


PEER

WHITE

PAPER

Number Six, \$5 U.S.

***UNINDICTED
CO-CONSPIRATOR***

Timber Theft
and the
U.S. Forest Service

March 26, 1996

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources. PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Inform** the administration, Congress, state officials, the media and the public about substantive issues of concern to PEER members;
3. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management; and
4. **Monitor** land management and environmental protection agencies.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who aggressively advocate for environmental protection and professional ethics in their agencies.

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About This Report

This PEER white paper documents the institutional complicity of the U.S. Forest Service in the problem of commercial timber theft and fraud.

This white paper was prepared by U.S. Forest Service law enforcement personnel, some of whom are special agents and investigators who served on the Timber Theft Task Force. These professionals collectively represent more than a century of Forest Service law enforcement experience.

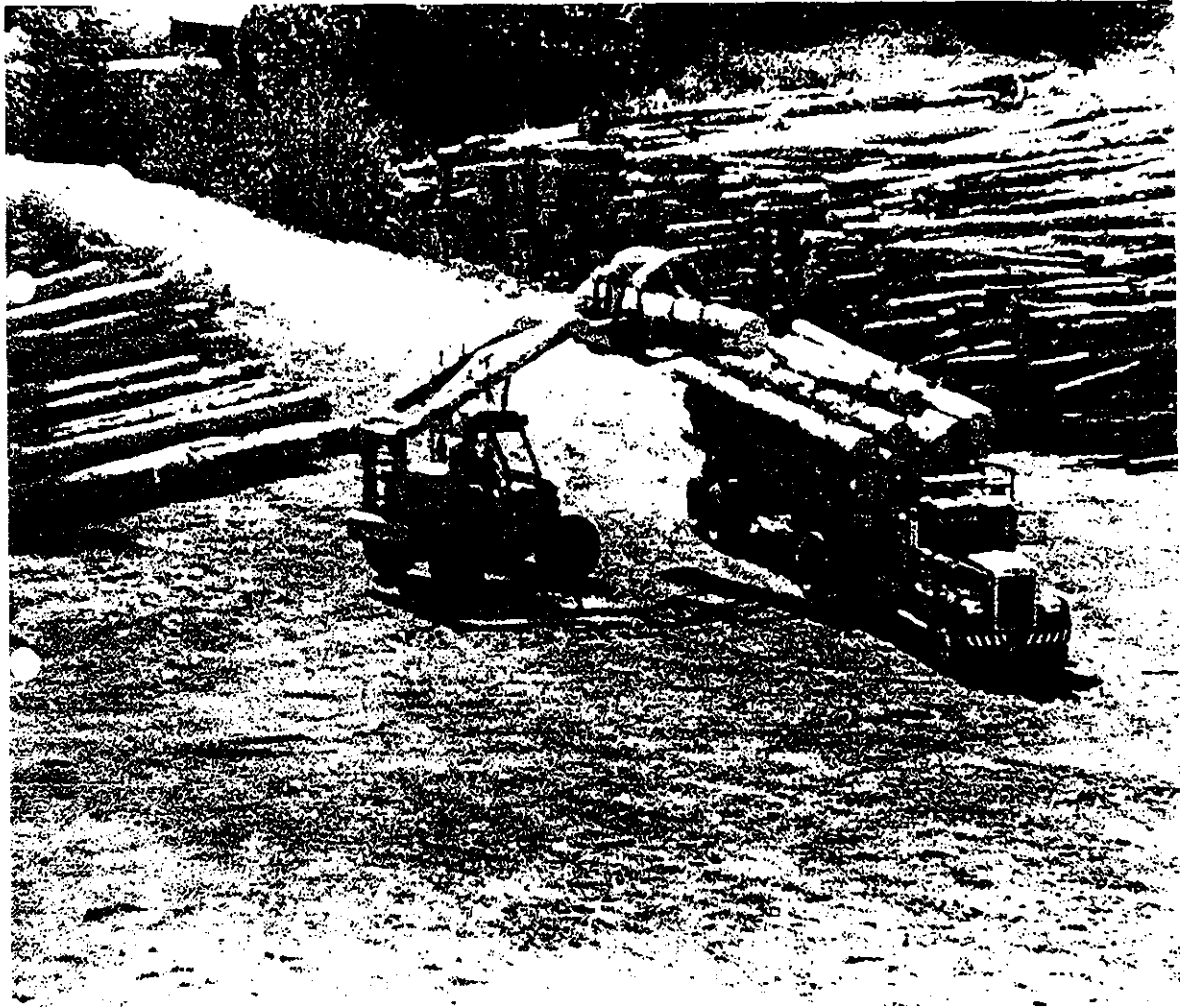
A draft of this report was reviewed by senior law enforcement officials from other federal resource and environmental agencies, including the Bureau of Land Management, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the Office of Surface Mining. Many of the reviewing special agents, lawyers and investigators are members of PEER's law enforcement chapter, the Association of Public Lands Law Enforcers (APLLE).

The authors of this report remain anonymous in order to avoid further retaliation by the Forest Service and in order to prevent further disruption to ongoing timber theft investigations. A number of Forest Service special agents and investigators have filed or are filing formal whistleblower charges against the agency concerning the events outlined in this White Paper. The authors do not wish to cloud the issue raised by this report with their personnel cases which will be separately litigated.

This PEER white paper could not have been prepared without the assistance of Tom Devine, legal director of the Government Accountability Project.

PEER is proud to serve conscientious public employees who have dedicated their careers to faithful execution of the laws that protect our national forests.

Jeff DeBonis
PEER Executive Director



Under Cover of the Night

This infrared photo shows a commercial timber theft in progress. The large logs removed without payment to the government are being placed directly onto the buyer's truck.

Executive Summary

According to its own law enforcement specialists, the U.S. Forest Service has unilaterally disarmed in the war against major timber theft and fraud by removing its cops from the forest protection beat. This abdication of enforcement effort has occurred in the face of unprecedented vulnerability to that crime, which the Forest Service concedes may cost taxpayers at least \$100 million a year and may account for more than ten percent of the all trees cut from the entire National Forest system.

Because major timber theft occurs as part of Forest Service administered timber sales, criminal timber theft investigations are singularly embarrassing to the Forest Service since virtually every case documents sloppy sale administration or worse. **As a result, some prosecutors refer to the Forest Service as the unindicted co-conspirator behind every timber fraud case.**

New emphasis on "salvage" sales dramatically increases the potential for major timber theft. These supposedly customized salvage sales to promote forest health leave both the national forests and the American taxpayers at the mercy of an industry honor system, an open invitation to steal.

In spring 1995, the Forest Service abruptly abolished the only investigative unit dedicated to the problem of timber theft. Contrary to agency statements at the time, ongoing investigations have been disrupted and are gathering dust, no new major fraud cases have been opened, and only small, firewood thefts are being investigated. For the last three years, the combined recovery from regional timber theft enforcement was slightly more than \$800,000, which is only about 25 percent of the \$3.2 million won by the timber theft task force in 1993 alone. In 1995, the Forest Service boasted of 76 timber theft adjudications, but the total recovery to the taxpayer was \$363,430, less than \$5,000 per case.

Despite promises, no national effort has been mounted within USFS to fill the vacuum:

- The Forest Service's major timber theft program is unfunded and dead in the water. There is no national timber theft organization or plan. Timber theft is not listed as a priority in the Forest Service Law Enforcement Manual. In fact, the words "timber theft" do not even appear in the manual.
- The Forest Service rejected an Office of Inspector General recommendation for the creation of a national cadre as streamlined hub of training and expertise for significant regional staff as part of a new national timber theft investigation effort.
- Regions have not assembled their own timber theft units, and do not have trained personnel committed to major timber theft investigation. In many regions, Forest Service law enforcement may not even initiate investigations without permission of Forest Service line managers or timber management staff.

This white paper highlights one major timber theft investigation that the Forest Service has obstructed: the "Rodeo case," a four-prong investigation of multimillion dollar theft through abuses of salvage sales in California and Oregon. Rodeo is a microcosm of Forest Service collusion; it involves:

- Unauthorized harvest of timber, up to 32,000 green trees per month, in a so-called salvage sale to clear out dead and diseased timber. Problems are ongoing.
- Deliberate miscalculation of the size and quality of cut government timber, a practice called "scaling fraud."

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- Illegal export of unfinished Forest Service timber, costing American mill workers their jobs.
- Collusion by top Forest Service officials in
 - * after-the-fact authorization to illegally cut timber
 - * after-the-fact "new math" to excuse industry failure to pay for hundreds of thousands of dollars of timber previously cut.

* de facto warnings to company targets of an ongoing probe, and wide distribution of confidential case information.

The white paper recommends the establishment of a national program to prevent, detect and investigate commercial timber theft. The white paper also calls for an end to retaliation against the Forest Service special agents and investigators who brought these concerns to light.

Introduction

The U.S. Forest Service manages more than 191 million acres of national forest system lands administered through 156 National Forests and 623 Ranger Districts grouped within nine regions. Sale of timber from the National Forests is one of the primary activities of the Forest Service with receipts from timber sales typically exceeding a billion dollars a year.

Timber theft from our National Forests is a large and growing problem. Despite admissions from nearly all of the major timber producing regions that the problem of timber theft is on the rise, the U.S. Forest Service has unilaterally disarmed its own law enforcement program from combating it.

Scope of Timber Theft

Theft of firewood and small scale illegal tree cutting in our National Forests represents only a small part of the volume of timber theft. Despite its relative insignificance, firewood theft consumes the lion's share of the time and resources of regional Forest Service law enforcement dedicated to timber theft. (In 1995, for example, the Forest Service reported 11,604 incidents of petty timber theft involving firewood, Christmas trees and theft of poles. By contrast, the Forest Service has no reliable data base or tracking system for major commercial timber theft cases.)

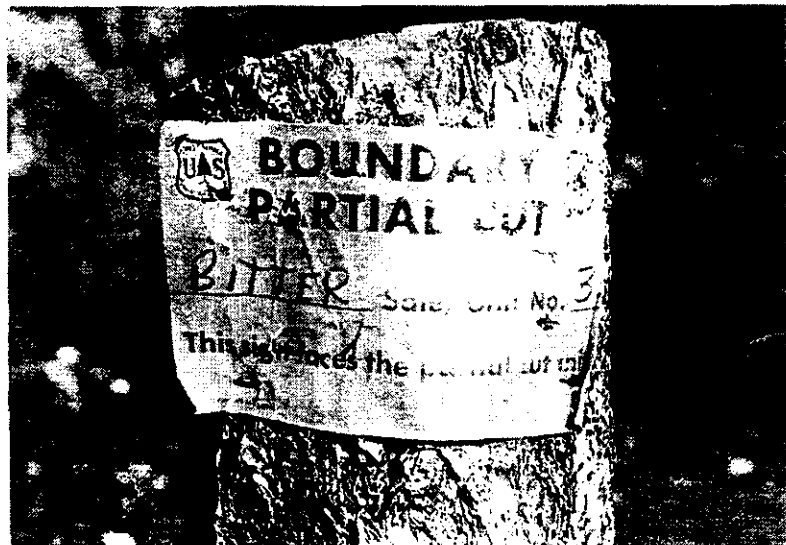
Major timber theft is primarily a function of Forest Service administered timber sales. Consequently, timber theft prosecutions are especially embarrassing to the Forest Service since virtually every case must document

sloppy sale administration or worse.

There are three principal types of commercial timber theft: 1) illegal harvest of trees; 2) diversions of trees prior to entry into the accounting system; and 3) fraud in the accounting or scaling process by undervaluing the most valuable timber as low-grade or worthless or by skewing the measurement of timber. Commercial timber theft cases usually involve hundreds of thousands to millions of dollars worth of timber.

Annual losses to the taxpayer from timber theft are difficult to assess. Estimates range from \$10 million (Forest Service) to \$100 million (House Appropriations Committee) annually. However, even former Forest Service Chief F. Dale Robertson conceded in 1993 that the higher estimates may be correct and that, accordingly, **timber theft may equal or exceed 10 percent of the total annual harvest from the National Forests.**

The Forest Service's growing reliance on salvage sales, i.e., timber sales designed for



Moving the Boundary

This Forest Service timber sale boundary marker was fraudulently moved by the logging company in a theft of more than \$180,000 of public timber.

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"forest health" that remove dead, diseased or fire-damaged trees, puts new strains on sale administration. Normal environmental controls are jettisoned, while each salvage sale is supposed to be customized to individual forest conditions. At the same time, downsizing within the Forest Service has significantly reduced the number of timber sale contract administrators which can, in turn, result in cursory sale inspections. These realities mean vulnerability to high volume timber theft.

The vulnerability is illustrated by a September 21, 1995, memo from Forest Service Timber Director David Hessel to all Regional Foresters suggesting that they should rely on the loggers themselves to directly administer salvage sales because the Forest Service lacked enough staff with sale preparation experience. In addition, timber companies are charged only reduced prices for logs taken in salvage sales because the logs are supposed to be of lower quality since they are from

diseased and dying trees. Taking of "green" or healthy trees during salvage is a financial windfall to the logger. **As a result, many Forest Service salvage sales are open invitations to steal.**

Whatever the ongoing scope of timber theft, the long term consequences for our National Forests of decades of commercial theft are quite severe. In order to maintain the integrity of the forest as a functioning ecosystem, each National Forest develops a "Forest Plan" which, among other things, identifies reserves which must remain uncut. Because timber theft is never counted into Forest Plans and the Plans are rarely updated by actual observation of ground conditions, over time the Plan description of the forest becomes more theoretical than representational. **On several major timber producing forests, the reserves are non-existent, because they have been plundered by decades of commercial theft.**



Missing Reserves

Overview of missing forest reserve. The boundary of the sale is below the line. Above the line more than 500 trees are missing, part of a \$300,000 timber theft.

I. Abolition of Timber Theft Task Force

Genesis of "TTIB"

In 1991, the Forest Service created the first specialized unit to combat timber theft. The unit was initially called the Timber Theft Task Force (TTTF). After a congressionally-imposed reorganization creating an independent Forest Service law enforcement program, the unit was reborn as a permanent Timber Theft Investigations Branch.

The Task Force was created to combat sophisticated white collar timber theft, as well as to address complex, multi-jurisdiction thefts. The initial Task Force jurisdiction, however, was limited to only three of the Forest Service's nine regions — California (Region 5), Washington and Oregon (Region 6) and Alaska (Region 10). All three are high timber-producing regions. Conspicuously absent from the task force's jurisdiction were two other high-cut regions: Region 1, which includes Montana and the Idaho Panhandle, and Region 8, the entire Southeastern United States.

The Task Force was created in response to a series of House Appropriations Committee investigative reports harshly critical of the Forest Service law enforcement program's integrity. Its mere existence was an admission that criminal prosecution is an appropriate response that the Forest Service historically has not wanted to take when it discovers timber theft. The strike force concept challenged longstanding Forest Service policy that even intentional timber theft would be dealt with at the forest level solely on a civil basis by the timber management staff, an approach called "settling under the contract." The offending timber company had to repay the contract value stolen ("stumpage"), or, in egregious cases, pay double or occasionally triple stumpage. In many cases, purchasers gladly pay double stumpage because they are selling the same product at five to six times the stumpage value.

Limited though it was, the Task Force met with stiff resistance from within the Forest Service. According to sworn testimony before Congressional committees, Task Force officials stated that:

- As adjuncts of the regions, the TTTF had extreme difficulty obtaining budgetary support and staff.
- Constant staff turnover impeded continuity, because personnel repeatedly were removed when they had completed the learning curve and replaced on assignments with new "detailers" who had to start over. The turnover also was a major drain on the few experienced investigators who had to devote half of their time to training.
- Potential prosecutions were scuttled by Forest Service timber management staff through advance warnings to targets of probes or through hasty civil settlements early in a criminal investigation.

Notwithstanding internal obstruction, the TTTF was instrumental in prosecution of the largest scaling fraud case ever brought in the history of the Forest Service — the Columbia River Scaling and Grading Bureau case. The case involved a longstanding scheme whereby the Forest Service was systematically short-changed through deliberate misscaling, misgrading and misidentifying origin of logs. As a consequence of this one victory, Forest Service scaling receipts rose approximately 5 percent for volume delivered to mills in the Pacific Northwest, the region with the largest timber volume in the system, nearly half the national total.



Leaving His Mark

This tree has a "leave-tree" mark on its side, but a timber thief cut it anyway and painted a phony mark on top. This stolen timber resulted in a successful \$440,000 prosecution.

"Stovepipe": Reorganization of Law Enforcement

The dissonance between the special agents and their chain of command began to attract outside attention.

On January 29, 1992, Forest Service Special Agent John McCormick, the law enforcement liaison for the national "whistleblower hotline" desk in Washington, D.C., testified before the U.S. House of Representatives Civil Service Subcommittee that agency managers routinely obstructed timber theft investigations and retaliated against agents who pursued timber theft cases. The Subcommittee commissioned a General Accounting Office (GAO) investigation of McCormick's allegations.

In June 1992, the Subcommittee on Interior and Related Agencies of the House Appropriations Committee issued a damning report entitled *USDA Forest Service Administration of Timber Contracts*, which strongly criticized Forest Service practices, docu-

mented cases of interference with its own law enforcement investigators and recommended that the law enforcement program itself be reorganized to ensure some measure of independence from the Forest Service chain of command.

By 1993, the issue of interference by Forest Service managers with its own investigators reached a mainstream audience. A newspaper exposé on internal obstruction of timber theft investigations published by the *Sacramento Bee* was followed by a CNN special report covering management interference with law en-

forcement cases. Whistleblowers also exposed obstruction of law enforcement probes into Forest Service use of contractors hiring crews of undocumented, illegal aliens to perform reforestation and brush removal projects; as well as a corruption case involving a district ranger spending agency recreation funds for a prostitute (the "Case of the Passionate Ranger") in which the investigating agents were defunded and transferred while the district ranger was appointed to oversee the law enforcement program on another forest. These media reports were followed, in turn, by two ABC news magazine segments on the issue. "PrimeTime Live" featured an undercover investigation on the illegal alien story, while "Day One" aired a segment on timber theft. All of the media coverage featured both background and for the record statements by Forest Service law enforcement officers and special agents.

The gist of the stories was the conflict-of-interest built into the agency's bureaucratic

system. In 1993, the Forest Service law enforcement staff, consisting of approximately 180 special agents (detective-level criminal investigators) and 600 law enforcement officers ("LEO's," uniformed field level employees) reported to the very chain of command they were called upon to investigate. This built-in conflict was particularly apparent with timber theft cases, since the agency's own timber staff was sometimes the target of potential criminal prosecution.

That same year U.S. Rep. Sidney Yates (D-Ill.), Chair of the Appropriations Subcommittee, and Rep. Ralph Regula (R-Ill.), the ranking minority member, jointly sponsored budgetary language reforming Forest Service timber sale practices and creating a separate agency Law Enforcement Program with its own budget and a separate chain of command that did not report to Forest Service line officers (district rangers, forest supervisors and regional foresters). Instead, agents and LEO's reported to a new national Law Enforcement and Investigations Director who, in turn, reported directly to the Chief of the Forest Service. This proposal was called the "stovepipe" or "straight line," denoting a discrete unbroken line on an organizational chart, with all law enforcement personnel answering to its own line of authority.

The timber industry vigorously opposed the stovepipe proposal. Not surprisingly, so did some elements of the Forest Service itself. In a July 1, 1993, letter, Keith Agrow, President of the National Woodland Owners Association, wrote to Sen. Robert Byrd (D-W.V.), then chair of the Senate Appropriations Committee, lobbying against the Yates-Regula language stating:

"There are obviously some very serious issues that must be corrected, but the proposed cure is not the right way to go. In fact, it could be disas-

trous. What is needed is the building of more accountability and cooperation within government agencies, rather than a separate line organization."

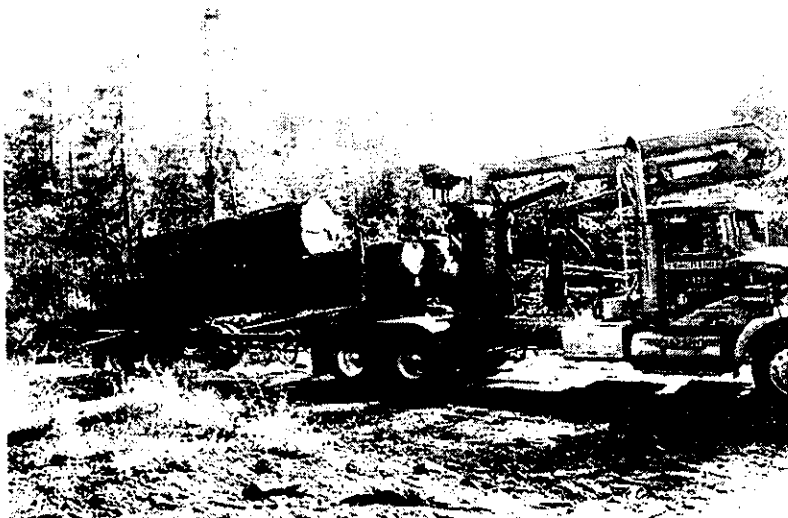
A blind carbon copy was sent back to the Forest Service Washington Office with a handwritten notation which read:

"Lamar — I hope we can do some good here.

K." [At that time J. Lamar Beasley was the Deputy Chief of Administration for the Forest Service.]

On October 5, 1993, the House Civil Service Subcommittee chaired by Representative Frank McCloskey (D-Ind.) held a hearing on Forest Service management interference with law enforcement investigations. Testifying before that panel was the immediately retired U.S. Attorney from Oregon and three special agents who told, firsthand, of agency obstruction of timber theft investigations.

The GAO report that was commissioned in the wake of Special Agent John McCormick's testimony the previous year was also unveiled at the hearing ("U.S. Forest Service: Independence Still Lacking in Law



Timber Thief Busted

A timber theft in progress interrupted by the Timber Theft Task Force. Prosecution in this case is pending.

Enforcement Organization" GAO/T-OSI-94-1). GAO had surveyed all special agents and found widespread accounts of management interference or attempts to control investigations, particularly timber theft cases. GAO also reported a pervasive fear by law enforcement personnel of management reprisal for pursuing investigations. The report recommended the adoption of a stovepipe law enforcement program within the Forest Service.

The Forest Service was represented at the McCloskey hearing by Chief F. Dale Robertson. Chief Robertson's prepared testimony announced a plan to adopt a modified stovepipe law enforcement organization controlled by regional foresters. Chief Robertson's testimony was dramatically undercut by the testimony of a Regional Special Agent from the Eastern Region (region 9), Jonathan Marsh, who told of direct attempts by his regional forester to derail law enforcement investigations and of retaliation by the regional forester against Marsh for resisting the interference.

The McCloskey hearing took place while an appropriations conference committee was considering the adoption of the Yates-Regula stovepipe proposal. ABC television did a follow up report on the hearings. The Clinton Administration, after attempting to find "a middle ground" (the phrase taken from an October 1 memorandum from USDA Assistant Secretary Jim Lyons to Chief Robertson), finally signaled its support for stovepipe and it was enacted effective immediately, as part of the new fiscal year appropriation. Soon after, the temporary Timber Theft Task Force was removed from the regions and attached to the Washington Office of the newly formed Law Enforcement and Investigations (LE&I) program where, its members were led to believe, they had been institutionalized as a permanent Timber Theft Investigations Branch (TTIB).

Hamstringing the TTIB

Supported by its new mandate, the TTIB opened three cases that promised to surpass the Columbia River victory, and the Branch was poised to probe massive timber theft in

Alaska previously reported but not investigated by the Forest Service.

But in January 1994, the new TTIB was halted in its tracks. Lowell Mansfield, a key manager implicated in the possible cover up of the agency's timber theft control problems in Alaska, was appointed to run the branch just as a TTIB agent was about to interview him about possible misconduct. The interview never took place. Instead, Mansfield, an outspoken opponent of the stovepipe organization, quickly proceeded to paralyze the strike force.

At the same time, a "management review" was created to evaluate the performance of the TTIB. One of the review leaders was Jim Turner, a stovepipe opponent and former regional manager on whose watch the Columbia River scaling fraud took place. The input of TTIB members was not solicited as part of the review and the members felt that the review's sole purpose was to lay the bureaucratic groundwork for ending the unit altogether.

In September 1994 a group of 10 agents and investigators from TTIB's Portland, Oregon office gave voice to their frustrations and sent a bill of particulars to the top of their chain of command. In a September 9, 1994, letter to U.S. Department of Agriculture Assistant Secretary James Lyons and the Chief, they warned that "almost nothing" was being done to honor the congressional mandate. They had not been allowed to follow through on a single case. "Instead of intensifying, investigation of timber theft has nearly stopped [and] our hands are even more tied than before we became independent."

The agents and investigators charged the agency with starving the TTIB, failing to replace key staff and cutting back computer services necessary to support major fraud prosecutions. At the same time, the Forest Service had also redirected a million-dollar budget augmentation that Congress earmarked for the timber theft task force.

The whistleblowers also disclosed how the major new probes were being tied up in red tape through a campaign of "accountability." Documentary requirements instituted by Mansfield clashed with the need to conduct

undercover work, establish and maintain confidential sources, and inspect harvest and mill sites without notice. Restrictions on travel prevented agents from leaving the downtown office building which was their assigned duty station, isolating them from evidence and ongoing case developments. Despite the TTIB's track record, Mansfield expressed dissatisfaction with the quality of the investigative work, ordering assignments to be repeatedly redone. Aggravating the mutual distrust, the agents' field leader, Portland Branch Chief Al Marion, a 30-year law enforcement veteran, was reassigned to a training post.

The Inspector General Investigation

At the end of September, Chief Thomas met with the members of the TTIB privately (without Mansfield present), where he listened to the whistleblowers' concerns. At that meeting, the Chief offered to open a channel for raising issues with him personally, pledged a full investigation, and reaffirmed his support for the strike force as a national cadre against major timber theft fraud. He promised to meet and listen to them again before officially responding to the letter from the "Group of Ten."

At first the Chief appeared to be a man of his word. He reassigned Mansfield and his assistant, Richard Grandalski, and restored Marion. Under Marion's leadership the three stalled probes were restarted. Vulnerability assessments were begun to check patterns

of industry cutting and potential theft moving East from increasingly barren Oregon/Washington forests to those in Idaho, Montana and the Rocky Mountain states.

Thomas also ordered an investigation by the Office of Inspector General (OIG) of the U.S. Department of Agriculture, the cabinet agency for the Forest Service. Over the next few months the OIG interviewed 78 people, including virtually every member of the TTIB. On January 25, 1995, the OIG completed its report and forwarded it to Chief Thomas. Unlike other OIG reports, neither this report nor the memorandum transmitting it to the Chief contained OIG findings of fact or conclusions as to the merits of the allegations investigated. Like an echo chamber, the report merely summarized the interview records, consisting of accusations and denials by the personnel involved.

In response to requests for the report under the Freedom of Information Act, the OIG would release only some highly expurgated, unintelligible portions of the report itself, and withheld all interview records. OIG cited as its basis privacy concerns as well as the contention that release of the material "would disclose techniques and procedures utilized during law enforcement investigations which could risk circumvention of the law."

On February 2, 1995, Assistant U.S. Attorney Jeffrey Kent, one the most experienced timber theft prosecutors in the country who also led the Columbia River case, wrote an extraordinary letter to OIG, which reads:

On November 1, 1994, I was interviewed by your office regarding matters relating to your investigation of potential continuing retaliation against Timber Theft agents by Forest service management - and the resulting obstruction of its mission to investigate complex timber theft cases.

Because of my extensive experience as a prosecutor, my background since 1986 prosecuting numerous complex timber theft cases and my intimate work with members of the Timber Theft Investigative Branch on these cases, I speak from a unique perspective regarding the issues raised by your investigation - and I hereby offer and memorialize these observations:

1. The Forest Service has a long history in its management of the timber sale program of creating easy criminal opportunities and of failing to detect or to even appropriately react to clear indicators of timber theft;

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2. Forest service management has emptily promised Congress, prosecutorial offices, including ours, and the media for literally decades to change these porous systems and permissive attitudes;
 3. The Forest Service's historical relationship with the timber industry has been riddled with political influence - and only those who served the goal of "getting out the cut" have advanced their careers within the agency;
 4. Forest Service law enforcement personnel until recently have been managed by those whose primary motto has been to get out the cut and have typically viewed criminal investigators as impeding that mission;
 5. Forest Service *law enforcement management* [emphasis in original] historically has been selected by timber-oriented management, often based upon law enforcement management's perceived willingness to cooperate in the broader objectives of the agency;
 6. Forest service law enforcement itself thus became divided between those who frequently obliged timber management's objectives and those who abided by the elementary law enforcement code of following the evidence wherever it led;
 7. thus, Forest service law enforcement agents involved in timber theft investigations often found themselves faced with the dilemma of either allowing criminal misconduct such as theft of timber to be handled "under the contract" or of following the evidence and thereby retarding the cut to the displeasure of management;
 8. given this dynamic, it is hardly surprising that agents involved in our precedent-setting timber theft prosecutions tended to be among the most independent agents in the Forest Service system;
- NOTE: When in 1992 Law Enforcement Supervisor Al Marion recruited agents for the newly formed timber theft task force branch in Oregon, he targeted those with proven experience and independence. Often, these agents had a reputation with traditional management (including many in law enforcement management) as being excessively independent.
9. these expert timber theft agents and our office combined to develop the most dramatic cases ever prosecuted in the highly complex arena of timber theft;
 10. these prosecutions were closely followed by Forest Service management, Congress, the media, and the industry and exposed decades of Forest Service mismanagement of the timber sale program;
 11. To say that Forest Service management (including many of its appointees in Forest Service law enforcement management) were chagrined by these cases understates the obvious;

NOTE: Forest Service management was unhappy with the public embarrassments of its mismanagement, and many in law enforcement management were envious of the high profile independent successes of the timber theft task force agents - investiga-

Unindicted Co-Conspirator

tions that should have been conducted decades before had timber and law enforcement management been doing their jobs.

12. these prosecutions led to highly publicized Congressional hearings and media exposes of mismanagement and retaliation against law enforcement agents that in turn resulted in Congressionally mandated law enforcement independence, "straight-lined" around prior timber-oriented management directly to the national head of law enforcement and the Chief himself;

13. in the wake of these events negative attitudes of many in Forest Service management, including many in law enforcement, toward the timber theft task force agents intensified.

This dynamic needs to be understood to comprehend how the new "independent" law enforcement management may well have continued to serve the old ways.

To appoint as managers of the timber theft task force persons who opposed straight line law enforcement independence in the past, and thereafter to appoint Forest Service timber management (who opposed law enforcement independence in general and the timber theft task force in particular) to review the performance of the task force proved to be only the opening volleys of an apparently concerted effort to destroy the task force and to personally humiliate its members.

I stated at the beginning of this letter that I have worked intimately with the members of the task force, who have filed this complaint. To a person, I find them to be individuals of integrity, independence, and dedication, who have abided by the first commandment of law enforcement: to follow the evidence wherever it may go. In doing so, they have endured unimaginably long hours for years to expose decades of mismanagement, misfeasance, corruption, theft, and fraud in the timber sale system, costing the taxpayers tens of millions of dollars and the forest incalculable ecological damage. Even as Chief of Special Prosecutions in Chicago, responsible for corruption and organized crime cases, I have never encountered in my twenty years as a prosecutor such a concerted effort by management to impede and sabotage the Congressionally mandated mission or such Machiavellian maneuvers to not only retaliate against but even to humiliate and break the spirit of these extraordinary public servants.

When an issue arose in this investigation as to whether the FBI and our office found a pattern of investigative obstruction and retaliation against agents in the widely publicized Circle De investigation, I went to great length with the Department of Justice to arrange for your review of the results of that investigation. That offer remains open. In the meantime, I understand that the FBI responded by advising you that it had found extensive evidence of obstruction and retaliation by Forest Service management in that case.

Given the long history of management retaliation, obstruction, and broken promises that pock-marks the history of Forest Service timber theft investigations, I view the abusive management style

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and decision to disturb a proven formula of branch office successes by consolidation of investigators away [emphasis in original] from the evidence as only a continuation of past practices.

On a final note, after being involved in these matters for eight years, I frankly have come to have reservations about the independent efficacy of your office to combat the entire problem of timber theft and Forest service mismanagement. How did this absurd system where timber management winked at timber theft and fraud go undetected by your office, created in 1978 to "provide policy direction for investigations relating to programs and operations of the Department of Agriculture."

Hopefully, this investigation will be a golden opportunity for your office to send a clear message to Forest Service management that obstruction, retaliation, intrigue, and abuse will no longer be tolerated. Do the right thing, for God's sake.

Jeff Kent
AUSA

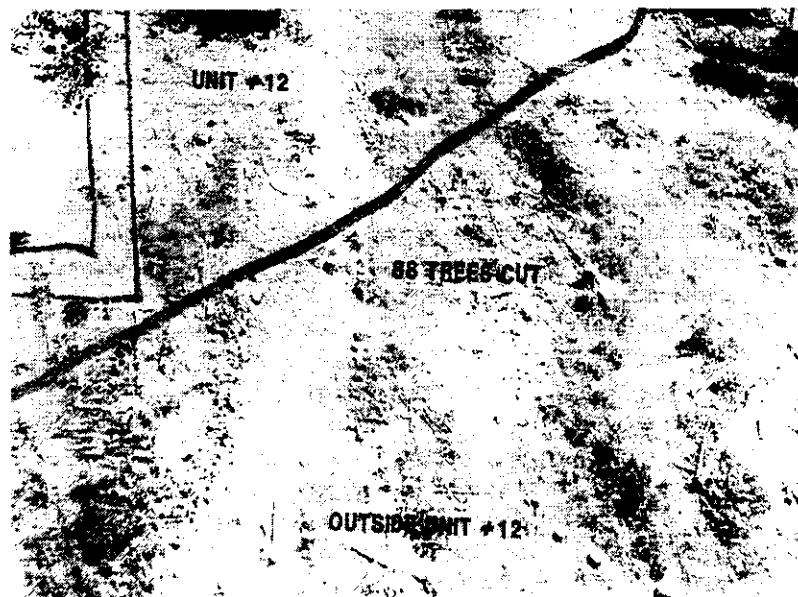
On February 7, 1995, Craig Beauchamp, the Assistant Inspector General for Investigations, met with Chief Thomas and, according to a May 11 letter by Beauchamp, "orally furnished the Chief with my recommendations concerning the need for further investigation; my opinion as to the merit of the major allegations addressed and my recommendations regarding the disposition of the TTIB. On February 21, 1995, in response to his memorandum to me, I gave Chief Thomas my concurrence on the actions he proposed to take regarding the TTIB."

"Abolished, Effective Immediately"

On March 7, Chief Thomas met with Marion and new law enforcement director Manuel Martinez and told them that the TTIB would have an 18-month mandate to finish its three most significant cases and other pending work. That included an intensive regional law enforcement training program to pave the way for long-term self-sufficiency in the agency's decentralized man-

agement structure. Martinez was to visit the TTIB shortly with an implementation plan.

The commitment for a phased transition into a national program lasted a month before the Chief reneged. Martinez's trip was postponed until April 6. On that date, without warning, Martinez then delivered a letter from the Chief with a new reorganization plan abolishing the TTIB, "effective immediately,"



Out of Bounds

The legal area of the timber sale is above of and to the left of the line. The illegal cuts below the line are part of a timber theft case that led to a guilty verdict.

Unindicted Co-Conspirator

and thanking all of its members for their hard work. Each position within the TTIB was, as of that moment, eliminated (Three positions technically still exist but those agents were dispatched on an open ended detail to the Department of Justice). Investigators and agents could apply for jobs around the country, but there were no promises that openings existed.

Simultaneously, the Forest Service issued a press release claiming it was merely doing what the OIG had recommended. But in his May 11 letter, Craig Beauchamp denied that the report had included any recommendations. He summarized his personal recommendations to the Chief as including the creation of a national cadre of experts for training and troubleshooting, while preventing current TTIB cases from being disrupted.

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II. Timber Theft Enforcement Derailed

In the months since the abrupt abolition of the TTIB, a yawning vacuum has opened. Despite assurances that the TTIB termination would be followed by a national timber theft program, it hasn't happened. The loss of timber theft investigative capacity caused by the abolition of the TTIB has not been replaced. No new major fraud cases are being opened. Open cases within the Forest Service are gathering dust. Despite internal warnings that the severity of theft is growing, the Forest Service has inexplicably stopped pursuing timber theft.

No New Cases

In its November 1995 national "LE&I" (Law Enforcement and Investigations) summary report, the Forest Service took credit for only two timber theft cases, both involving minor theft of firewood. In December, the agency could not boast of any successes. (Earlier initiated cases have gone forward, however: Two Forest Service employees were convicted in January as part of an ongoing timber theft prosecution arising out of the Sabine National Forest in Texas. Two convictions were also obtained against logging company employees in Oregon at the same time another, unrelated Oregon case enters the indictment stage.)

Two major cases which the TTIB had brought to the pre-indictment phase were handed over directly to the Department of Justice. A handful of Forest Service agents responsible for investigating the cases have actually been assigned directly to the Department of Justice through informal, open-ended details. A third major case was not turned over to Justice, but was retained by the Forest Service (the status of this case is the subject of the next chapter).

The end result has been a trivialization of remaining timber theft enforcement. In FY 1995, the agency boasted of 76 timber theft adjudications but the total recovery to the

taxpayer was \$363,430 or **less than \$5,000 per case**. For the last three years, the combined recovery from regional (i.e., non-TTIB) timber theft enforcement is slightly more than \$800,000 or around 25 percent of the \$3.2 million won by the TTIB in FY 1993, the last year the unit was allowed to fully function.

No National Program

Despite the Forest Service's seeming acceptance of the USDA Office of Inspector General recommendation that a national training cadre be created in order to enable regional law enforcement staff to assume responsibility for major fraud investigations, no national cadre exists. Moreover, the only internal staff qualified to conduct regional training was told that their services were not needed, except to be on call for token assignments. This staff formerly assigned to the TTIB was either "defunded," assigned to



Caught Red-Handed

This truck was caught leaving with old-growth timber illegally cut from a Northwest national forest. The violators were apprehended.

general law enforcement duties on a national forest unit, or given non-law enforcement positions.

As a consequence of lack of training, resources or interest, the regions of the Forest Service have not created timber theft investigation units of their own. **No funds have been specifically allocated to any region for timber theft investigation.**

Furthermore, **timber theft is not even listed as an investigative priority within the Forest Service's Law Enforcement Manual. In fact, the words "timber theft" are not in the Manual.** Each regional law enforcement program has been left to respond to the agency's core mission of protecting the nation's public forests without any national direction, training, support, financing or even encouragement.

The message sent by the agency's handling of the TTIB has been received loud and clear by field law enforcement personnel — the Forest Service does not want to be embarrassed any more by timber theft cases. Other Forest Service personnel, such as resource scientists, are also understandably reluctant to report any evidence of theft they encounter to, or even cooperate with, law enforcement for fear that it may complicate their career within the agency.

Counterrevolt of Line Management

The vacuum in timber theft investigation is being filled by Forest Service line officers anxious that no future cases are referred for prosecution.

In many regions of the country the reassertion of line management control has been informal. In other regions, law enforcement staff has formally relinquished autonomous decision making. For example, in some areas law enforcement staff may not, without concurrence by timber management at the relevant forest, open criminal investigations of willful cutting of undesignated trees, unauthorized possession or use of Forest Service tracer paint (used to mark trees for sale purposes) by private loggers, or deliberate alterations in timber sale unit boundaries. In many areas, no agreement even exists between timber management and law enforcement on how timber sale "incidents" would be handled.

Since the timber management staff does not want incidents involving their "purchaser," i.e., the timber company, to escalate beyond their control, timber management staff will generally want to settle even the most egregious theft "under the contract." The remedies under the contract, in essence, provide that the purchaser must pay for what he has been caught stealing. Because the timber company is generally unwilling to admit a willful contract violation, the double or triple

"stumpage" penalty provisions in the timber sale contracts are rarely, if ever invoked.



Old Growth Seized

Massive, illegally cut, old-growth timber is seized as evidence in a pending case.

March 26, 1996

Retaliation Against TTIB Staff

The disbanded membership of the TTIB was scattered to the bureaucratic winds. At the time that the TTIB was abolished, none of the Task Force members were directly reassigned; all had to undergo varying lengths of limbo before receiving new assignments. Some agents never received formal reassignment but instead were placed on indeterminate "details" with no return posting or return posting to jobs that had been abolished.

Some members of the TTIB retired. One was forced to retire prematurely because, despite the knowledge that family obligations precluded a long move, the only jobs offered him were in distant locations, such as Alaska. Another received a reprimand involving an internal dispute that occurred almost four years earlier. It arrived on the day that he retired after decades in the Forest Service. Many of the remaining staff were ultimately

reassigned to other areas of the country. Virtually none of the reassigned staff (discounting those on detail to the Department of Justice) was given new assignments directly related to timber theft.

In essence, the personnel assets with training and experience in the area of timber theft were discarded by the Chief's action.

Despite conceding that the TTIB had compiled an impressive record, the Forest Service conferred no recognition for the services rendered or victories won by the Task Force beyond the terse praise contained in the letter abolishing their positions. None of the TTIB veterans were promoted and some have been denied even lateral transfer to open positions within the law enforcement program. This brusque treatment by the Forest Service seemed designed to stigmatize the Task Force members, to mark them as examples of what would happen to any employee who embarrassed the agency.

III. Major Prosecution Obstructed

At the time of the TTIB's abolition there were three major investigations pending criminal referral. It was these three investigations that the Office of Inspector General recommended the Chief not disrupt in any transition plan. Two were turned over to the Department of Justice (along with some of the former TTIB staff). The other investigation, known as "Rodeo," was not turned over to Justice. Nor was Rodeo actively pursued by the Forest Service. The Rodeo case was put into limbo.

The Rodeo Case

The Rodeo case should represent a breakthrough as an even larger, more significant victory than Columbia River. Instead, Rodeo is a microcosm of Forest Service collusion with alleged theft on national forests in California and Oregon. On January 31, 1995, the TTIB sent a preliminary report on Rodeo to agency Chief Jack Ward Thomas. The four-pronged investigation had uncovered information evidencing:

- Massive unauthorized harvest of timber, up to 32,000 green trees per month in salvage sales designed to remove only dead trees.
- Scaling fraud of major proportions, direct nonpayment compounded by missing timber samples needed to measure or grade government timber.
- Illegal export of unfinished Forest Service timber. Export of unfinished timber from federal lands is generally prohibited on the basis that the export costs American mill jobs and income. The illegal export operations may have been going on for years and is, in all likelihood, still continuing.
- Collusion by top Forest Service officials, including:
 - * after-the-fact authorization by Forest Service officials to cut

undesigned timber; an activity tantamount to blessing the theft.

* after-the fact recalculation of timber volumes to obscure government losses, including an apparent pattern of direct interventions to protect the purchaser from repayment requirements.

* warnings to company targets of the ongoing probe through dissemination of confidential case information to potential industry targets.

At the time of the TTIB's abolition the Rodeo case was nearing the stage where a criminal referral was to be made to the U.S. Attorney for prosecution.

Dead in the Water

Following abolition of the TTIB, the Forest Service Washington Office took control of the case and divided it into two investigations. First, the USDA Inspector General (OIG) was asked to conduct an internal affairs investigation into any impropriety by Forest Service personnel. Second, Region 6 Special Agent Tom Lyons assumed responsibility for the timber theft, scaling fraud and illegal export portions of the investigation.

Since spring 1995, no visible progress has been made in either end of the divided investigation. No personnel from either agency have been assigned to take on the case full time. Instead, the case has floated down the list of operational priorities of each agency until it resides near the bottom rung of importance.

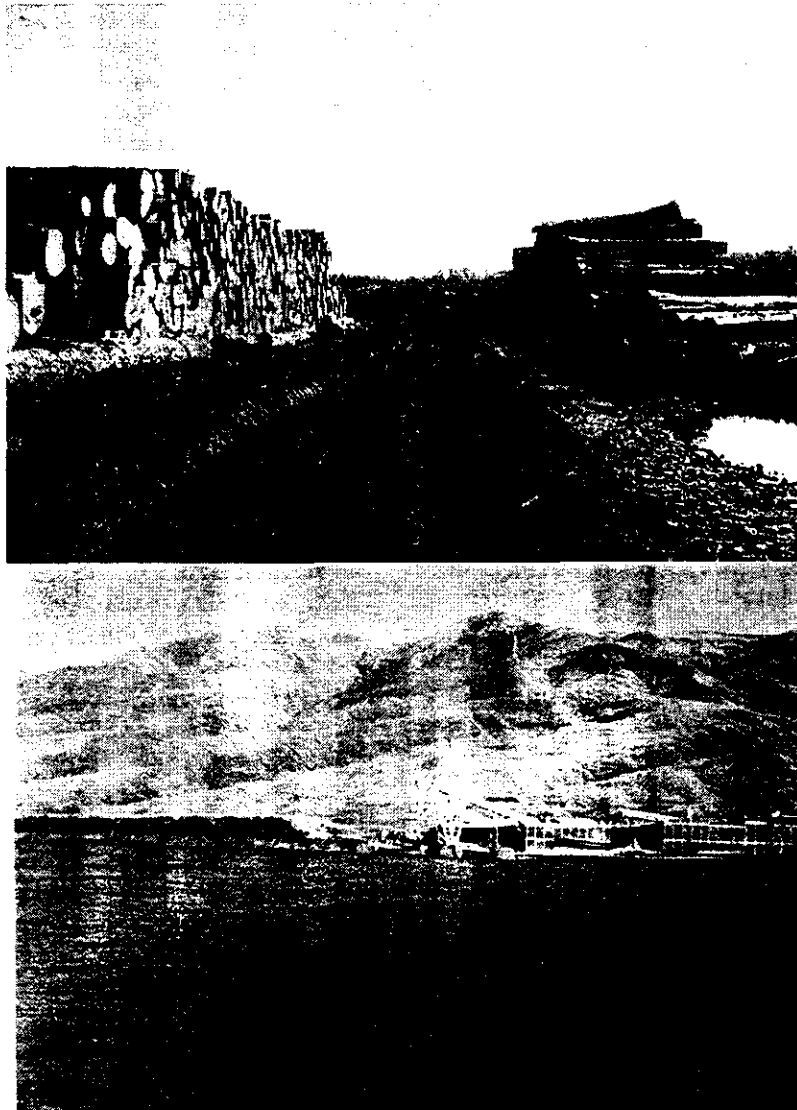
Until February of this year, the Rodeo case file had not been requested by either agency. For 10 months, the case file had been gathering dust in a locked storage unit.

None of the TTIB personnel who developed Rodeo are assigned to it today, even in a consultative role. None of those investiga-

tors expect the Rodeo case to ever emerge from its inactive status.

As time goes on, expiring statutes of limitation and the growing potential that the U.S. Attorney would decline the case due to staleness dim the prospects for criminal pros-

ecution. Portions of the case already developed from the earlier investigation have led to some minor civil settlements yielding pennies on the dollar for the amounts potentially recoverable.



Exporting Logs, and Jobs, Overseas

The overseas export of unfinished government timber is illegal because it costs the jobs of U.S. millworkers. The top photo shows unfinished timber waiting to be shipped overseas. The bottom photo shows illegal logs waiting on the dock.

IV. Recommendations

1. Establish a National Timber Theft Program

Any national timber theft program requires two broad elements: prevention and investigation:

A. Prevention

1) Training

➤ **National Timber Theft Cadre** — Experienced special agents and criminal investigators are needed to train both regional law enforcement personnel plus timber management and field staff how to recognize the signs of timber theft or fraud as well as how sales should be administered to prevent or minimize the potential of loss. These same training staff should also serve as reserves of expertise to regions in investigating complex cases. To be credible not only with their peers but also with the outside agencies whose cooperation is required for successful investigation and prosecution of cases, the cadre selected must be experts with proven track records in major fraud cases.

2) Accountability in Sale Administration

➤ **Timber Management Theft Prevention System** — A primary responsibility which must be institutionalized within all Forest Service timber management operations is theft prevention through heightened contractual accountability, stricter liquidated damage provisions in the contracts themselves, systematic vigilance during sales, surprise spot checks of sale and scale operations as well as unfettered law

enforcement access to sale sites and information.

B. Investigation

1) Timber Theft as Law Enforcement Priority

➤ **National Plan** — The agency's commitment to combating major, commercial timber theft should become a top priority for the entire law enforcement program and that commitment should be reflected in the law enforcement manual as well as the operational plans of all the regions.

2) Regional Timber Theft Units

➤ **White-Collar Crime** — The Director of Law enforcement and Investigation must establish standards and budgets for regional major crime investigative structures. While regional variations need to be reflected, the task should not be left up to each individual Regional Special Agent. There must be some degree of uniformity or congruity so that the regions can cooperate and act jointly when needed.

3) Clear the Stovepipe

➤ **Law Enforcement Independence** — Any requirements for non-law enforcement approval of, or control over, timber theft investigations should be rescinded.

4) National Case Tracking System

➤ **Measurable Progress** — The National cadre should administer a computerized data base for tracking cases and "trending" evidence for development of case

patterns and for application in newly opened cases.

2. End Retaliation

The timber theft investigators have yet to be recognized for their past successes. More significantly, at a time when the national forests are increasing vulnerable to theft due to reliance upon salvage sales, expert investigators are being assigned away from timber theft and fraud duties. Further, the lack of any permanent reassignments for many of the TTIB members is blatant retaliation.

On March 7, 1996, Chief Thomas issued a "Civil Rights Policy Statement" in which he ordered all Forest Service supervisors to main-

tain a "workplace free from discrimination and harassment." The reality within the Forest Service has not matched the rhetoric. On the very day that the Chief's policy statement was issued, one of the TTIB's most productive investigators was denied continued duty within the law enforcement program and placed in an administrative slot.

Unless the Chief of the Forest Service takes steps to resolve whistleblower complaints at an early stage, lengthy litigation will result to the detriment of effective protection of our nation's public forests. The leadership of the Secretary of Agriculture may be needed to bridge the Forest Service's credibility gap with its own employees.



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PAPER

Number Six, \$5 U.S.

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Timber Theft
and the
U.S. Forest Service

March 26, 1996