 letter regarding S. 1360.

After reviewing the proposed legislation, I have concluded that it would be premature to amend the National Forest Management Act. As you know, there has been very little experience to date under that law, since the final regulations were only issued June 2. Thus, without judging the merits of the amendment, I believe we should refrain from changing the basic authority until we have had further opportunity to review the experience of the new regulations.

Sincerely,

The Honorable Frank Church
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

To Senator Dale Bumpers

This is in further response to your August 4 letter regarding S. 1360.

After reviewing the proposed legislation, I have concluded that it would be premature to amend the National Forest Management Act. As you know, there has been very little experience to date under that law, since the final regulations were only issued June 2. Thus, without judging the merits of the amendment, I believe we should refrain from changing the basic authority until we have had further opportunity to review the experience of the new regulations.

Sincerely,

The Honorable Dale Bumpers
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE
WASHINGTON
August 25, 1977

The Vice President
Bob Lipshutz
Frank Moore
Jack Watson

The attached is forwarded to you for your information. If you wish to comment, please call by 4:00 PM today.

Rick Hutcheson

BIDDING PROCEDURES FOR NATIONAL FOREST TIMBER

THE WHITE HOUSE
WASHINGTON

August 25, 1977

Bert Lance

The attached is forwarded to you for your information. If you wish to comment, please call by 2:00 PM tomorrow.

Rick Hutcheson

BIDDING PROCEDURES FOR NATIONAL FOREST TIMBER

MEMORANDUM

July 27, 1977

To: President Carter
From: Senator Frank Church
Re: Forest Service Timber Sale Bidding Methods

1. Since the late 1940's, most of the timber sold by the Forest Servi in the West has been sold at oral auctions; in the eleven western stat from 1964-72, 93 percent was sold by this method.

HOWEVER

2. In 1976, Congress enacted the National Forest Management Act. One section of the Act has as its purpose the elimination of collusion amo purchasers of Forest Service timber.

--This section requires the Secretary of Agriculture to take appropriate action to obviate collusive bidding practices, including establishing systems to monitor bidding patterns, reporting instances of possible collusion to the Attorney General, and requiring sealed bidding on all timber sales except when he determines otherwise by regulation.

--This section was added to the final version of the Act at the last moment; it was enacted without benefit of hearings or detailed debate.

--As interpreted by the Forest Service, the section would make sealed bidding the rule and oral bidding the exception.

3. Legislation has been favorably approved by the Senate Agriculture and Energy and Natural Resources Committees to change this provision.

--The anti-collusion section, and its mandate to stop any illegal activities, would not be repealed; it would be rewritten.

--Consideration would be given to the economic stability of those communities dependent on National Forest timber sales.

--The only change from the existing law would be the repeal of the mandate for sealed bidding throughout the National Forest System, regardless of whether collusion is suspected or not.

--The Forest Service must continue to set the minimum appraised price on the timber, receive sealed bids of that price or more, and then proceed to oral auction for greater prices if that method better serves the public needs of an area.

--The Secretary of Agriculture would still be directed to monitor timber sales for collusion, report any such activities to the Attorney General, and change the bidding method being used in the area where collusion is suspected (e.g., go from oral to sealed bids).

THE CHANGE IS SOUGHT BECAUSE

--Oral bidding is necessary to protect the economic stability of western communities dependent upon sawmills, which in turn are totally reliant upon national forest materials.

4. Sealed bidding has been the accepted sale method in the South and East because individual timber sales are relatively small, and the national forests provide only a small fraction of the timber supply.

HOWEVER

--Oral bidding has become the norm in the West because many western mills are designed to produce special products and, thus, must obtain specific rather than random sales.

--In addition, timber sales are often very large, and there are usually no alternate sources of timber supply to the national forests.

5. In the West, where the Forest Service is often a virtual monopoly owner and seller of timber, oral auction sales have proven to be in th best public interest.

--Under oral bidding, sawmill operators can react to their competitors in an open manner; if an operator is low on logs, he can bid to the limit, if necessary, to obtain the sale he needs.

BUT

--If sealed bidding is used, a sawmill operator may submit what he regards as a very high bid, only to find that someone has bid higher.

AND

--Under sealed bidding, it is easier for a large timber company trying to shut down its small competitors to slip into an area and buy the logs the small operator needs to remain in business.

--The economies of many small communities in the West are directly tied to the local sawmills; if these mills can't buy the logs they need, the ripple effect could wipe out the economy of whole towns.

6. Since passage of the 1976 law, economic disruptions have occurred.

--On the Umpqua National Forest (Oregon) in calendar 1976, while oral bids were used, 80.2 percent of the Umpqua timber stayed in the area to be processed. Since then, 41.3 percent of the sales have gone out of the area, some to areas that have never before bid on Umpqua timber.

--On the Deschutes National Forest (Oregon), sales have gone to firms that normally purchase timber from the Ochoco National Forest. Deschutes mills have been forced to strike back by going into the Ochoco to buy logs.

7. The Forest Service has no objection to this legislation as presently drafted,

BECAUSE

--It still provides enough flexibility to stop collusion should that activity be taking place.

--It makes no change in the present Forest Service policy that federal timber be sold at no less than its appraised price.

--It helps protect those small communities which are dependent upon the national forests for their economic livelihood.

--There is no hard data to show that sealed bids bring a greater return to the government than oral bids.

SUMMARY OF ANSWERS TO QUESTIONS FREQUENTLY ASKED ON TIMBER SALE BIDDING ISSUE

1. Why is oral bidding needed in the West?

2. Why then, is sealed bidding used to sell National Forest timber in the South?

3. How important is National Forest timber and what is the history of oral bidding in the West?

4. Hasn't a significant amount of sealed bidding been used in some parts of the Wes such as Montana and Idaho?

5. Forest Service bidding regulations would require only 25 percent sealed bidding in dependent communities. What's wrong with that?

6. Wouldn't S. 1360 just repeal the bidding provisions of the National Forest Manage ment Act?

7. Wouldn't limiting the size of Forest Service sales adequately address the community stabilitiy problem by making each sale less critical to a purchaser's operations?

8. Isn't sealed bidding needed to reduce the risk of collusion?

9. Aren't convictions for collusion very difficult to obtain unless there is an inform or other direct evidence of an agreement?

10. Aren't there indications that collusion is widespread in the forest industry?

11. Has the recent use of sealed bidding procedures resulted in any adverse impacts to local dependent communities?

12. Isn't the public being cheated when timber sales go for the minimum bid?

13. Which bidding method results in more return to the government on the sale of timber?

14. Isn't it significant that each of the Justice investigations for suspected collusion has been in an area where oral bidding was a predominant method of selling timber?

15. Will S. 1360 require the use of oral bidding in the South where sealed bidding has historically been used?

16. Does oral bidding discriminate against small purchasers of National Forest timber?

17. Does oral bidding favor or discriminate against innovation and efficiency?

18. With the advent of modern transportation systems, is protecting the economic stability of communities still a viable objective?

ANSWERS TO QUESTIONS ON NATIONAL FOREST BIDDING ISSUE

1. Why is oral bidding needed in the West?

For the last thirty years oral bidding has been customary in the West -- and for good reason. It is the best way to assure that local mills and the communities which are dependent upon them can compete in the open for the timbe which is essential to their operations. Sealed bidding injects an element of extreme uncertainty as to just what price must be bid to obtain the timber. An operator may put in what he considers to be a very high bid, but if someone else bids just a little higher, he will lose the sale. Such a loss could create a severe economic hardship, or even bankruptcy, on the firm and extreme economic instability on the local community dependent upon the firm for employment. Oral bidding provides an opportunity for a second chance to raise the bid.

2. Then why is sealed bidding used to sell National Forest timber in the South?

In the South the use of oral bidding is unnecessary due to several factors:

1. Individual timber sales are comparatively small in size in relation to western timber sales. Between 1964 and 1972 sales averaged only 800,000 board feet in the East and South as compared to over 11 million board feet in California during the same period. Thus, each individual timber sale is much more important to a local community in the West than it is in the South. If an individual firm loses a timber sale in the South, it does not create the economic hardship or the threat of bankruptcy that such a loss could create for an independent western mill.

2. National Forest timber, although important in the South, is not the only source of supply. It amounts to only about 6 percent of the timber supply in the South, whereas in the West many communities are totally reliant on National Forest timber. In the Southern Rocky Mountain area as a whole, National Forest timber accounts for over 80 percent of the total timber supply. If a southern firm loses a National Forest timber sale, there is usually timber available on adjacent private lands to fill the gap. In many parts of the West the National Forests are essentially the "only store in town".

3. How important is National Forest timber and what is the history of oral bidding in the West?

The National Forests currently supply about 27 percent of U.S. needs for softwood sawtimber - an essential product in the construction of residential housing and other uses. During the last 30 years, oral bidding has been the predominant method of selling National Forest timber in the West. For example, during the period 1964-1972, approximately 78.1 billion board feet of National Forest timber was sold in the eleven Western states. This amounts to 93 percent of our nationwide National

Forest timber sales during the same period. Of this 78.1 billion board feet, 72.9 billion board feet, or 93 percent was sold by the oral auction method.

In Forest Service Region 6 (Oregon and Washington) during the years 1964 through 1972, over 99 percent of the volume sold by the Forest Service was by oral auction. In the Forest Service's California Region, 96 percent of the volume was offered by oral auction during that same period.

4. Hasn't a significant amount of sealed bidding been used in some parts of the West, such as Montana and Idaho?

Although a fairly significant volume is sold by sealed bidding in Idaho and Montana, those sales which are sold by this method generally tend to be quite small. Forest Service figures indicate that, of the timber sales sold by the Forest Service in the Rocky Mountain area from 1964 through 1972, oral auction sales had an average size of 6.3 milion board feet, whereas those sales sold by sealed bidding had an average size of only 2.4 million board feet (only 38 percent as large). In Montana and northern Idaho, although 45 percent of the volume was sold by sealed bids in 1976, the average sealed bid sale size was only 2.2 milion board feet as compared to 5.4 million board feet for oral sales. Thus, even in Idaho and Montana the sales which are largest and most important from a community dependency standpoint continue to be sold by oral auction.

Proposed Forest Service regulations require a substantial increase in sealed bidding in all sale size classes. Under these regulations, it will not be possible to limit the use of sealed bidding only to the smaller sales as has been done in the past in the Intermountain Area.

5. Forest Service bidding regulations would require only 25 percent sealed bidding in dependent communities. What's wrong with that?

While the final Forest Service regulations are a significant improvement in comparison to those originally drafted, the final regulations still would be adverse to the economic stability of local dependent communities. Even in communites which the Forest Service determines to be substantially dependent upon National Forest timber, the Forest Service will offer up to 25 percent of the volume on a sealed bid basis. Although there is a "safeguard" which the regulations provide for increasing the percentage of timber offered by oral auction if a substantial portion of the sales end up being purchased by outside firm, it has the obvious and critical flaw that nothing will be done unless substantial, and in all likelihood permanent and irreparable, damage has been done to the local economy.

Many small operators in some parts of the West specialize in certain types of sales that have particular species or grades of logs. These small operators must obtain every single sale which comes up having the kinds of products they specialize in. If, by chance, that sale is one of those offered under sealed bidding, it puts the operator in an untenable position due to uncertainty over what he must bid to obtain the sale.

Another difficulty is created by the fact that in the past few years the amount of timber offered from the National Forests has been reduced significantly in some parts of the West. In these areas the Forest Service is selling hardly enough to maintain existing mills on a break-even point. Putting into jeopardy 25 percent of the volume in these areas would be enough to severely damage the local economy.

6. Wouldn't S. 1360 just repeal the bidding provisions of the National Forest Management Act?

No, it would not. Under S. 1360, Section 14(e) of the 1976 National Forest Management Act would be amended to permit the Forest Service to return to historic bidding methods, but flexibility would be retained to require sealed bidding where appropriate, including situations in which collusion is suspected. It would eliminate the apparent mandate in the 1976 National Forest Management Act to substantially increase the use of sealed bidding in all situations, but would authorize continuation of the present Forest Service system of monitoring timber sale bidding patterns and require the Forest Service to notify the Justice Department if collusion is suspected.

7. Wouldn't limiting the size of Forest Service sales adequately address the community stability problem by making each sale less critical to a purchaser's operations?

There is a definite limit to what can be done in this area. Many sales in the West necessarily involve extensive road construction requirements which need substantial volumes of timber for amortization. In addition, the Forest Service unit costs for sale preparation and administration rise substantially as sale size is reduced. Although the idea of reducing sale size is sound, practical application of the principle in the West is limited.

8. Isn't sealed bidding needed to reduce the risk of collusion?

No. Forest Service Chief John McGuire has repeatedly testified before Congress that there is no sound evidence to support the conclusion that sealed bidding is any more effective in reducing collusion than is oral auction. Those inclined to collude will do so under any bidding method. There is no substantial difference in risk of collusion whether oral or sealed bidding is used.

9. Aren't convictions for collusion very difficult to obtain unless there is an informer or other direct evidence of an agreement?

This is not true. Since Interstate Circuit, Inc. v. United States, (1939), it has been clear that circumstantial evidence is sufficient to sustain a finding of an unlawful conspiracy to violate the antitrust laws despite the absence of direct evidence. Indeed, in United States v. Champion International Corp., et al (1975), the Ninth Circuit Court of Appeals ruled that no direct evidence of a collusive agreement is necessary for conviction:

> The government was unable to introduce direct evidence of an express agreement, but argues that the circumstantial

evidence proved the existence of the tacit agreement found by the judge. We agree.

The Court of Appeals concluded by noting that it is not necessary for the government to show either that the defendants knowingly entered into a conspiracy or that they had a specific intent to restrain trade. Thus, the law directly refutes the claim that it is necessary either to have an informer or direct evidence of a conspiracy to obtain a conviction.

Finally, it should be noted that to help identify possible collusion, the Forest Service has established a monitoring system of National Forest timber sale bidding patterns. Records on the amount of bidding above appraised value and other relevant information is kept on each Forest Service timber sale and compiled for local areas with regional and national summaries. This program is used to identify bidding patterns which may be suggestive of collusive activities so that further investigation may be initiated.

Under these circumstances, there is no reason to threaten communities with sealed bidding. The innocent need not be injured to enable the government to prosecute the guilty.

10. Aren't there indications that collusion is widespread in the forest industry?

This is simply not true, and there is no evidence that it is. There have been only ten investigations by the Justice Department in seventeen (or more) years in an industry annually buying thousands of individual timber sales which generate over half a million dollars per year. This does not suggest an industry subject to widespread collusion. Further, there has been only one case in which there have been convictions for collusive bidding on federal timber since the antitrust laws were passed at the turn of the century.

Indeed, at the May 18, 1977 hearings of the Public Lands Subcommittee of the Senate Energy and National Resources Committee, Forest Service Chief John McGuire testified that collusion in the timber industry is "relatively rare -- isolated."

Investigations into alleged collusion should and will continue. If they indicate evidence of unlawful activity, the parties involved will be prosecuted. If there was collusion in violation of the antitrust laws, the parties will be convicted. However, broad legislative action intended to control a few suspected people should not be aimed at an entire industry since innocent individuals and dependent communities will suffer unnecessarily.

11. Has the recent use of sealed bidding procedures resulted in any adverse impac to local dependent communities?

Yes. Although data on this issue is admittedly sketchy, what is availabl indicates substantial dislocations in some areas. Between November 1976, when sealed bidding was initiated on the Klamath National Forest in California, and May 1977, 42 percent of the total volume was purchased by first-time buyers. In addition, in the area near Roseburg, Oregon, before sealed

bidding was used, there was an outflow of about 20 percent of the volume to other communities. Under sealed bidding, the outflow has jumped to over 41 percent.

12. Isn't the public being cheated when timber sales go for the minimum bid?

This is not true. By law, National Forest timber cannot be sold for less than the appraised value. The appraised value is the value calculated by the Forest Service as to what the timber is reasonably worth after the costs of harvest, road construction, completion of other contractual requirements, and manufacturing the timber to finish products are subtracted from the selling value of those products. Under Department of Agriculture regulations, appraised value must be equal to "fair market value". Under oral auction situations, the appraised value becomes the minimum price which the government will accept. In the sharp competition for increasingly limited supplies of National Forest timber, the actual bid price of the timber may be considerably above the appraised value.

13. Which bidding method results in more return to the government on the sale of timber?

Forest Service Chief McGuire has stated that the data is inadequate to provide a statistical basis for coming to a firm conclusion on this issue. However, in testimony before the Forests Subcommittee of the House Agriculture Committee on February 7, Chief McGuire stated that:

> "the data that we do have available... suggest:
>
> (1) In competitive areas (where bid prices are substantially above the appraised value), oral auction tends to give higher average bids than sealed bidding. This is typified by bidding found in areas tributary to the Willamette Valley in Oregon....
>
> (2) In areas of moderate competition, it appears that the method of bidding has no significant impact on the price paid for timber.
>
> (3) In areas of relatively low competition, where a small number of large businesses dominate, oral auction gives lower average bids than sealed bidding. Parts of eastern Oregon and central California typify this situation."

It must be emphasized, and it was recognized by Chief McGuire, that these assumptions are based on sketchy data.

There is no evidence that sealed bidding on the average will produce more money to the government than does oral auction. In fact, the reverse may well be true. Available data indicates that under highly competitive situations the use of oral bidding generally results in higher returns than does sealed bidding. The vast majority of National Forest timber is sold under conditions which can be characterized as moderately to highly competitive.

14. Isn't it significant that each of the Justice investigations for suspected collusion has been in an area where oral bidding was a predominant method of selling timber?

No, it is not. Since the vast majority of Forest Service timber sales in the West have been by oral bid, obviously Justice Department investigations of timber sales will involve a high percentage of oral bid situations. In fact, it is estimated that of the 83.8 billion board feet of National Forest timber which was sold in the entire U.S. between 1964 and 1972, 73.3 billion board feet or 87 percent, was sold by oral auction.

15. Will S. 1360 require the use of oral bidding in the South where sealed bidding has historically been used?

Definitely not. Although this implication has been made, it has no substance. S. 1360 among other things, is designed to remove the apparent mandate in the National Forest Management Act to use sealed bidding irrespective of whether collusion is suspected. It would permit the Secretary to use either sealed or oral bidding depending on what is in the public interest and will adequately protect the economic stability of local communities.

16. Does oral bidding discriminate against small purchasers of National Forest timber?

No. In fact, the opposite is more likely the case. At the Senate hearings on the bidding issue, strong support for oral bidding was received from small business purchasers.

Sealed bidding would seem to discrimminate disproportionately against the small operator who has a difficult enough time surviving as it is. Many small operators in certain parts of the West specialize in certain types of sales that have particular species or grades of logs. These small operators must obtain every single sale which comes up having the kinds of products they specialize in. If by chance that sale is one of those offered under sealed bidding, it puts the operator in a very difficult position due to uncertainty over what he must bid to obtain the sale.

Sealed bidding also raises the specter of predatory bidding in which large operators, able to absorb short-term losses, anticipate the sales in which a small operator will be interested and bid higher than normal in an attempt to, deprive the small operator of the sale. Under sealed bids the small operator is unable to respond to such competition. In the long run, this will reduce competition and ultimately increase the risk of collusion.

17. Does oral bidding favor or discriminate against innovation and efficiency?

There is admittedly no hard data on this issue. But it would seem that in dependent Western communities, the uncertainty created by sealed bidding would, in fact, foster inefficiency by discouraging capital investment in improved faciltites and promoting economic instability.

18. With the advent of modern transportation systems, is protecting the economic stability of communities still a viable objective?

Very definitely. In the West many communities now exist around a single dominant mill where once several mills existed. Any further concentration of the industry will disrupt entire communities.

There are absolutely no grounds for stating that public policy consideration should not be given to maintaining the economic stability of such committees. In fact, such consideration is provided for by law. The Sustained Yield Forest Management Act of 1944 (16 U.S.C. S583) says that: "In order to promote the stability of forest industries, of employment, of communities, and of taxable forest wealth" the Secretary of Agriculture is authorized to dispense with both oral and sealed bidding and to negotiate timber sale contracts where the stability of a timber-dependent community may be threatened by use of the usual sale methods.

July 21, 1977

THE NATIONAL FOREST TIMBER SALE BIDDING ISSUE

CONTENTS

		PAGE
I.	Introduction	1
II.	Historical Practices in the West	2
III.	The Forest Management Act of 1976 and Section 14(e)	4
IV.	Current Legislative Effort to Return to Oral Bidding in the West	10
V.	The Church-Melcher Bill (S. 1360) and Why It Has Widespread Support from all Segments of the Industry	11
VI.	Questions Concerning S. 1360	
	A. Is oral bidding non-competitive and does it lead to "preclusive" bidding?	15
	B. Does oral bidding increase the likelihood of collusion among bidders; would sealed bidding prevent such collusion; and is collusion under oral bidding situations more difficult to prove?	16
	C. Does oral bidding promote the larger mills at the expense of the smaller operators?	20
	D. Does the Government receive less than a fair price in an oral auction of timber?	21
	E. Could oral bidding in the West lead to oral bidding in the South and East?	22
	F. Are small mills and dependent communities adequately protected by Department of Agriculture regulations?	22

July 20, 1977

I. INTRODUCTION

The Senate Committees on Energy and National Resources and Agriculture, Nutrition and Forestry have jointly reported an amended S. 1360. The amended language provides:

Section 14(e) of the National Forest Management Act of 1976 is amended as follows:

> "(e) The Secretary of Agriculture shall monitor bidding patterns involved in the sale of trees, portions of trees, or forest products from National Forest System lands. If the Secretary has a reasonable belief that collusive bidding practices may be occurring, then:
>
> (1) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data;
>
> (2) he may alter the bidding methods used within the affected area; and,
>
> (3) he shall take such other action as he deems necessary to eliminate such practices within the affected area.

This language will allow the Forest Service to return to its historic selling practices in the National Forests. It requires the continuation of a monitoring and reporting system designed to prevent any possible collusion in purchases of National Forest Timber. The amendment is necessary because Section 14(e) of the National Forest Management Act of 1976, as interpreted by the Forest Service, has resulted in chaotic marketing conditions in the Western National Forests. Specifically, the elimination or restriction of oral auction timber sales has caused sales of National Forest timber to

go outside the communities dependent on them. Without the opportunity to increase their sealed bid prices by auction bidding the smaller lumber companies have been losing sales to preemptive bids by larger companies. Adoption of S. 1360 as amended will restore the opportunity to increase a sealed bid by oral auction.

II. HISTORICAL PRACTICES IN THE WEST

The Forest Service manages approximately 182 million acres of public land in the United States and approximately 138 million acres, or 76 percent, of these public lands are located in the eleven Western states.

These lands are managed under principals of multiple use, and sustained yield which were recognized in the Multiple Use Sustained Yield Act of June 12, 1960 (16 U.S.C. 528), and which essentially provide that our publicly held forests be managed and used for outdoor recreation, range, timber, watershed, fish and wildlife purposes in harmonious combination to meet the needs of our Nation and its people. A significant ingredient of the multiple use/sustained yield concept is the prudent harvesting of timber in our national forests, and the harvesting of timber and the manufacture of timber products is big business. National Forest lands are expected to yield in excess of 10 billion board feet of timber this fiscal year which will provide approximately 25% of the softwood lumber and plywood used in our housing and other wood using industries.

Of course, the harvesting of National Forest timber has not always been as significant an element in our Nation's economy. Although the Organic Act of 1897 (16 U.S.C. 476) provided the basic legal authority for the sale of Federally owned timber, it was not until after World War II that the harvest of Federal timber began to represent a significant proportion of the total timber production in this country. With the strong expansion of the housing industry and the decline of more accessible private timber after the War, the demand for Federal timber and the attendant competition increased dramatically.

Throughout the early history of our sales of Federal timber, sealed bidding was used almost exclusively. That method was the only practical one given the size of our as yet fledgling forestry bureaucracy and the remote locations of our Western Forest Reserves. However, in the late 1940's, oral auction sales were determined by the Forest Service to be a legally permissible method under existing law, and by 1960 had become the most common method of timber sales in the Western States. According to John R. McGuire, Chief of the Forest Service in testimony before the Subcommittee on Forests, House Agriculture Committee, on H.R. 5863 the shift in bidding method was, in part, generated by a desire to help preserve the economic existence of communities in Western Oregon and Washington which had become dependent on federal timber.

During the period 1964-1972, approximately 78.1 billion board feet of National Forest timber was sold in the eleven Western states. This amounts to 93 percent of our nationwide National Forest timber sales during the same period. Of this 78.1 billion board feet, 72.9 billion board feet, or 93 percent was sold by the oral auction method.

The importance of National Forest timber to the economies of local communities in the West is difficult to overemphasize. Many individual communities are virtually totally reliant upon National Forest timber. In the southern Rocky Mountain area as a whole, National Forest timber accounts for over 80 percent of the total timber supply.

In 1976, the Congress enacted the National Forest Management Act and its controversial Section 14(e) which requires the Forest Service to make the sealed bidding method the rule and oral bidding the exception when National Forest timber is sold.

III. THE FOREST MANAGEMENT ACT OF 1976 AND SECTION 14(e)

The Forest Management Act of 1976 was the end product of several bills which were designed to accomplish three main purposes: 1) require the Secretary of Agriculture to develop management plans and guidelines for the protection, use, and development of the renewable resources of the National Forest System; 2) insure that counties in which National Forest System lands are located would receive 25% of the total income from Forest System timber sales; and, 3) set out new provisions

governing timber sales on National Forest System lands (this provision was primarily intended to correct the Monongahela decision).

The Senate Agriculture and Forestry, and Interior and Insular Affairs Committees held joint hearings on March 15, 16 and 22, 1976 and reported a bill out on May 14, 1976. The House Agriculture Committee held hearings on March 22, 23 and 24, 1976. During the final day of mark-up in the House Agriculture Committee, September 1, 1976, Congressman Krebs (D. Cal.) introduced an amendment, which was later to be changed by the Conference Committee into the present language of §14(e) of the Forest Management Act of 1976. The original "Krebs' Amendment" read as follows:

> "...(3) requiring sealed bidding to be predominantly utilized for advertised small sales. For the purposes of this section, a small sale shall be defined as one of 1 million board feet or less."

This language was accepted by the full committee and a bill reported out on September 8, 1976.

The Senate bill was passed on August 25, 1976, the House bill on September 17, 1976 and a final bill was reported out by the Conference Committee on September 29, 1976. The bill as reported out of Conference substantially changed the language of the "Krebs' Amendment" to read as follows:

"...(2) requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation..."

The bill reported from the Conference Committee was passed by both the Senate and the House on September 30, 1976, after limited debate. This debate, however, does highlight the confusion and divergence of opinion among various Congressmen concerning the effect of the "Krebs' Amendment", as altered by the Conference Committee, upon the timber industry in the Pacific Northwest:

Mr. Symms:

"Oral auction procedures are presently the main method of bidding on national forest timber sales in most areas of the West. This practice has a long history in this area because many mills are totally dependent on national forest timber. They have no alternative source of supply. Since every timber sale the Forest Service offers in many areas is often life or death to these plants and local dependent communities, it is important that they be aware of and be able to respond to bidding competition. Such an opportunity is not available when sealed bidding procedures are used. The opposite situation exists in the East and South where national forest timber makes up only 10 percent or less of the timber supply and sealed bidding is preferred.

It was a primary intent of the conferees that a major change from oral auction to sealed bidding procedures would be made in a particular area when collusive bidding is suspected. The conferees had no intent that provisions for sealed bidding will in any way undermine or jeopardize the stability of local dependent communities. Therefore, in areas where there are no alternate sources of timber supply, the Secretary should by regulation provide that, unless reasonable evidence indicates that collusion may be occurring, oral auction bidding or a mix

of bidding methods will be the preferred and predominant method.

* * *

122 Congressional Record at H12020

Mr. Krebs:

"The statement of managers indicates that the conference substitute requires the use of sealed bids for all advertised sales, except in those instances where the Secretary of Agriculture, pursuant to regulations which he shall prescribe, determines otherwise. The statement further indicates that this provision is designed to provide the Secretary with discretion to employ oral bidding, or a mix of bidding methods, when protection of the economic stability of dependent communities or other considerations indicate the advisability to do so. I am concerned that the phrase "or other considerations" might be interpreted to reflect an intention to give the Secretary blanket authority for the use of oral bids. I would appreciate it if the chairman could explain the intention of the conferees.

Mr. Foley:

It is my understanding that the conferrs did not intend to give the Secretary carte blanche authority to depart from the sealed bidding procedure. Certainly, this is clear from the language of the statement of managers which emphasizes that the Secretary must determine, pursuant to regulations which he shall prescribe, that the public interest justifies use of other methods. (emphasis added)

Mr. Krebs:

Would the gentleman be so kind as to define the term "public interest"?

Mr. Foley:

There are two very significant points that will bear emphasis. First, the statement of managers clearly indicates that there will be public participation in developing these regulations. Thus, there is a means by which the Secretary can identify

unique problems which may, in his opinion, justify departure from the sealed bid procedure. Second, and I believe that this goes directly to the gentleman's concern, the public interest is the determining factor here. There must be benefits accruing to the public generally. The bill agreed to in conference does not grant to the Secretary the discretion to vary from sealed bidding solely for the benefit of the timber purchaser.

I would like to point out to my colleague that there are considerations other than protection of dependent communities which may call for an oral bidding procedure. Take the case of a salvage sale where the public interest is best served by getting to the timber while it is still usable. The sooner damaged or down timber is removed, the sooner the land is protected and the multiple use values are enhanced. Clearly, it is in the best interests of the public to have this timber sale contract awarded promptly, and it is my opinion that the Secretary should have the discretion to go to oral bidding in this type of instance should he choose to do so.

There is the possibility, also, that the Secretary may find a pattern of collusive bidding develop in sealed bids. The Secretary could, then, determine that the public interest would be served by going to oral bids or a mix of bidding practices.

While these are only a few of the possibilities, they indicate that the Secretary should have this discretionary authority to employ other than sealed bidding procedures when it would be in the best interest of the American people. (emphasis added)

* * *

122 Congressional Record at H12021-22

Given the inconclusive nature of the evidence on the intent of Congress in promulgating Section 14(e), the Secretary of Agriculture has interpreted that section as requiring sealed bidding to be the rule and oral bidding to be the exception.

Pursuant to the National Forest Management Act of 1976, on November 4, 1976, the Secretary of Agriculture promulgated interim regulations for the sale of National Forest timber. These regulations, and the administrative instructions interpreting them, virtually eliminated all oral auction bidding on western National Forests. Additional instructions from Forest Service Chief John McGuire to the field on December 17 resulted in minor use of oral bidding under very restricted situations. On February 23 the Forest Service requested public comment on proposed final bidding regulations. These proposed regulations were instituted on a temporary basis beginning in early April. Although the proposed regulations were a significant improvement over the interim regulations, they were still far from perfect. Final Forest Service bidding regulations were published on June 2, 1977. These final regulations provide that, even in communities which the Forest Service determines to be substantially dependent upon National Forest timber, the agency will strive to create a mix of oral and sealed bidding amounting to 75 percent oral and 25 percent sealed on a volume basis. Here again, the Forest Service is proposing to use a significant amount of sealed bidding in all situations, regardless of whether collusive bidding practices are suspected.

IV. THE CURRENT LEGISLATIVE EFFORT TO RETURN TO ORAL BIDDING IN THE WEST

Strong industry concern over the way in which the Forest Service was implementing Section 14(e) resulted in legislative action in both the House and the Senate. Representative James Weaver (D. Ore.) introduced and strongly supported H.R. 6362, a bill which would repeal Forest Service timber sale bidding provisions contained in Section 14(e) of NFMA, in addition to establishing a seventeen-member advisory committee on timber sale bidding procedures to be appointed by the Secretary of Agriculture.

Considerable confusion, however, occurred when former Assistant Attorney General Donald I. Baker of the Antitrust Division of the Department of Justice wrote to the Secretary of Agriculture, Bob Bergland, in support of sealed bidding on National Forest timber sales. Sealed bidding was endoresed as a way to discourage collusive bidding, which the Justice Department alleged was very difficult to discover and prove in courts. This objection to oral bidding is addressed in Part VI of this paper. The Justice letter severely damaged the position of those who supported H.R. 6362. Subsequently, the bill was reported from the House Agriculture Committee by a vote of 22 to 20.

Additionally, in the Committee Report, the dissenting opinion expressed concern over the fact that the bill did not

simply amend Section 14(e), but went on to establish a Commission to study bidding practices on National Forest Systems lands. Several members felt that that provision ran counter to the Administration's policy to halt the proliferation of Congressionally created commissions.

In the Senate, hearings were held before both the Agriculture Committee and the Energy and National Resources Committee in June 1977. Both Committees jointly reported out S. 1360, a bill sponsored by Senators Church and Melcher. This bill, in the nature of a compromise bill, does not contain the provision in the House bill establishing an investigative commission, but rather deletes the sealed bidding provision from Section 14(e) while retaining adequate safeguards so that the Secretary can detect suspected collusive bidding practies and alert the Justice Department in such instances.

V. THE CHURCH-MELCHER BILL (S. 1360) AND WHY IT HAS WIDESPREAD SUPPORT FROM ALL SEGMENTS OF THE INDUSTRY

One June 23, 1977, the Senate Energy and Natural Resources Committee adopted Senator Church's substitute for the text of S. 1360 by a vote of 12-3. The bill as reported out of that Committee provides:

> "Section 14(e) of the National Forest Management Act of 1976 is amended to read as follows:
>
> (e) The Secretary of Agriculture shall monitor bidding patterns involved in the sale of trees, portions of trees, or forest products from National Forest

System lands. If the Secretary has a reasonable belief that collusvie bidding practices may be occurring, then:

(1) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data:

(2) he may alter the bidding methods used within the affected area; and,

(3) he shall take such other action as he deems necessary to eliminate such practies within the affected area.

S. 1360, as adopted by the Senate Energy and Natural Resources Committee, was voted upon favorably by the Senate Agriculture Committee on June 28, 1977.

This amendment would modify the bidding provisions contained in Section 14(e) to eliminate the apparent mandate to substantially increase the amount of sealed bidding throughout the country. The Church language will permit the Forest Service to return to historic methods of sale of Federal timber, but will preserve the Service's traditional flexibility (and existing power) to require sealed bidding, where appropriate, in situations where the Service suspects that collusive bidding practices may be occurring. Further, it will authorize the continued monitoring of bidding patterns and reporting of suspected collusion to the Department of Justice.

In a letter dated June 20, 1977, Senator Church forwarded this language to Rupert Cutler, Assistant Secretary of Agriculture, for his comments. Secretary Cutler replied on June 22, 1977, that the Department has "no objection to the proposed amendment, and believe it would provide workable authority on this issue." Thus, S. 1360 as adopted by the Senate Agriculture Committee and by the Senate Energy and Natural Resources Commitee has the support of the Administration. That is not to say that S. 1360 is without opposition.

At present, what opposition there is is led by Senators Metcalf, Bumper and Metzenbaum who filed a minority report. The opponent's positions and the industry's responses are contained in a subsequent section of this paper.

In addition to the views expressed by signatories to the minority report, several members of the Senate Agriculture Committee expressed reservations about making exceptions to the standard federal procurement practice of requiring sealed bids. Those expressions of concern are certainly laudable, but may have been made without sufficient information, or perhaps with misinformation, regarding historical Western timber sales methods (oral bids) and the paucity of evidence to support the damning conclusion that oral bidding means lack of competition and collusion. The facts are that oral

bidding is an extremely competitive form of sale of any commodity -- including timber, and has immeasurable value as a stabilizing force in an industry which has always been plagued by uncertainty.

Several Agriculture Committee members expressed the view that a two-tiered bidding system might be satisfactory. The fact is that two-tiered bidding has been used in every oral auction sale since the Fall of 1950. In testimony before the House Agriculture Committee Forests Subcommittee on H.R. 5863 earlier this year Chief McGuire stated at page 83 of the Hearings:

> The second major policy change occurred in September of 1950, when it became a requrement for bidders to submit a sealed bid for at least the advertised price of the sale. This sealed bid had to contain the required cash bid deposit and must be submitted prior to a designated date and time. An acceptable and proper sealed bid was a prerequisite for participation in the oral auction that followed. Both of these policies are still in effect today.

It is submitted that the widespread bipartisan support for S. 1360 evidenced in the Senate Committees which have considered it, and a careful longsighted view of the pros and cons of the measure, will justify your support of the effort to return to oral auction timber sales in the Western United States.

The support for S. 1360 within the timber industry is likewise widespread and represents a true cross-section

of the industry. Seldom have we seen such unanimity of views among large and small and East and West timber companies. One need only examine the transcript of Hearings on S. 1360 and its original Companion bill in the House, H.R. 5863, to see that the firms and individuals responsible for the production of our country's timber products genuinely oppose existing Section 14(e) and support the return to traditional timber sales methods that is embodied in S. 1360.

VI. QUESTIONS CONCERNING S. 1360

A. Is oral bidding non-conpetitive and does it lead to "preclusive" bidding?

NO.

First of all, the blanket asertion that oral bidding is non-competitive reflects either, a lack of awareness of what the word "competition" means, or else a misunderstanding of the term "preclusive bidding" as that term is unfortunately used in the Justice Department letter previously alluded to.

Oral bidding consists of nothing more than an auction with the United States Forest Service playing the part of the auctioneer and where the various mill operators or independent loggers are the buyers who bid progressively higher in order to obtain

the much-needed timber. Nothing could be more competitive than this situation.

Preclusive bidding occurs when a firm bids upon a sale at oral auction in order to prevent another firm, often located outside the local area, from taking the sale. Criticism of oral auction sales as tending to encourage preclusive bidding is inconsistent with the claim that such sales do not assure recovery of the highest possible price for the government. The effect of allegedly preclusive sales would be to give a return to the seller, i.e., the government, higher than could otherwise be anticipated on the basis solely of the fair market value of the timber being sold.

But more to the point, the condemnation of oral auction sales as sometimes tending to be preclusive overlooks the fact that the sale of any commodity in quantities less than the demand for the commodity is necessarily and unavoidably preclusive. As has already been pointed out, many of the areas in which government timber sales are made are highly dependent upon these sales to supply existing mill capacity. Where existing capacity exceeds the annual allowable cut, some of the capacity must necessarily remain idle. It is the function of competition, furthering public interest in the lowest possible prices for the end product, to determine on the basis of efficiency which particular units are idled.

B. Does oral bidding increase the likelihood of collusion among bidders; would sealed bidding prevent such collusion; and is collusion under oral bidding situations

more difficult to prove in court?

NO

First of all, the proponents of this paper want to go on the record once again to voice their opposition to any sort of collusive practies that may exist in any American industry -- including the timber industry -- and we quote with approval the comments of our colleague, Congressman AuCoin, cited in the Congressional Record on July 12, 1977:

> "Those of us who favor a return to the historical practice of oral bidding for Federal timber in the Northwest oppose collusion as much as anyone. It certainly is not in the public interest. It is illegal. Steps should be taken to prosecute when evidence is unearthed indicating alleged collusion. Not just in bidding for Federal timber but in any activity bearing upon public resources or money.
>
> To the best of my knowledge, there has been only one conviction of this type involving timber interest in the Pacific Northwest where oral bidding was practiced. But collusion is not the real issue in the "sealed bid/oral bid" controversy."

Chief John McGuire of the Forest Service has repeatedly testified before Congressional committees that there is no sound evidence to support the conclusion that sealed bidding is less likely to result in collusion than is oral bidding.

Furthermore, in United States v. Champion International Corp. et. al., 1975-2 Trade Cas. ¶60,453 (D. Ore. 1975), aff'd, 5 CCH Trade Reg. Rptr. ¶61,442 (9th Cir. 1977), the only case which led to a conviction for collusion in an oral bidding setting, those convicted had met and reached understandings prior to the sales. The case illustrates that,

in oral as well as sealed bidding settings, meetings and agreements prior to the actual sales are necessary if the parties are to effectively collude. This directly contradicts the Justice Department's letter's assertion that collusion at an oral bidding sale is harder to prove because the participants need not make such prior agreements.

The only conclusion that can be drawn from the existing evidence is that those inclined to collude will do so under any bidding mechanism, and that collusive activities under either mechanism will be essentially similar.

Furthermore, the contention that collusion in an oral bidding situation is difficult to prove implies (1) that collusion in sealed bidding situations would be easier to prove, and (2) that the Justice Department would have to rely on circumstantial evidence to make a case. Aside from the fact that the purpose of S. 1360 is not to amend the antitrust laws, the first implication is totally unfounded, and the second implication is inaccurate.

Since Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939), it has been clear that circumstantial evidence is sufficient to sustain a finding of an unlawful conspiracy to violate the antitrust laws despite the absence of direct evidence. 306 U.S. at 226-27. Indeed, in the Champion case discussed above, the Court of Appeals ruled

that no direct evidence of a collusive agreement was necessary for conviction:

> The government was unable to introduce direct evidence of an express agreement, but argues that the circumstantial evidence proved the existence of the tacit agreement found by the judge. We agree.

5 CCH Trade Reg. Rptr. at 71,646. The Court of Appeals concluded by noting that it is not necessary for the government to show either that the defendants knowingly entered into a conspiracy or that they had a specific intent to restrain trade. Id. at 71,647. The law directly refutes the Baker letter's claim that it is necessary either to have an informer or direct evidence of a conspiracy to obtain a conviction.

Finally, it should be noted that to help identify possible collusion, the Forest Service has established a monitoring system of National Forest timber sale bidding patterns. Records on the amount of bidding above appraised value and other relevant information is kept on each Forest Service timber sale and compiled for local areas with regional and national summaries. This program is used to identify bidding patterns which may be suggestive of collusive activities so that further investigation may be initiated.

Under these circumstances, there is no reason to threaten communities with sealed bidding. The innocent need not be injured to enable the government to prosecute the guilty.

C. Does Oral bidding favor the larger mills at the expense of the smaller operators?

NO

This assertion relates closely to the concept of "preclusive bidding" discussed previously.

It is an economic reality in the timber business that a relatively small operator will bid whatever is necessary in order to obtain a sale from local forest areas that is vital to the survival of his mill. He will do this irregardless of whether the sale is by sealed bid or oral auction. The only difference between the two, is that under the oral auction process, he can meet his competitors in the open and know what he must bid to obtain the sale. Under sealed bidding -- a guessing situation -- he may well place a very high bid, but if someone else bids a little higher, he loses a sale which may be absolutely essential to his operations.

As to the larger mills, the bidding method makes less difference. Larger mills have more capital resources and often have their own substantial timber reserves. If a large firm, with sufficient financial backing wishes to take over all timber sales in a particular geographic area, it can do so under either bidding method. However, oral bidding gives small mills a better opportunity to be aware of, and respond to, such competition. If Congress wishes to halt the "trent toward concentation"

in America's business, particularly timber sales in the West, then required sealed bidding is certainly not the proper approach. If Congress wants to protect the small operators, then certainly it would be wiser to support oral bidding, wherein the small mill has the opportunity to bid, rebid, and rebid yet again in an attempt to gain a timber sale in the face of his larger rivals. Sealed bidding gives only one opportunity, ultimately, the loser is the small operator -- and the community whose survival depends upon his continued operations.

D. Does the Government receive less than a fair price in an oral auction of timber?

NO

Opponents to auction sales imply that this method results in timber purchases below its fair market value. This is not true. In order to qualify for oral auction bidding a prospective purchaser must submit a bonded sealed bid at or in excess of the Forest Services appraisal. That appraisal, by statute, must be for the fair market value of the timber. The oral auction purchaser must bid in excess of the fair market value in order to obtain the sale.

The opponents state that sealed bid procedures have resulted in sales at 85% above fair market value, while oral auctions have yielded only 71% above that figure. Statistics

from the sales do not support such an allegation. Aside from the fact that it is the home buyer who ultimately must pay the increased cost, the statistics show that per board foot, oral auctions have yielded higher prices. (pp. 120-139 House Committee on Agriculture Hearings by the Subcommittee on Forests, dated February 7, 8, and 9 and April 5, 1977 on H.R. 5863)

E. Could oral bidding in the West lead to oral bidding in the South and East?

NO

The authors of the Senate Minority Report expressed fear that "Repealing Section 14(e)...could result in oral bidding in areas where the Forest Service has traditionally used sealed bidding". This is much like saying, "The sky could fall tomorrow." The stated purpose of amending Section 14(e) is to restore to the Forest Service the authority to return to its historical practice. There is no intent to change Forest Service practices in the South and East and the likelihood of such change is less than remote. Sales practices which do not disrupt community stability will remain the same.

F. Are small mills and dependent communities adequately protected by Department of Agriculture Regulations?

NO

The Metcalf, Bumpers and Metzenbaum minority report on S. 1360 suggests that the Secretary of Agriculture has

sufficient flexibility under the National Forest Management Act of 1976 to adjust bidding methods to minimize adverse impact on dependent communities. This suggestion seems to be based upon the premise that the Executive Branch is sufficiently cognizant of the plight of dependent communities and small operations and adequately staffed to respond quickly enough to an economic crisis. In reality, of course, it is not.

In initially implementing the provisions of Section 14(e) in 1976, the Secretary of Agriculture virtually eliminated oral auction bidding, even in dependent community situations -- a result which gave rise to sharp industry, community, and Congressional criticism. Even Chief McGuire has admitted that Forest Service "field units applied more rigid standards than we had envisiioned and only one community in the West qualified for oral auction." Because of this valid criticism of the initial regulations, the final regulations published on June 2, 1977 are a vast improvement over the interim measures. Nonetheless, they provide that even in communities which the Forest Service determines to be substantially dependent upon National Forest timber (to date 183 have so qualified), the Forest Service will offer up to 25% of the volume on a sealed bid basis.

Many small opeators in some parts of the West specialize in certain types of sales that have particular species or

grades of logs. These small operators must obtain every single sale which comes up having the kinds of products they specialize in. If, by chance, that sale is one of those offered under sealed bidding, it puts the operator in an untenable position due to uncertainty over what he must bid to obtain the sale.

Another difficulty is created by the fact that in the past few years the amount of timber offered from the National Forests has been reduced significantly in some parts of the West. In these areas the Forest Service is selling hardly enough to maintain existing mills on a break-even point. Putting into jeopardy 25 percent of the volume in these areas would be enough to severly damage the local economy.

Finally, the "safeguard" which the regulations provide for increasing the percentage of timber offered by oral auction if a substantial portion of the sales end up being purchased by outside firms has the obvious and critical flaw that nothing will be done unless substantial, and in all likelihood permanent and irreparable, damage has been done to local economy and the stability of the community.

There exists ample precedent for a public policy which aims at stabilizing communities heavily involved in forest products production, and this Congress should evidence at least the same concern for the economic plight of dependent communities in the West that it seemed to last year.