RESOLUTION NO. 2900

WHEREAS, the Albany City Council has publicly supported both state and federal legislation to improve and make more efficient the use of Oregon land and its resources; and

WHEREAS, there is currently a bill before the United States Senate (S. 1436) designed to revise, streamline, and make more efficient the review of land and resource management plans together with sales and other actions implementing such plans, to clarify the jurisdiction and powers of the courts with regard to the review of such plans and actions pursuant thereto; and

WHEREAS, the Albany City Council has carefully reviewed this proposed federal legislation introduced by Oregon Senator Bob Packwood, long-time supporter of sound practices in the management of U.S. Forest Service and Bureau of Land Management properties; and

WHEREAS, the interest and well-being of the citizens of Albany, Linn County, and much of the State of Oregon is entrusted in such legislation.

NOW, THEREFORE, BE IT RESOLVED, that the Albany City Council affirms its support to this measure (S. 1436) and directs the Mayor to communicate to Senator Packwood the content of this resolution.

DATED THIS 11TH DAY OF OCTOBER 1989.

Keith Rohrbough, Mayor

ATTEST:

City Recorder

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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

RECEIVED
OCT 10 1989
CITY OF ALBANY

October 5, 1989

The Honorable Keith Rohrbough
City of Albany
441 6th Avenue
Albany, Oregon 97321

Dear Mayor Rohrbough:

Recently I introduced legislation -- S. 1436 -- to streamline the process of judicial review of Forest Service and Bureau of Land Management decisions. My bill would rationalize court review procedures so that challenges to Forest Service and BLM actions are brought at the appropriate times in the appropriate courts. It would insure that existing management plans remain in effect while legal challenges are decided, and that forest management decisions, once made by the federal agencies and approved by the courts, become final and not subject to repeated attack.

My bill would not limit judicial review. It would not prevent anyone from going to court and winning a case that is valid on its merits. Instead, it represents an attempt to correct ambiguities and loopholes in current court procedures. The bill would apply equally to lawsuits filed by environmental groups and the timber industry. It is not a complete response to the old growth controversy, but it will help provide something both sides deserve: certainty.

I have enclosed a copy of the bill, and my statement of introduction, for your information.

Your support will aid this cause. If possible, I would appreciate having a formal resolution of support so I can add the Albany city council to the list of supporters. Please let me know your position by writing me in care of my Oregon Field Office, 101 S.W. Main Street, Suite 240, Portland, Oregon 97204-3210.

Thanks for your interest in this issue and for your consideration.

Sincerely,

Bob Packwood

BOB PACKWOOD

BP/ohh

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, FIRST SESSION

Vol. 135 WASHINGTON, MONDAY, JULY 31, 1989 No. 105

Senate

By Mr. PACKWOOD:

S. 1436. A bill to revise, streamline, and make more efficient the review of land and resource management plans, together with sales and other actions implementing such plans, to clarify the jurisdiction and powers of the courts with regard to the review of such plans and actions pursuant thereto, and for other purposes; to the Committee on the Judiciary.

LAND MANAGEMENT REVIEW ACT

Mr. PACKWOOD. Mr. President, I rise today to introduce S. 1436 the Land Management Review Act of 1989. This act would unify and streamline the now abysmally complicated and tortuous process of judicial review of decisions relating to management of Federal timber lands.

It is a truism that the lifeblood of the Oregon economy is the timber industry. Oregon possesses some of the most beautiful and productive forests in the world. These forest lands provide clean drinking water, recreation, wilderness, wildlife habitats, and jobs.

The timber and forest products industry provides approximatley 77,400 jobs in my State, far and away Oregon's largest manufacturing-based industry. Twice that many Oregonians are indirectly employed as a result of forest products manufacturing. The industry contributed more than $3.0 billion to Oregon's gross State product in 1986. Even this figure is low, because it does not take into account the multiplier effect that the industry creates for the State's economy.

Oregon accounts for more than one-fifth of the Nation's production of softwood lumber. It can thus be stated, without exaggeration, that Oregon's timber industry is crucial not only to Oregon itself, but to the Nation as well.

Unlike other timber-producing States, especially those in the Northeast and Southeast, more than half of the timber lands in Oregon are owned by the Federal Government. Of the 28 million acres of timber lands in the State, 16 million acres (57 percent) are managed either by the U.S. Forest service or the Bureau of Land Management. This creates a unique situation in which the bulk of Oregon's available timber supply is subject to Federal environmental and regulatory statutes, administrative planning processes, and judicial review of the entire system by which such Federal timber lands are managed.

Federal law mandates that these lands be managed for multiple use, including oudoor recreation, range land, sustained yield of timber, watershed, and conservation of fish and wildlife. The task of balancing these multiple, and often conflicting, purposes is not an easy one. By and large, however, the Forest Service and Bureau of Land Management have done a commendable job in striking such a balance. Suffice it to say that, in attempting to do so, no one point of view can claim complete victory.

Federal planning for timber land can be traced primarily back to 1976. In that year, Congress enacted the National Forest Management Act [NFMA] and the Federal Land Policy and Management Act [FLPMA]. These acts required the Forest Service and BLM, respectively, to prepare comprehensive long-range land and resource management plans for the lands within their jurisdiction. This planning process was explicitly designed to encourage public participation, in order to take account of the opinions of interested parties as the plans were being developed. These planning processes have now been underway for 10 years. Indeed, the BLM is in the process of developing its second set of plans for the 1990's.

Notwithstanding the expectation that these indepth planning procedures would result in competent, rational management, the result has been anything but encouraging. The planning process is at a virtual standstill, as are sales of timber from Federal lands, as a result of a multiplicity of lawsuits, as well as the threat of future litigation, challenging the planning process and decisions implementing the plans.

This litigation stems in part from legitimate concern over environmental issues. Individuals and organizations have had serious and honorable concerns that decisions of the Forest Service and BLM will impact adversely on the land, its resources, and its inhabitants. These individuals and organizations have challenged such agency actions in court on the basis of noncompliance with various Federal statutes.

I do not, for 1 second, begrudge these individuals and organizations the right to their opinion or the right to challenge these various decisions in the courts. I consider that to be a proper use of our judicial system, and I have no intention of seeking to limit the grounds on which decisions of the Forest Service and BLM are challenged. If these individuals and organizations can prove the validity of their claims in court, on the merits, I wish them well. They deserve to win their case, and no one should seek to prevent them from doing so.

What I am concerned with, however, is the use of delay inherent in our judicial system to win de facto victories without the necessity of winning the case on the merits. It has become a popular tactic of individuals and organizations seeking to stop the logging of Federal timber lands to challenge agency actions in court at every stage of the planning process. The courts have responded to this redundant litigation by issuing sweeping injunctions which effectively prevent the agencies charged with completing the planning process from carrying out their mandate to do so.

The problem of delay inherent in the judicial system is compounded in this situation by the existence of several statutes which apply in various ways to the planning process for Federal lands. Their confusing and often conflicting directives, and the uncertainty about how these statutes are to work together, have provided opportunities to stop the planning process altogether.

First, there are the statutes which establish the planning processes, NFMA—applicable to lands under management of the Forest Service—and FLPMA—applicable to the Bureau of Land Management. These statutes provide criteria according to which the respective plans must be developed and implemented.

In addition, there are a number of other, overlapping, statutes with which the agencies must comply in developing and implementing these plans. Included among these statutes are the National Environmental Policy Act of 1969 [NEPA], the Clean Air Act, the Clean Water Act, the Endangered Species Act, and the Wilderness Act. These statutes were enacted by Congress at different times, to address different goals, often with conflicting procedures and substantive standards and requirements. Congress gave no thought whatsoever as to how an agency, charged with compliance with each of these statutes, was to do so in light of their often conflicting requirements.

These oft conflicting goals and procedures have enabled opponents of logging on Federal timber lands to bring challenges to such logging on a multitude of grounds, and at various times throughout the planning process. The tactic of delay has been as powerful a weapon as has winning on the merits. The bid and contract process by which timber on Federal land is sold necessitates that there not be undue delay in between the time the bid is made and the timber are cut. If there is delay, the economics of the transaction often change, making the sale unfeasible.

Unfortunatly, the courts have contributed to the success of this delaying tactic by their willingness to issue sweeping injunctions which have resulted in an almost complete stoppage of timber sales in Oregon and elsewhere. In addition, the courts in many cases have been altogether too willing to second-guess the decisions of the Forest Service and BLM, and to substitute the judgment of the court for that of the agency, notwithstanding the agency's obvious expertise in the field.

As I stated previously, I have no quibble with anyone who can win their case on the merits. I do have strong objections, however, to use of the judicial system to obtain victory by delay. That is not what these various acts contemplate, and it is completely contrary to any notion of good, rational decisionmaking.

This planning by judicial decree must stop. It is causing severe economic hardship to citizens of my State and of other States as well. In addition, it is seriously jeopardizing the timber industry, which as I stated previously, is the lifeblood of the State.

Many sawmills in Oregon have closed down because of a shortage of logs to cut into finished wood products. In part, this shortage is caused by the export of a significant volume of unfinished logs to Pacific Rim nations. The other reason, however, is that timber companies have been prevented from harvesting timber from Federal lands.

That is the reason that I am introducing this bill, the Land Management Review Act of 1989. It would set forth the procedures by which planning and plan implementation decisions of the Forest Service and the BLM would be reviewable in court. It would bring together in one place the rules concerning when challenges could be brought, regardless of what ground the challenge is based. It would eliminate any overlap or conflict between the statutes which may be applicable to such planning decisions.

This bill would not alter, in any way, the standards and requirements of those various statutes. I do not seek to make it impossible for challengers of agency decisions to prove their case on the merits. What I do seek to do is make sense of a hodge-podge of procedural requirements which have provided challengers with the ability to shut down agency decisionmaking, whatever the merits of their case may be.

This bill was developed only after extensive consultation with many authorities in the field. In particular, I wish to express my appreciation for the wise counsel of individuals with the Departments of Agriculture, Interior, and Justice. While these Departments have not expressed their official position on the legislation I introduce today, the technical guidance they have given me has been invaluable. In addition, I have met and talked with attorneys representing organizations with interests in this type of litigation, and private practice attorneys representing individual clients. Altogether, the people whose input has been so helpful are the people who will have to function under the rules set forth in my bill.

My bill proceeds from the premise that there may be certain agency decisions which are not appropriate to challenge in court. In particular, my concern here are the so-called regional guides of the Forest Service. Regional guides are not required by any statute. Instead, they are called for in the Forest Service regulations. They are intended to provide general guidelines for the drafting of the various forest plans. These documents are not self-executing; they only set forth goals which the various plans, which are required by statute, should accomplish.

Since regional guides are not required by statute, since they are not self-executing, and since they are only the umbrella document by under which the required plans are to be developed, there is no reason why the guides themselves ought to be challengeable in court. Nevertheless, they are, under an unreported decision of the U.S. District Court of the Western District of Washington (the Pilchuck decision).

Elimination of judicial review of regional guides will not result in prejudice to any interest. Regional guides, and the decisions called for therein, will only be meaningful if the plans that are later developed conform to the guides. Since the guides are drafted for the subsequent forest plans to follow, any objectionable decision should be reflected in the plan itself, at which point it will be challengeable in court. If the plan, for some reason, does not conform with the objectionable provision of the regional guide, the challenge would be moot in any event. The net result will be the elimination of a layer of judicial review without any loss in the ability of a challenger to prevail on the merits.

The next premise of my bill is that challengers to agency actions should bring their challenge to the agency first, and should thereafter utilize all avenues for challenge within the agency. This is generally known as the doctrine of "exhaustion of administrative remedies." The requirement that administrative remedies be exhausted is generally a judicially-imposed prerequisite, which is often disputed by challengers.

My bill would eliminate these disputes and any uncertainty over whether the requirement of exhaustion applies. The bill would provide statutorily that exhaustion of administrative remedies is a prerequisite to judicial review. In order for a challenge to be brought in court to a decision adopting, amending, revising, implementing, or declining to adopt, amend, revise or implement a plan, the challenger must have first participated in the agency's decision-making process, beginning at the earliest stage possible. In many cases, this would occur when the agency invites comments on its draft plans, together with its draft environmental impact statement. The challenger would be required to set forth its written objections in a timely manner and with specificity. In addition, the challenger would be further required to utilize every subsequent administrative remedy available before the agency. This will insure that the challenger participates to the fullest extent possible in the making of the decision. The Supreme Court has recognized that the administrative process can be "a game or a forum to engage in unjustified obstructionism by making cryptic reference to matters that 'ought to be considered' and then, after failing to do more to bring the matter to the agency's attention, seeking to have that agency determination vacated on the ground that the agency failed to consider matters 'forcefully presented.'" *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553-54 (1978). My bill would prevent this from occurring in the context of Forest Service and BLM plans and their implementation.

After the challenger has exhausted its administrative remedies, a court challenge could be brought. The bill specifies which court is the appropriate forum for review of a particular agency decision.

In 1975, the Administrative Conference of the United States issued its recommendations for "The Choice of Forum for Judicial Review of Administrative Action," which is published at 1 CFR § 305.75-3 (1-1-88 Edition). The Administrative Conference was created by Congress for the purpose of studying and recommending improvements to administrative procedures.

The recommendations on the forum for judicial review called for direct appeals of agency decisions to the circuit courts of appeals in cases in which the record of the agency is adequate for review, such as in the case of notice and comment rule-making. The conference indicted that direct review in the courts of appeal is generally desirable in the interest of economy and efficiency, especially where the public interest requires prompt, authoritative determination of the validity of the [action]. The only caveat was that the

cases should not be so great in number as to overburden the courts of appeal, but the cases for which direct appeal is appropriate are those that resolve issues of law and policy of major impact.

Agency decisions approving forest plans fit these criteria perfectly. The plans required by NFMA and FLPMA are subject to a comment period after publication of notice in the Federal Register. Especially if challengers are required to participate in the comment process and subsequent agency remedies as a prerequisite to challenging the agency decision in court, there is virtual assurance that the record below will be adequate for the courts of appeals to render a decision. If the record is not adequate for some reason, my bill provides that the case will be remanded to the agency for further factfinding. Direct appeal to the courts of appeal are clearly warranted in terms of efficiency and economy. Finally, because the number of forest plans will be relatively small, there should be no risk that the courts of appeal will be seriously burdened by providing for direct appeals to the courts of appeals.

With regard to actions implementing plan decisions, such as timber sales, the criteria set out by the Administrative Conference did not apply with equal force. While in many cases the record of the agency would be adequate for the courts of appeal to render a decision, such would not always be the case. If direct review in the courts of appeals were provided, it might then be necessary for the agencies to provide more formalized processes for these decisions. The net result might be greater delays, rather than speedier decisions. Therefore, my bill provides that judicial review of plan implementation decisions, such as timber sales, shall occur in the first instance in the district courts.

My bill would provide strict limits on the time within which agency decisions could be appealed. In a situation in which a challenger has participated throughout the agency review and appeals process, there is no need to provide a long period of time within which a challenger should bring an action in court. To the contrary, there is every reason to require that the challenge be brought as quickly as possible, so that the courts can seek to resolve the case as quickly as possible. Therefore, my bill provides that challenges to plans must be brought within 120 days after final agency action on the plan, and that challenges to implementing actions, such as sales, be brought within 60 days of final agency action.

With regard to plans, if no challenge is brought in court, or if a challenge is brought and the court determines that the plan is valid, the plan will not be subject to further challenge in any court. One of the ways in which timber planning and sale process has been brought to a halt in the West has been repeated challenges to plans already in effect. In substance what has happened is that, based on the possibility that "new information" could be developed, we have evolved into a system in which there is no finality. Instead, we have "rolling challenges" to plans on the basis that they do not take account of new information. Since new information is always being developed, these plans can never be final.

It is thus lack of finality which troubled the Supreme Court most in the Vermont Yankee case. There, the Court stated:

> Administrative consideration of evidence • • • always creates a gap between the time the record is closed and the time the administrative decision is promulgated. • • • If upon the coming down of the order litigants might demand rehearing as a matter of law because some new circumstances has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. (435 U.S. 519, 554-55 (1978).)

My bill seeks to eliminate this state of limbo by providing that if the plan is not challenged in court or, if challenged, is found valid, it will not be subject to further challenge—that is, it will be final. Challenges could still be brought to particular implementing decisions. In addition, agencies could always be requested to amend plans based on new information, which if not done, would be subject to judicial review under these same procedures. But at least the Forest Service and BLM, once a plan is in place and found valid, would have the ability to manage in accordance with that plan.

The grounds on which an agency decision could be challenged would be limited to those raised before the agency. This is merely a corollary to the rule that requires exhaustion of administrative remedies. It would be an exercise in absurdity to require that a challenger raise objections with specificity before the agency, if the challenger were then permitted to raise entirely new arguments before the court. My bill would provide that the grounds for challenge before the court would be limited to those raised before the agency.

In addition, the review before the court would be on the record produced before the agency. Again, it would be absurd to require exhaustion of remedies but yet allow new evidence to be admitted in court. My bill would provide that the new court's review would be limited to the record, with two exceptions. In the case of plans, if the court of appeals determined that the record was inadequate for the court to render its decision, the court could remand the case to the agency for further factfinding, analysis, or other appropriate action. The court could not remand the case to the district courts. This will eliminate the possibility of "judicial ping-pong," where cases bounce back and forth between circuit and district courts, each time subject to the vagaries of crowded dockets and higher priorities. Remand to the agency will insure prompt attention by the agency, which is the expert in the area, and is the organization charged with the responsibility for the plan.

In the case of implementing actions, the district courts would be permitted to admit new evidence, but only if the challenger were able to show by clear and convincing evidence that it could not have produced that evidence before the agency because the evidence did not exist and that such evidence would have a significant effect on the court's decision. This is intended as a high standard for a challenger to meet. The court's consideration of, and decision in, the case should not be delayed simply because inconsequential evidence is sought to be admitted or because a challenger failed to submit evidence to the agency which was otherwise available.

The bill also makes clear that a challenger carries the burden of proof on all issues. While it is likely that this is the case under present law, it is necessary that this point be clarified, especially in light of the possible application of so many different statutes to the planning process. Similarly, the challenger would be responsible for demonstrating that the agency decision was arbitrary, capricious, or an abuse of discretion. It is wholly inappropriate for courts to be attempting to substitute their judgment for that of the agencies with expertise in the area. Agency decisions reflecting that expertise are entitled to deference by the courts. The Supreme Court recently confirmed this principle in two NEPA cases: *March* v. *Oregon Natural Resources Council, Inc.* 109 S. Ct. 1851 (1989) and *Robertson* v. *Methow Valley Citizens Council*, 109 S. Ct. 1835 (1989).

The Supreme Court in those cases held that under NEPA, the courts must defer to "the informed discretion of the responsible Federal agencies," and must not overturn the agency's decision unless shown to be arbitrary and capricious.

I heartly concur, and my bill would apply this arbitrary and capricious standard to judicial review of all aspects of Forest Service and BLM planning and implementation decisions, not just those implicating NEPA. This will accomplish two things: First, it will eliminate any ambiguity that may exist under present law as to what standard of review may apply to grounds for challenge other than under NEPA, and, second, will assure that the courts apply a uniform standard of review for all aspects of all forest planning and implementation cases.

The final premise of my bill is that judicial remedies ought to be limited to the actions being challenged before the court. Courts have, in certain instances, shown a willingness to issue injunctions stopping all planning and implementation decisions. My bill would stop this practice. In the case of judicial review of plans, the court could enjoin new plans pending its review. However, the Secretary would then have the option of reinstating the previous plan, under which the Secretary could continue to function until the court reached its decision on the new plan. The court would have no power to enjoin the previous plan, if it had previously become final and not subject to further review in the courts. Similarly, if the court was reviewing an agency decision to amend a plan already in effect, the court could enjoin implementation of the amendment pending its review, but could not enjoin the plan to which the amendment applied. This is consistent with the notion that a plan, once final, remains final.

With regard to judicial review of sales and other implementing decisions, the court's remedy would be limited to the implementing decision being challenged. The court could not enjoin the plan which the action was intended to implement. Similarly, the court could not enjoin any other sale or action of the agency.

This legislation is intended to be effective upon date of enactment. For cases which are pending at that time, this bill would apply as follows:

First, cases challenging regional guides would be dismissed, since the courts would no longer have jurisdiction to hear them;

Second, cases in district court challenging plans would be transferred to the courts of appeals;

Third, the requirements for exhaustion of administrative remedies would not apply. These requirements would only apply to cases filed after date of enactment;

Fourth, the limitations on the court's remedies would be applied to all pending cases; and

Fifth, the provisions governing burden of proof and standard of review would apply to all pending cases.

In addition, with regard to plans already outstanding, any new challenges would have to be brought within 120 days of date of enactment, subject to all the requirements set forth in the bill.

Mr. President, it is my belief that this measure is one which will benefit all sides. No one really benefits when rational, deliberative decisions are passed over in favor of litigation. We must take steps to insure that agency decisions are made only after full participation by everyone interested in the decision, so that the agency can take into consideration all evidence available. At the same time, once that has occurred, the agency decision must be upheld unless it is clearly wrong. The courts do not have the experience or expertise that the agencies have, and should have only a limited role to play in such decisionmaking. Forest planning by the courts is not the system which will allow this country to best manage those precious resources.

Mr. President, this bill, in terms of its impact on Oregon's principal industry, which is the timber industry, is perhaps as significant a bill as could be introduced in this Congress. Oregon's timber industry today is being shut down because of judiciary review of decisions relating to management of Federal timberlands, and that management and those decisions are incredibly complicated and time-consuming.

The timber industry is the lifeblood of the State of Oregon. The industry provides about 77,000 direct jobs, together with countless jobs indirectly, and the industry contributes over $3 billion annually to the State of Oregon's economy. Oregon contributes one-fifth of all of the Nation's production of softwood lumber which, as the Chair well knows, is the principal construction lumber used in the United States.

There are sawmills in the State of Oregon that are closing down not for the lack of customers; they are closing down for lack of logs to run through their mills to supply the customers. This shortage is caused, in part, by the inability of the Forest Service and the Bureau of Land Management to authorize sales and harvest of timber.

That is why I am introducing today a bill entitled the Land Management Review Act of 1989. This bill seeks to address the delays in the development and implementation of forest plans, including sales of timber, caused by judicial review. The bill will streamline and unify the judicial review process.

The planning process for forest land is required by two laws:

The first is the National Forest Management Act of 1976, which applies to the Forest Service; and the second is the Federal Land Policy and Management Act of 1976, which applies to the Bureau of Land Management.

Many other laws apply to the planning process as well. These laws include the National Environmental Policy Act, the Endangered Species Act, the Clean Air Act, the Clean Water Act, and the Wilderness Act.

There is, however, no set of coordinated rules concerning how decisions of the Forest Service and the Bureau of Land Management are reviewed by the courts. This has led to a confusing array of litigation, with the courts demonstrating a readiness to issue sweeping injunctions and to substitute their judgment for that of the agency.

This hodge-podge of uncoordinated statutes has given opponents of agency decisions the ability to bring the planning process and implementation of plans to a virtual standstill. This, in turn, has placed the timber industry in serious jeopardy as it struggles to find harvestable timber to substitute for the large volume of timber on federal lands that is now, in effect, unavailable to the industry.

We must bring this "planning by court injunction" to a halt. The procedures under which agency decisions regarding timber management are reviewed by the courts must be rationalized so that:

First, challenges to agency actions are brought at the appropriate times;

Second, challenges to agency decisions must have been preceded by the challengers' full participation in the agency decision;

Third, the appropriate courts are reviewing such decisions;

Fourth, decisions, once made by the agencies and approved by the courts—and I emphasize "approved by the courts"—become final;

Fifth, the courts use an appropriate standard for reviewing agency decisions, so that the courts are not able to substitute their judgment for that of the agencies; and

Sixth, the remedies available to the courts would be limited so that the planning process is not brought to a complete standstill pending court review.

The Land Management Review Act of 1989 would accomplish these goals by providing a coordinated system of judicial review for timber management decisions.

Specifically, the act would:

First, require challengers to agency actions to have fully participated in the planning process before they could challenge agency actions in court;

Second, eliminate duplicative litigation, by specifying when decisions are reviewable, and by providing for challenges to plans to be filed directly in the Federal courts of appeals;

Third, provide strict time deadlines for such challenges to be brought;

Fourth, limit the grounds for challenge to those raised before the agency;

Fifth, limit the court's review to the record developed by the agency;

Sixth, place the burden of proof on the challenger to demonstrate that the agency acted arbitrarily and capriciously;

Seventh, provide that if a plan was not challenged in court or, if challenged, was found valid, no further court review of the plan would be possible;

Eighth, provide that if a court enjoined a new plan, the old plan could remain in effect, so that the agency could continue to function; and

Ninth, limit the court's remedies to the agency action being challenged, rather than being able to issue sweeping injunctions which effectively shut down all timber planning and sales.

The Land Management Review Act of 1989 would not limit in any way—and I emphasize, Mr. President, "in any way"—the grounds which agency actions could be challenged.

There is no change in the substantive law of the Clean Air Act, the Clean Water Act, the National Environmental Planning Act, or any other laws. No changes to the substance of any environmental statute dealing with forest planning are being proposed. The changes deal only with the procedures which apply to judicial review. If a challenge to a plan or sale is valid, it should be upheld. However, the process of planning and sales should not be allowed to the delayed merely for the sake of delay. Decisions must be made and implemented as quickly as possible, and once implemented should not be subject to endless, repeated challenges.

To that end, Mr. President, I have introduced this bill today in the hopes that we can bring a rational basis for reviewing agency action and for appealing them to appropriate courts. When the courts have made their decisions on the agency, those plans can be implemented; and the reviews that have been made are final.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.