

University of Colorado Law School

## Colorado Law Scholarly Commons

---

Who Governs the Public Lands: Washington?  
The West? The Community? (September 28-30)

1994

---

9-29-1994

### Developments and Trends in Fiber Supply: Implications for the Northwest's Forest Products Industry

James C. Geisinger

Follow this and additional works at: <https://scholar.law.colorado.edu/who-governs-public-lands-washington-west-community>



Part of the [Administrative Law Commons](#), [Environmental Law Commons](#), [Environmental Policy Commons](#), [Forest Management Commons](#), [Land Use Law Commons](#), [Natural Resources and Conservation Commons](#), [Natural Resources Law Commons](#), and the [Natural Resources Management and Policy Commons](#)

---

#### Citation Information

Geisinger, James C., "Developments and Trends in Fiber Supply: Implications for the Northwest's Forest Products Industry" (1994). *Who Governs the Public Lands: Washington? The West? The Community? (September 28-30)*.

<https://scholar.law.colorado.edu/who-governs-public-lands-washington-west-community/13>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



William A. Wise Law Library  
COLORADO LAW  
UNIVERSITY OF COLORADO BOULDER



Getches-Wilkinson Center Collection

James C. Geisinger, *Developments and Trends in Fiber Supply: Implications for the Northwest's Forest Products Industry*, in *WHO GOVERNS THE PUBLIC LANDS: WASHINGTON? THE WEST? THE COMMUNITY?* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1994).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

**DEVELOPMENTS AND TRENDS IN FIBER SUPPLY:  
IMPLICATIONS FOR THE NORTHWEST'S FOREST  
PRODUCTS INDUSTRY**

**James C. Geisinger  
President  
Northwest Forestry Association  
Portland, Oregon**

**WHO GOVERNS THE PUBLIC LANDS:  
WASHINGTON? THE WEST? THE COMMUNITY?**

**Natural Resources Law Center  
University of Colorado  
School of Law  
Boulder, Colorado**

**September 28-30, 1994**

## **DEVELOPMENTS AND TRENDS IN FIBER SUPPLY: IMPLICATIONS FOR THE NORTHWEST'S FOREST PRODUCTS INDUSTRY**

James C. Geisinger  
President  
Northwest Forestry Association  
1500 S.W. First, Suite 770  
Portland, Oregon 97201  
U.S.A.

### **ABSTRACT**

---

The Clinton Administration has advanced a radical new management plan for federal forests in the Pacific Northwest that will reduce fiber supply by some 80 percent from what was sold during the decade of the 80's. While describing its plan as an "ecosystem management plan," the Administration's proposal would effectively place 88 percent of the federal forests off limits to predictable, sustainable harvesting of timber. In fact, the stated objective of the plan is to restore the forests to a mythical "pre-settlement condition." The impact on the region's forest products industry and to the dozens of communities that depend on it will be truly devastating. Industry economists estimate that as many as 80,000 jobs could eventually be lost when the plan is implemented. The pulp and paper industry will also be affected in that approximately 55 percent of the chips consumed by the region's paper industry traditionally have originated from federal timber sales. The plan was prepared in an attempt to break the legal gridlock caused by a federal court injunction that has essentially stopped the sale of timber from federal forest lands for nearly four years. The Clinton Forest Plan is currently before district court Judge William Dwyer awaiting approval.

---

### **OVERVIEW**

The Pacific Northwest is facing a major fiber supply crisis that will have significant economic implications for all sectors of the forest products industry. One sector of the industry that has been largely ignored in most economic analyses of this situation is the pulp and paper industry. This paper will describe the events leading up to the pending supply shortages, the impact of these events on the supply of fiber in the Pacific Northwest region, and speculate on possible alternatives for resolving the political controversy that has brought gridlock to the forest lands of the region.

Timber sales from federal forest lands in Washington, Oregon and northern California have been enjoined by a federal district

court for almost four years due to the inability of the U.S. Forest Service and the Bureau of Land Management to satisfy two judge's interpretation of the legal requirements for protecting habitat for a threatened species known as the spotted owl. Between 1989 and 1992, no less than three forest management plans have been presented to the courts to resolve the controversy. The adequacy of these plans have been challenged by national and regional environmental groups. Each time, the court has rejected the documents and granted injunctive relief to the plaintiffs. The net effect is that fiber production activities have been prohibited on 24 million acres of federal forest lands in the three states.

During this period of time, government agencies were preparing new resource management plans pursuant to the National Forest Management Act (NFMA). While these plans collectively put nearly three quarters of the federal forest lands off limits to logging, environmentalists wanted Congressionally designated old growth preserves. Congress made numerous attempts to break the gridlock by initiating legislative efforts to redefine forest management in the northwest. In 1992, there were as many as 14 different pieces of legislation before various committees of Congress designed to restore some stability and certainty to the region's forest policy. Only one of these bills ever got reported out of a committee, none ever went to the floor of either house of Congress. In the meantime, Presidential candidate Bill Clinton made a campaign promise to organized labor that, if elected, he would convene a Forest Conference bringing key Cabinet Officers and interest groups to the table to negotiate a fair and balanced solution to the gridlock.

President Clinton held his Forest Conference in Portland, Oregon on April 2, 1993. At the conference he promised to produce a plan based on ecosystem management principles. He said the plan would be fair and balanced. He said it would be legally defensible. He said it would put people back to work in the woods. He said it would provide stable, predictable supplies of timber from federal lands and certainty for non-federal lands. His Secretary of Interior said it would produce two billion board feet of timber in the first year. After a year, not a single promise has been kept.

The President's plan effectively preserves 88 percent of the federal forests as old growth preserves where no programmed, predictable timber harvest is allowed, hardly a plan to manage ecosystems in the context of broad landscapes. The "probable sale quantity" will, some day, be one fifth of what was sold during the previous decade. I say "some day" because the Administration has admitted it will take up to four years after the injunction is lifted to get from zero to 20 percent of what was produced from these lands just a few short years ago. The agencies' 1994 budget is \$57 million short of what is needed to implement this plan. The Administration's 1995 budget request to Congress is \$111 million short.

The plan was devised by a group of handpicked scientists behind closed doors with no involvement from the public or other scientists with different views. The Administration's own attorney admitted in federal district court on March 4, 1994 that the team of scientists (the Federal Ecosystem Management Assessment Team) was never intended to be balanced. He told a federal judge that to be "balanced" would have required the participation of individuals with views different than the Administration's. Consequently, the options presented to the President represented a skewed range of alternatives reflecting the opinions of a small group of scientists all holding strong feelings about their respective areas of expertise. Because of the process used to develop the President's Forest Plan, a federal district court judge in Washington, D.C. has found the Administration in violation of the Federal Advisory Committee Act on ten different counts. The Forest Plan has already been declared illegal.

Earlier this year President Clinton's Press Secretary Dee Dee Meyers clearly articulated the Administration's views on forestry issues. At a press briefing where the President's proposed health plan was distributed on computer disks, Ms. Meyers responded to a question about why there were no hard copies available for the press by stating, "Hey this is the 90's, we don't believe in killing trees!" Clearly, the President intends on implementing this policy in the Pacific Northwest.

I believe the President's Forest Plan will fail for the many reasons to be explained in this paper. It is legally indefensible, economically dysfunctional, not implementable at the ground-level, and politically unacceptable. The only way to resolve this growing crisis is for Congress to intervene and legislate a solution to the gridlock that is threatening the economic fabric of an entire region of the country. Let there be no mistake, the future will be different than the past. But the degree of change is an issue of such monumental significance that Congress must demonstrate its oversight responsibilities rather than leaving such decisions to the Executive Branch, alone.

## **KEY ISSUES AFFECTING FIBER SUPPLY**

### **Old Growth Forests**

Just two years ago, George Frampton, the President of the Wilderness Society, spoke to the Portland City Club about the need to preserve old growth forests. He told the audience of business executives that less than two million acres of old growth forests remained on federal lands in the northwest and it was the position of his organization that all of it should be saved.

Mr. Frampton is now the Assistant Secretary of Interior in charge of the National Park Service and the U.S. Fish and Wildlife Service. He has been very involved in the preparation of the President's Forest Plan. The Clinton Administration now believes

there are 8.6 million acres of old growth forests and its plan preserves all but one million acres. Two fascinating observations need to be made here. First, even though the President's Plan preserves four times as much old growth as Mr. Frampton said existed just two years ago, the environmental community is still not satisfied. They are now calling for "zero harvest" on public forest lands. Second, while the Administration believes eight to nine million acres of old growth forests remain on federal lands in the region, they buy into the environmentalist's allegation that this is the last ten percent of the old growth forest and that we have, in fact, cut 90 percent. Well, if this is true, then mathematics would tell you that between 80 and 90 million acres of old growth existed at some point in time. Unfortunately, this is an impossible theory since there are less than 50 million acres of forest land in all of the northwest!

The fact is that the latest research indicates that northwest forests never had more than 40 percent of the landbase in an old growth condition. The northwest forests are dynamic ecosystems that have been disrupted cyclicly for centuries. Indigenous people have had a profound impact on these ecosystems for at least 12,000 years by burning the land to create wildlife habitat and for agricultural purposes. Yet one of the stated objectives of the President's Forest Plan is to restore the forests to their "pre-settlement" conditions by letting them grow, almost exclusively, into an old growth condition. I submit that this is a highly "unnatural" condition.

### **The Northern Spotted Owl**

The spotted owl was originally believed to be an "indicator species" for purposes of measuring the health of old growth forest ecosystems. The theory was that if spotted owls were prospering in a forest environment, then all other species that depend on similar environments were prospering as well. This theory served the environmental community very well in that they used the owl for years as a surrogate (their word not mine) for preserving old growth forests. When the owl was listed as a threatened species in 1990, it obtained a status that increased its value exponentially as a tool or means to stop forest management activities in late successional forest types. The Forest Service has made three attempts to prepare a management for preserving habitat for the spotted owl. Each attempt has been rejected by federal district court judge William Dwyer. He has issued three different injunctions against harvesting in owl habitat. The latest was issued in the Spring of 1992 and is still in effect today. Ironically, none of these injunctions have been based on the owl's status as a threatened species. Rather, it has been procedural violations of the National Environmental Policy Act (NEPA) that has produced the legal strangle-hold on the region's timber supply. The Clinton Administration's Forest Plan will be the fourth plan submitted to Judge Dwyer.

While the original assumption that the owl requires old growth is still tightly held by a small but powerful group in the scientific community, the most recent research has demonstrated the owl's ability to live quite well in a variety of forest habitats. Evidence is mounting that northwest forests can be managed to produce timber and still maintain forest stand characteristics necessary to provide for a viable population of spotted owls.

### **The Marbled Murrelet**

The marbled murrelet is a seabird that spends approximately 80 percent of its time in the ocean. It was listed as a threatened species in 1992 based mostly on the research of single graduate student at Oregon State University. The murrelet is known to nest in large old growth trees along the coasts of Washington, Oregon and California. The listing decision was based on knowledge of approximately 19 nests in the three states. There is an estimated 250,000 murrelets in British Columbia and Alaska where the birds nest in rocks along the coast. The U.S. Fish and Wildlife Service, however, believes the murrelets in the lower 48 are a "distinct population" different from those that live farther north.

While the marbled murrelet spends the majority of its life in the ocean where it is exposed to life threatening occurrences such as drift nets, oil spills and predation, the biologists seem to believe that nesting habitat is the most critical component of the species life requirements. Consequently, any timber sale activity on federal land within 50 miles of salt water in the three affected states in the vicinity of nesting habitat must undergo Section 7 Consultation under the Endangered Species Act.

### **Threatened Salmon**

Also in 1992, the National Marine Fisheries Service (NMFS) listed the Snake River Sockeye and the Columbia River Chinook runs of salmon as threatened species. Compared to the spotted owl, marbled murrelet and old growth forests, the listing of anadromous fish runs as threatened species promises to expand the impact of the Endangered Species Act far beyond what was imagined possible just a few short year ago. Stretching well into the intermountain west, the Columbia River drainage covers some five states and millions of acres of forest land. Today, any timber sale activity that is determined to affect the spawning habitat of these fish runs must undergo Section 7 Consultation. This is a rigorous process utilizing incredibly rigid standards for protection. Some of the first timber sales subjected to consultation were given "jeopardy opinions" by NMFS, meaning that they could potentially jeopardize the future existence of the species if harvested. NMFS issued the opinions because it was predicted that the sales might increase short-term sedimentation in one isolated stream by .10 percent. The consultation process has severely curtailed timber sales even in areas not affected by the

spotted owl.

Most frustrating for the forest products industry, is that all eyes seem to be on forest land habitat as the most critical component of the salmon's habitat needs. Recent research indicates that many other factors rate much higher in importance to the well-being of salmon runs. These include over-fishing, hydro projects, agricultural practices, predation by an exploding population of seals and sea lions, failed hatchery programs, ocean currents like El Nino and human development. The fact is, there are hundreds of miles of forest streams in the northwest today offering pristine spawning opportunities, but the fish are not returning to their traditional spawning habitat. Something is happening from the time they leave their birthplace and when it is time to return. In many cases it is analogous to a four-star hotel leaving its vacancy sign on but nobody is checking into the hotel.

In spite of the complexity of the decline in salmon runs, the President's Forest Plan prescribes huge buffers along forest streams. All fish bearing streams would have 300 foot buffers on each side of the stream, non-fish bearing perennial streams would have 200 foot buffers and intermittent streams would have 100 foot buffers. Collectively, these buffers will take hundreds of thousands of acres out of production.

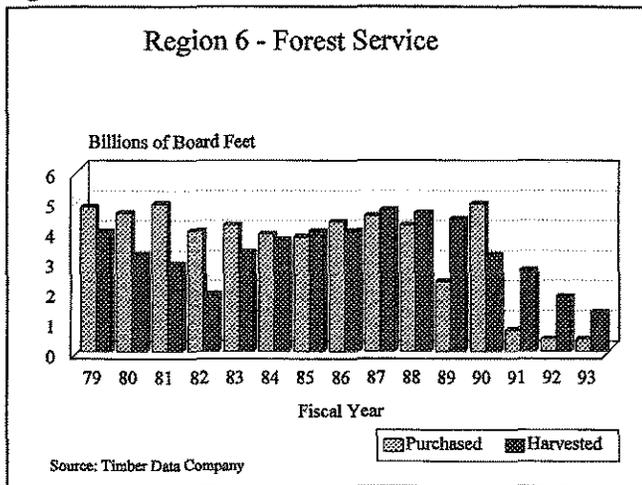
In summary, the issues of old growth preservation and the Endangered Species Act implications for spotted owls, marbled murrelets and salmon have collectively brought timber sales on federal forests in the Pacific Northwest to a virtual standstill.

## **QUANTIFYING THE IMPACT ON FIBER SUPPLY**

### **Historical Timber Sales And Harvests From Federal Forests**

The environmental community, as well as the Clinton Administration, consistently refer to the "over-harvesting" of the national forest lands during the past decade. The truth is that the decade of the 80's was one that saw the best of times for the forest products industry and also the worst of times. It is true that harvest levels reached something less than five billion board feet per year between 1987 and 1989. But our industry was in the depths of the worst recession it has ever encountered during the early part of the decade. Between 1980 and 1983 the industry harvested less timber from the northwest's national forests than at any other time in modern history. The average harvest level for the decade was well within the limits of sustainability under the management plans in effect at the time (see figure 1).

Fig. 1. Purchased and Harvested Timber Sale Volumes



Timber sale levels are determined based on the forest management plan in effect at the time and on the annual congressional appropriations process. Congress sets the annual timber sale level. Figure 1 shows that these sale levels varied during the course of the decade, but averaged about 4.5 billion board feet. This volume, too, was within the sustainable limits of the forest plans in effect when the timber was sold.

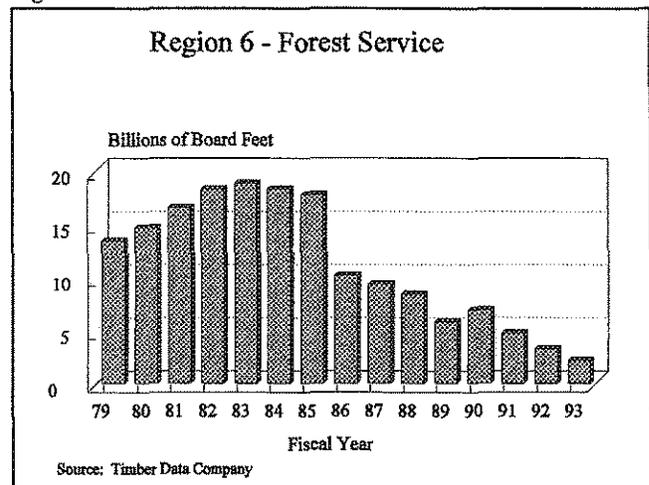
An historical event took place in 1984 that nearly all parties fail to recognize when debating the sustainability of the harvest levels of the 80's. The Contract Payment Modification Act of 1984 allowed timber purchasers to turn timber sale contracts back to the government, for a financial penalty, because they had become uneconomical to harvest when interest rates skyrocketed and the housing market collapsed. Congress instructed the Forest Service to resell the returned volume as part of, not in addition to, the normal annual timber sale program. The point here is that over six billion board feet of timber was resold between 1985 and 1989, as part of the normal timber sale program. For five years between 30 and 40 percent of the annual sale program was comprised of these returned timber sales. This volume was sold twice, but harvested just once. If this double-counted volume is deleted from the new volume sold during the decade, the average volume of new sales was less than three billion board feet per year. The bottom line is that the Forest Service's timber sale program during this period of time was sustainable and did not constitute "over-harvesting" in any shape or form.

The impacts of Judge Dwyer's injunctions are shown quite vividly in Figure 1. The first injunction hit in the Spring of 1989, the second in early 1991 and the last and current injunction in 1992. There essentially has been very little to no timber sold since 1991 in Washington, Oregon and northern California.

### Federal Timber Under Contract

Figure 2 shows the impact that the court injunctions have had on federal timber under contract. Typically, companies in our industry have kept two and a half to three years of timber under contract. It is necessary to have such a backlog for a variety of reasons including the flexibility to respond to market fluctuations, weather conditions and to secure financing to run operations. But due to the injunctions, most companies only have a few months of volume left and many are operating on a week to week basis. The point here is that the real economic impact of the court injunctions has not yet been felt. Most companies have been operating at near normal capacity using timber sales they purchased prior to the injunctions being imposed. But all that will come to an end within a few months if the gridlock on the federal forests is not broken.

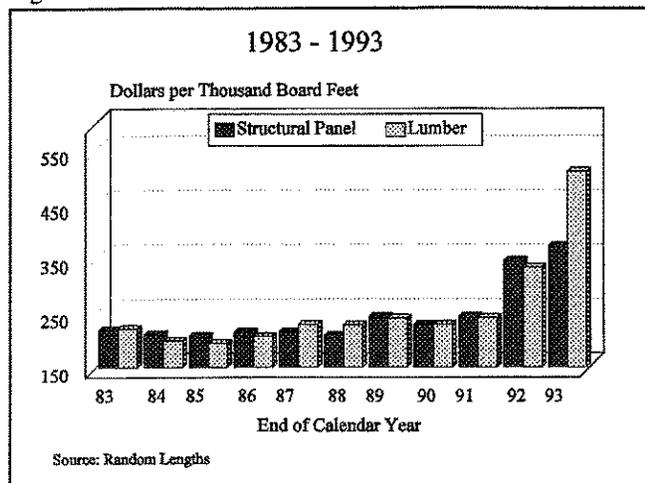
Fig. 2. Volume Under Contract



### Finished Product Prices

Traditionally the Pacific Northwest has supplied nearly one third of the country's building material needs. Court injunctions and President Clinton's Forest Plan will reduce the ability of the region to supply the demand it once did. Figure 3 shows the reaction of the lumber and structural panel market to the controversy surrounding federal timber supply in the northwest. Some economists have alleged that this spike in prices is a reaction to demand and that the real price of building products is not any higher than in the late 70's. Their analysis fails to note that over two million homes a year were being built in the late 70's compared to 1.3 million today. If housing starts ever reach two million per year again, and the timber supply crisis has not been resolved, prices will escalate well beyond anything we've ever experienced.

Fig. 3. US Softwood Lumber & Structural Panel Prices



Of great significance to the pulp and paper industry is that approximately 55 percent of the chips consumed in the northwest have traditionally originated from federal timber. Mills that depend almost entirely on federal timber have been a major supplier of chips for the pulp and paper industry. As federal timber sales are reduced dramatically, the price and volume of chips will be impacted as well.

### THE PRESIDENT'S FOREST PLAN

Subsequent to the April 2, 1993 Forest Conference, the Clinton Administration convened a committee of scientists known as the Forest Ecosystem Management Assessment Team (FEMAT). Its charge was to develop an ecosystem based plan that would balance environmental concerns with the economic needs of the region. They met for three months behind closed doors in the U.S. Bank Tower in Portland, Oregon. They would not meet with the public. They would not accept input from other scientists with views different than their's. In hindsight, the driving force behind their recommendations to the President, was their estimation of the chances for long-term (100 years) viability for over 1,000 species of vertebrates and non-vertebrates known to inhabit northwest forests. On July 1, 1993 President Clinton announced the recommendations of the FEMAT, the so-called Option 9.

Table 1 and Figure 4 illustrate the land allocations proposed by FEMAT for the 24 million acres addressed by Option 9. Under the President's Plan, 88 percent of the federal forest landbase would be off-limits to sustainable, programmed harvest of timber. Only three million acres spread over three states would be available for predictable levels of timber harvest. These are called the Matrix lands, but even these lands must keep at least 15 percent of the acreage in old growth at all times. All of the other land allocations have the stated objective of maintaining and

creating old growth forests or, as stated in the Final Environmental Impact Statement, returning the forests to "pre-European settlement conditions."

Table 1. Option 9 Land Allocations Spotted Owl Forests

Land Allocation	Acres
Congressionally Designated Reserves	7,321,000
Late-Successional Reserves	7,532,000
Adaptive Management Areas	1,522,000
Administratively Withdrawn Areas	1,477,000
Riparian Reserves	2,628,000
Matrix	3,975,000
Total	24,455,000

Source: FSEIS & ROD

Fig. 4. Option 9 - Land Allocations

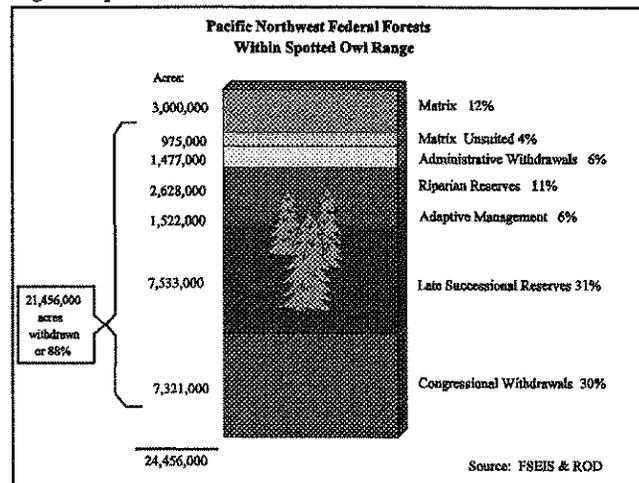
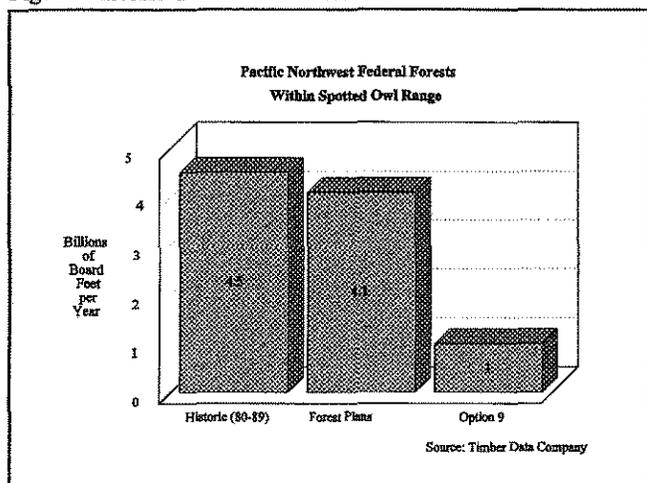


Figure 5 demonstrates the dramatic reduction in timber supply that would occur under the President's Forest Plan. Between 4.5 and 5 billion board feet of timber were sold from these forests each year during the past decade. Under Option 9, less than one billion board feet would be sold, an 80 percent reduction. While these reductions will clearly have a catastrophic impact on the industry and the dozens of communities that depend on it, Forest Service Chief Jack Ward Thomas recently testified before Congress that it will take at least four years to implement the meager timber sale program envisioned in the plan. Adding this timeframe to the nearly four years of court injunction will assure that the region will undergo seven straight years of virtually no federal timber being available.

Fig. 5. Historic Timber Sale Volumes



The Administration estimates that its plan will result in the loss of 58,000 jobs in the forest products industry. However, in its initial analysis it assumed that no jobs in the pulp and paper industry would be affected. Industry economists believe the accurate figure is closer to 80,000 jobs, just in the Pacific Northwest.

The forest products industry, obviously, has many concerns with the President's Plan. It is not an ecosystem management plan embracing large landscapes. Instead, it is a preservation plan that effectively locks up over four fifths of our forests. It is based more on the opinions of a small group of scientists rather than the product of a scientific process. It largely ignores the economic dependency of dozens of communities and tens of thousands of people on federal forest resources. It will not break the legal gridlock that has prevented the sale of any timber for almost four years. And even if it could, the Administration has already said it will take three years or longer to implement. Frankly, it fails the test of nearly every promise the President made to the people of the Pacific Northwest.

#### WHERE DO WE GO FROM HERE?

The Clinton Administration made a well-intentioned effort to resolve a controversy in three months that has been raging for nearly two decades. Unfortunately for the Administration and for the people of the Pacific Northwest, it failed. The federal timber sale program is still enjoined by a federal court, the plan advanced by the Administration cannot be implemented in a manner timely enough to mitigate the economic consequences of the injunction, the plan itself is not balanced and embraces a radical preservationist theology, and the process utilized to develop the plan has been declared illegal by a federal district

court. The President has not delivered on his promise to sell two billion board feet in the first year of his plan. In fact the plan hasn't produced two million board feet.

The only way to bring meaningful and lasting relief to the forest products industry in the northwest is for the Administration to ask Congress to intervene and legislate a solution that would allow the President to deliver on the promises he made over a year ago. Congress is responsible for the innumerable laws that have been passed over the years directing, often in a contradictory manner, how our federal forest resources should be managed. These laws have become so complex that it may be that no government agency is capable of complying with them in a comprehensive and cohesive manner. Therefore, it is Congress' responsibility to clarify its intent relative to federal forest resources by passing legislation that will give clear direction and protection from obstructive litigious strategies so that its mandate can be implemented on the ground.

Without such legislative intervention, the forest products industry in the northwest is facing certain disaster. It doesn't matter whether you work for a sawmill, a plywood plant or a paper mill. Fiber supply in all forms will be in short supply in the very near future. How dramatic the reduction will be is a major public policy decision that should be made by Congress.