A STUDY OF LITIGATION RELATED TO MANAGEMENT OF FOREST SERVICE ADMINISTERED LANDS AND ITS EFFECT ON POLICY DECISIONS

PART ONE: THE GANDT V. HARDIN CASE

Thesis for the Degree of M. S.

MICHIGAN STATE UNIVERSITY
MALCOLM RUPERT CUTLER

1971

105

093

S-316

029

032

KS 1950

108

2177 350

JAN 4 1979

36

SS

177

ABSTRACT

A STUDY OF LITIGATION RELATED TO MANAGEMENT OF FOREST SERVICE ADMINISTERED LANDS AND ITS EFFECT ON POLICY DECISIONS

PART ONE: THE GANDT V. HARDIN CASE

By

Malcolm Rupert Cutler

Because standing to sue recently has become less of a problem for conservation organizations, many legal actions have been filed in recent months by such groups to try to resolve environmental disputes in court. A number of these actions have involved the Forest Service, U.S.D.A. Should the trend toward citizen-group use of the courts to contest Forest Service administrative decisions gain momentum, the agency could find some of its programs delayed for substantial periods of time or terminated altogether.

Administrators of the National Forest System would like to know how best to cope with those expressions of dissatisfaction with their decisions which emanate from their various clientele groups in order to avoid expensive and time-consuming administrative and judicial reviews. How Forest Service policies and procedures, particularly with respect to the involvement of the public in agency

decisionmaking, might be amended to lessen the apparent pressure on conservation groups to utilize the courts as their conflict resolver of last resort is the question this two part study seeks to answer.

This is a single case study, a trial run in preparation for the multi-case reconstruction and analysis which will constitute the Ph.D. thesis-final report. Described here is a controversy between the Forest Service and an ad hoc citizen conservation group, the Save Our Sylvania Action Committee (SOSAC) of Green Bay, Wisconsin, over the management of the newly acquired Sylvania Recreation Area in Michigan's Upper Peninsula. The case, which reached the federal district court hearing stage in December 1969, is known as Gandt v. Hardin. In this instance, the plaintiffs' complaint--abuse of administrative discretion through failure to weigh the impact of a proposed development scheme on this "wilderness" area's natural values prior to proceeding with road and other construction--was dismissed on the bases of lack of evidence and untimely delay in the filing of the complaint (laches).

This description of the Gandt v. Hardin controversy is based on study of relevant literature, the reconstructed chronology and contents of all available transaction evidence (correspondence, house organ editorial statements, internal memoranda, minutes and proceedings of meetings, and similar materials), interviews with key participants

in the case, and a first-hand, on-the-ground inspection of the Sylvania area and the developments there to which SOSAC objected. The resources at stake in the area are summarized, and the land ownership history is brought up to date. A detailed chronology of events related to the issue is provided, from the time the Forest Service entered the picture through the court hearing. Communications shortcomings as well as differences in points of view between the agency and the citizen group are pinpointed. The legal implications of the Gandt decision are tentatively indicated.

A STUDY OF LITIGATION RELATED TO MANAGEMENT OF FOREST SERVICE ADMINISTERED LANDS AND ITS EFFECT ON POLICY DECISIONS

PART ONE: THE GANDT V. HARDIN CASE

By

Malcolm Rupert Cutler

A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF SCIENCE

Department of Resource Development

1971

ACKNOWLEDGMENTS

Without the help of many individuals and organizations this thesis could not have been written. It would not have been started if my wife, Gladys, had not agreed to return to work and to accept for a period of years the lower standard of living which accompanies graduate study.

It could not have been completed without the aid of Dr. Howard Tanner, MSU Director of Natural Resources, who cleared the way for University financial assistance and made an office in the Natural Resources Building available to me; Mr. Henry DeBruin, Director of Information and Education, United States Forest Service, who sought and won Forest Service support for the project,[1] enabling me to spend the summer of 1970 gathering data by traveling to the home communities of key individuals for interviews; and the National Wildlife Federation, which provided additional financial assistance through its graduate fellowship program.

Dr. Leighton L. Leighty, Professor of Natural Resources Law, provided the guiding spirit behind this research as my thesis chairman. Helpful, too, were Dr.

---

[1]Contract No. 12-11-009-22423

Milton H. Steinmueller, my academic advisor; Dr. Daniel E. Chappelle, who assisted me with the study plan; and Professor Louis F. Twardzik, Chairman of the Department of Park and Recreation Resources, whose class in Park and Recreation Policy during the Fall of 1970 quarter dealt specifically with the Sylvania area as a case study, providing opportunities to visit in East Lansing with class guest speakers who were participants in the Gandt v. Hardin litigation.

Because this study is essentially a detailed description of the anatomy of a single controversy, the cooperation of the leadership on both sides of the Sylvania court action was essential. Thankfully, it was obtained without difficulty. Dr. Jerry Gandt, Dr. Robert Ditton, attorney Fred Reiter and several other members of the plaintiffs' "team" spared no time or effort to provide me with all I asked for in the way of copies of correspondence and other transaction evidence as well as verbal descriptions of what happened and why.

Similarly, personnel of the Forest Service--in Washington, D.C., the Eastern Regional Office in Milwaukee, and at its Ironwood and Watersmeet, Michigan national forest and ranger district headquarters--were unfailingly helpful in documenting the defendants' side of the story and in obtaining key materials including a copy of the Proceedings of the court hearing. Mr. Robert Rue and Mr.

Jack Curtis of the U.S. Department of Agriculture's Office of General Counsel contributed important ideas from their vantage point as federal attorneys.

District Ranger Marsh Lefler's guided tour of the controversial developments within the Sylvania Recreation Area, and Ottawa National Forest Recreation Officer Richard Guth's verbal recollections of the events that led up to the Sylvania lawsuit were indispensable. Mr. Ralph Kizer, Supervisor of the Ottawa National Forest, was my key source of Forest Service data and a constructive critic of an early draft of the report.

Thanks also go to Miss Virginia Prentice of Ann Arbor, Michigan, past chairman of the Mackinac Chapter of the Sierra Club, for the documentation of the Sierra Club's role herein described; Mrs. Margaret Huffman, office manager of the Michigan United Conservation Clubs headquarters in Lansing, for access to MUCC's file on this issue; Miss Muriel Ferris, legislative assistant to U.S. Senator Philip A. Hart, for copies of bills, press releases and other needed materials; and fellow MSU graduate students Martin Hanratty, John Carroll, and Marion May for providing me with materials on Sylvania obtained during the development of their class reports on this subject.

TABLE OF CONTENTS

Chapter Page

Chapter Page

LIST OF APPENDICES

CHAPTER I

INTRODUCTION AND BACKGROUND

Introduction

Until a relatively few months ago, the efforts of private citizen conservation organizations and individual conservationists to attain their environmental objectives were directed primarily toward working through the executive and legislative branches of government, and not through the judiciary. Organizations which tried to gain access to the courts to modify government agency projects were advised that they lacked "standing" as proper parties to obtain redress. Trials on the merits of a conservation resource issue were rare.

New ground was broken with the Consolidated Edison-Storm King decision in 1965, however. In this landmark case[1] a citizen group, the Scenic Hudson Preservation Conference, was granted standing to sue the Federal Power Commission, and the barriers to "standing" began to be lifted. Since the decision, standing to sue has become

---

[1] 354 F.2d 608 (2nd Cir. 1965), cert. denied sub nom. Consolidated Edison Co. v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966).

less of a problem for conservation organizations and individuals not directly damaged by agency activities.

The tentative lifting of these access barriers to the courts has resulted in the filing of many legal actions in recent months by private individuals and conservation groups to try to resolve environmental disputes. A number of these actions have involved the Forest Service of the U.S. Department of Agriculture. Some of these cite the Secretary of Agriculture as one of the defendants; others list only specific Forest Service staff members as defendants.[2]

The Problem

Should this trend toward citizen-group use of the courts to contest Forest Service administrative decisions gain momentum, the Forest Service could find some of its programs delayed for substantial periods of time or terminated altogether.

Supervisory personnel of the Forest Service at national forest headquarters, regional office, and Washington office levels have been taken off regular duty assignments and "thrown into the breach" created by these lawsuits. Forest officers have spent thousands of man-days assisting federal attorneys from the Department of

---

[2] See p. 14 infra.

Agriculture's Office of General Counsel and from the Justice Department in the preparation of the government's cases. They also have been distracted from their regular routines in order to handle the increased volume of correspondence from concerned citizens stemming from the publicity generated by the litigation.

Today's citizen conservationist is often a college-trained professional person. Many are highly qualified scientists. The fact that these academically and politically sophisticated activists are banding together in conservation organizations by the hundreds of thousands to make their voices heard means that the agency's "public relations" job is more difficult today than it was in the past. Hundreds of thousands of affluent, well-educated young adults, who believe they have had some political-action success in changing the government's attitudes on the war in Viet Nam, civil rights, and the use of marijuana, appear to be ready to adopt the preservation of environmental quality as their personal crusade for the next decade or more. Channeling the energy of this volatile group, with Ralph Nader's team of youthful lawyers showing the way, may be even more difficult than coping with today's professional, middle-class, adult conservationists, who at least to some extent share with the leaders of the Forest Service a common value system.

In short, the mass-media communications efforts of the past--Smokey Bear, the Lassie television program and color booklets describing clear-cutting as resulting in beautiful "forest patterns"--will not be enough to keep citizens' groups from taking the agency to court if the agency's actions in the field are not in line with how an enlightened citizenry feels its national forests should be administered. The public today is demanding meaningful involvement, a sharing in the decisionmaking process.

The Forest Service has not been singled out by conservationists for attack, despite its harried leaders' suspicions that such might be the case. It is only one of many bureaucracies being buffeted by the winds of change, represented by complaints being filed in court to overcome agency and corporate reluctance to move in new directions in tune with the times. Citizens' groups have found it possible to use the courts--as well as traditional administrative remedies and just-as-traditional political pressure--in their constant search for countervailing power. They can be counted upon now to attempt to win at least stop-gap solutions to their complaints in court, while seeking long-range solutions in the legislatures.

All observers of the existing tense situation would agree that what <u>is</u> diverges from <u>what ought to be</u>. Just what ought to be--the normative state--is the

question. All might agree that an end to the litigation would be desirable--but on whose terms?

The Forest Service has emphasized the Multiple Use and Sustained Yield Act of 1960 as its basic policy guideline, while some conservationists reject the multiple use definition in this act as too vague and therefore inoperable, and would prefer an agency credo based on the philosophy behind more recent statutes such as the Wilderness Act of 1964, the National Wild and Scenic Rivers Act of 1968, and the National Environmental Policy Act of 1969. The conservationists' contention might well be that the Forest Service today is operating in an urban scene with a rural script, because most national forests now are within commuting distance of a "standard metropolitan area" and are used more as weekend recreation areas than they have been in the past. As the agency's clientele changes (most Americans are city-dwellers now), so must the agency change to reflect its clientele's changing needs.

The situation I have chosen to investigate easily meets the minimal conditions for the existence of a problem. Its "anatomy" is as follows: (1) The chief and staff of the Forest Service--the decisionmakers in this instance--have a problem, i.e., the litigation which has their people in court and is delaying the implementation of administrative decisions. This evidence of public dissatisfaction with the agency's decisions weakens its

posture in the Federal Establishment; it becomes more susceptible to budget-cuts and reorganization schemes. (2) An outcome (objective or goal) is desired by these decisionmakers, namely the reduction to a minimum of such litigation in the future. This outcome could also be stated as "satisfied recreationists." Also, an early warning system to catch conflicts before they blow up into litigation might be sought. (3) These decisionmakers have at least two unequally efficient courses of action, e.g., the hiring by the government of more lawyers to expedite handling of lawsuits or the modification of the agency's procedures in order to provide for meaningful public involvement in its decisionmaking processes, thereby reducing the conservationist frustration which results in lawsuits. (4) A state of doubt, or uncertainty, might be said to exist as to which alternative course of action is best. (5) An environment, or context, of the problem exists, consisting of uncontrollable variables such as the actions of other decisionmakers, reactions or counter-reactions, previous commitments, and recreationists' preferences.

Objectives of the Study

Administrators of the National Forest System would like to know how best to cope with those expressions of dissatisfaction with their decisions which emanate from their various clientele groups in order to avoid expensive

and time-consuming administrative and judicial reviews. They would prefer to "get on with the job at hand." The question is: Can they provide a relatively informal method of resolving conflicts at the field level that will keep initially small problems from becoming big controversies?

The agency's theoretical objective, albeit an impossible one, is to keep all of its clientele groups happy all of the time. These groups include several million recreationist-users of its national forest wilderness areas and less formally-designated back-country areas, whose organizations, typified by the Sierra Club, have been responsible for much of the recent litigation which has "tied the agency in knots." User-group dissatisfaction cannot simply be ignored and fought in the courts; the political ramifications of such an attitude, if nothing else, argue against following this route.

The conservation groups who have sued the Forest Service share with the Service, it may be assumed, a distaste for this conflict-resolution route, if only because of its expense. The groups' lawyers pursue these suits enthusiastically, but no conservation organization has the resources to be able to afford very many lawsuits when each suit may cost it twenty or thirty thousand dollars

for legal fees and related expenses.[3] And so it would be to the advantage of all concerned--the Forest Service, the conservation organizations, and our overburdened courts--if further litigation of the sort presently in the courts involving the Forest Service could be avoided or at least kept to a minimum number of cases in the future, as long as satisfactory resolution of conflicts could be obtained at a less formal level.

This two-part investigation will analyze in detail the development, or evolution, of four Forest Service-conservation group conflicts which have been the subject of federal court hearings. The backgrounds of a number of other similar conflicts not quite as well developed also will be reviewed, but in less detail. The sequence of events will be reconstructed in each case, to identify common elements such as, for example, the absence of public hearings or other "due process" procedures.

The information thus obtained, plus information on public involvement techniques used by other agencies, will be employed as the basis for the construction of a set of recommendations to the Forest Service regarding certain aspects of its relationships with its clientele groups.

---

[3]Michael McCloskey, Executive Director, Sierra Club, private interview, San Francisco, Calif., Aug. 14, 1970.

The report will be published in two parts. The first segment (this thesis) constitutes a "trial run" investigation of a single case (the Gandt v. Hardin, or Sylvania, case) to test the technique. The second segment (the Ph.D. dissertation) will contain the full-blown, multi-case comparison, analysis, and recommendations.

Review of Relevant Literature

This investigation essentially is in a hitherto untouched field. It combines the techniques of legal research and historical documentation with the investigative and descriptive style of an embryonic field known as sociology of law. Because of the limited number of cases available for study which involve the Forest Service as defendant and a private conservation group as plaintiff, a census of the individuals (the responsible leadership) on both sides of each case has been chosen as the most practical way to obtain the needed data.

At the core of this study is a description of one aspect of a dynamic new field called environmental law. Whether environmental law is a bona fide division of the law profession at this juncture or consists only of the application of old legal procedures to a new kind of conflict with a new class of plaintiff, it has become a very popular subject area. Several national conferences, symposia and workshops on the subject have been held since

the first such conference, sponsored by the Conservation Foundation of Washington, D.C., attracted environmental lawyers to Airlie House near Warrenton, Virginia in September of 1969.[4]

Because environmental litigation is such a new field, and because no one else to this investigator's knowledge has worked on the question at hand (Why these lawsuits, and what can be done to avoid them?), the literature review process was expected to be relatively unproductive. However, useful examples of work in allied fields such as sociology of law were found. Further, a few books and a number of law review and other journal articles have appeared on both the procedural aspects of environmental litigation and on the general question of public involvement in agency decisionmaking. Federal statutes, the regulations of federal agencies pertaining to public access to information and to the decisionmaking process, and sections of the Forest Service Manual also have an important bearing on this investigation. Examples of works available for use as style guides and sources of relevant insights into applicable aspects of the fields of public administration, sociology of law, and environmental law are cited in the bibliography.

---

[4]Conference proceedings: Malcolm Baldwin and James Page, editors, Law and the Environment (New York: Walker Press, 1970); see also, The Conservation Foundation, CF Letter (Sept. 30, 1969).

A detailed description of the relevant literature will constitute an important section of the second part of this report. Leading examples of literature in each field can be cited, however. For example, Law and the Behavioral Sciences by Professors Lawrence Friedman and Stewart Macauley includes excerpts from a number of studies in the area of sociology of law. Professor Joseph Sax's Defending the Environment provides an introduction to the field of environmental law. A Strategy for Citizen Action and the Sierra Club's "handbook for environmental activists," Ecotactics, are similarly valuable. The Bureau of National Affairs, Inc. (BNA) in Washington, D.C. is the source of both a casebook (Cases and Materials on Environmental Law by Professor Oscar Gray) and a law reporter (Environment Reporter) in this field. Law school journals may be the best source of current information on the procedural aspects of environmental litigation. Recent articles on the subject have appeared, among other places, in the Columbia, Oregon, Rutgers, Utah, and Wayne law reviews, in Wyoming's Land and Water Law Review, in the New Mexico law school's Natural Resources Journal, and in the Harvard Civil Rights and Civil Liberties Law Review as well as in the U.S. Department of Justice's Land and Natural Resources Division Journal.

The house organs of the national conservation groups (particularly the Sierra Club's Bulletin and the

American Forestry Association's American Forests) provide continuing coverage of the environmental lawsuit situation from these groups' points of view.

Congressional documents, such as the hearings before the Subcommittee on Energy, Natural Resources, and the Environment of the Senate Committee on Commerce on S. 3575, the Environmental Protection Act of 1970, and relevant insertions by Members of Congress in the Congressional Record, are recommended reading as background for an appreciation of the changing context of public opinion and awareness, within which the field of environmental law is evolving and developing.

Finally, books and journal articles on the subject of public administration (such as Kaufman's The Forest Ranger: A Study in Administrative Behavior, Reich's Bureaucracy and the Forests, Woll's American Bureaucracy, and Mosher's Democracy and the Public Service) and official documents and statements emanating from the offices of the Secretary of Agriculture and the Chief of the Forest Service must be reviewed in order to tie together what is happening in the courts with what is happening in the Forest Service.

CHAPTER II

PROJECT DESIGN

Research Methods

Initially, it can be stipulated that the investigator has a strong personal interest in pursuing this investigation, stemming from his close connection with parties on both sides of the lawsuits under study. As a graduate of a forestry-wildlife management undergraduate curriculum at the University of Michigan, as a former seasonal employee of the U.S. Forest Service, as a former state wildlife agency division chief, and as a former consultant to the Office of Environment and Urban Systems of the U.S. Department of Transportation, he is appreciative of the problems faced by government resource administrators in carrying out their statutory missions with efficiency and dispatch. As a former executive staff officer of both the National Wildlife Federation and The Wilderness Society, he knows the frustrations experienced by private citizen group leaders who seek to modify executive-branch agency policies on behalf of the interests of their members.

Four lawsuits and their backgrounds are to be examined in detail during the course of this study. These actions are:

1. Dr. Jerry Gandt, et al. v. Clifford Hardin, et al., ____ F. Supp. ____ (W.D. Mich. 1969) (Civil Docket No. 1334, Dec. 11, 1969) (Sylvania Recreation Area development, Michigan)

2. Robert W. Parker, et al. v. The United States of America, Clifford Hardin, et al., 307 F. Supp. 685 (D. Colo. 1970) (No. C-1368, Feb. 27, 1970) (East Meadow Creek timber sale, Colorado)

3. Sierra Club v. Walter J. Hickel, et al., ____ F. Supp. ____ (N.D. Cal. 1969) (No. 51464, July 23, 1969) (Mineral King ski development, California)

4. Izaak Walton League of America v. George W. St. Clair, et al., 313 F. Supp. 1312 (D. Minn. 1970) (Civil Docket No. 5-69-70) (Boundary Waters Canoe Area mining permit, Minnesota)

Other, more recent cases and controversies, including examples in Alaska, Washington State, Oregon, Idaho and West Virginia involving the Forest Service, will be compared with these pace-setting examples.[1]

---

[1]These cases and controversies will be reviewed: Sierra Club, Sitka Conservation Society, and Carl Lane v. Clifford Hardin, et al. (D. Alaska) (Civil Docket No. A-16-70) (Admiralty Island timber sale); Alpine Lakes Protection Society, et al., v. Clifford Hardin, et al. (W.D. Wash.) (No. 8885) (Middle Fork Snoqualmie River valley mine access road construction); Save French Pete Committee, et al. (appeal to the chief of the Forest Service) (F.S. Docket No. 172, June 2, 1970) (management of French Pete Creek drainage, Oregon); White Cloud Mountains, Idaho (proposed mining and road construction); West Virginia Highlands Conservancy v. The Island Creek Coal Company, et al. (N.D. W. Va.) (Civil Action No. 70-82-E) (proposed mining and road construction).

The purpose of the present study will be to explore and document the following aspects of the above-mentioned cases:

(1) What were the legal bases for the suits?

(2) Do these bases conform to traditional legal approaches?

(3) Are the current approaches likely to have increased legitimacy in the future?

(4) What are the legal ramifications of these suits--the impact of law on society, and the impact of society on the law?

(5) Specifically, what is the possible extent of the impact that may be expected on Forest Service policies and programs?

(6) Do these suits and other forms of conflict have any common denominators--in terms of the kinds of groups involved, the actions of the Forest Service, and the legal bases employed?

(7) Were these lawsuits and other actions conceived as "last resort" efforts by the citizen groups who initiated them? What other courses of action--avenues of communication and possible conciliation or compromise with the Forest Service--were open to these groups? Were these avenues of communication used before the lawsuits were decided upon as a necessary course of action? Do adequate means of public involvement in Forest Service decision-making exist at the present time?

The research involved in the analysis of the cases listed above will involve a combination of the traditional legal research techniques and data-gathering by means of interviews with all primary participants. The cases under investigation will be described; the basic facts of each situation will be set forth, with precise chronologies; the resources at stake in each instance will be described briefly but precisely; and background data will be provided. Included in the analysis will be a discussion of the elements of commonality and dissimilarity, legal remedies and strategies, attitudinal problems, and the limited number of opportunities for citizen involvement in agency decisionmaking.

The literary cognitive style is used because this report is basically a description, comparison, and analysis of case studies. And because the phenomenon under investigation is so difficult to predict, a "verbal" research model is used, assisted by a nominal scale of measurement (a listing of the different cases being studied).

Conceptual Foundations

We begin with a double handicap, from the standpoint of a scientific investigation, because neither legal research nor historical documentation appear to be regarded as bona fide applications of the scientific method (Tullock, The Organization of Inquiry, p. 59). But, if a

qualitative, verbal model meets the test, we should be able to demonstrate the truth or falsity of the statement: Increased public involvement in agency decisionmaking will result in "better" decisions (based on more information) --"betterness" being related to societal goals. While one hypothesis tentatively considered--More public involvement will result in less litigation--has been discarded because it has been suggested by several observers that the opposite may well prove to be the case, reduction of litigation is a prime maxim in the law, and perhaps "better" decisions will result in less litigation.

More to the point, perhaps, we should be able to show either that elements of commonality exist between a wide range of cases of broad applicability, or that no element of commonality exists and each case is an aberration unique unto itself. If we can identify those conditions which are common to all suits, which are likely to recur, and which will lead to lawsuits, we should be able to propose solutions--e.g., manual and policy changes--to eliminate these causal conditions. (This is based on the assumption that the organization wants to provide goods and services that the general public wants, recognizing that basic conflicts between various clients of the agency exist.)

What kinds of information are needed to prove or disprove these hypotheses? What kinds of decisions lead

to court suits? Transaction evidence--copies of letters, petitions, minutes of meetings, and other indicators of agency response to public inquiries--have been obtained and compared to arrive at the necessary conclusions.

It can be speculated that, of the three branches of government (executive, legislation, and judicial), at least one branch must be responsive to the public that is frustrated by lack of response from the other branches. Today, perhaps because the executive branch is slow to respond to the public and the legislative branch has not been creative enough, relying almost entirely upon the executive branch to draft its legislation, the public is turning to the courts for relief, where it can deal as an "equal" with the agency and require it to justify its actions.

Answers to pertinent questions will be sought through the personal interview process and through reading and analyzing the legal briefs, pleadings, court hearing transcripts, and decisions in each case. Regarding the "law in action," are people complying with the "law"? What structures exist for the resolution of conflicts? What is the relevant formal law, the legal basis for the suit, the legitimacy of the approach? Did all the plaintiffs experience "exhaustion and frustration" before finally deciding to go to court? And where is the "crunch" --the impact of society on the law, the impact of the

conservation groups on Forest Service policy (which is an informal part of the formal law)? Do we find ourselves today in a new social environment, where land-use decisions are no longer made unilaterally but where compromises are possible? Can an analogy be drawn between the emerging acceptance of the public's "environmental rights"[2] and the acceptance by society a generation ago of the rights of labor to workmen's compensation and collective bargaining?

The urgency with which the Forest Service views this investigation is indicated in part by the fact that it has entered into a cooperative agreement with Michigan State University (Contract No. 12-11-009-22423; see Appendix C) which has provided funds to this investigator to proceed with the data-gathering phase of the study.

Interviews in the Field

During the summer months of 1970, the principal investigator traveled to the following field locations to interview participants in the cases, making detailed and precise notes during all interviews:

Gandt v. Hardin:

Milwaukee, Wisconsin: Regional Forester; Director, Information and Education Division, Washington, D.C.; USDA

---

[2]See Michael McCloskey, "A Bill of Environmental Rights," No Deposit--No Return (Huey D. Johnson, ed.) (Reading, Mass.: Addison-Wesley Publishing Company, 1970), pp. 269-271.

Office of General Counsel Regional Attorney; Assistant Director, Recreation Division, Eastern Region; Assistant Director, Information and Education Division, Eastern Region.

Ironwood and Watersmeet, Michigan: Forest Supervisor, Ottawa National Forest; Deputy Forest Supervisor; District Ranger, Watersmeet District.

Green Bay, Wisconsin: Leaders of the Save Our Sylvania Action Committee including its scientific information director, its public information director, and its attorney.

Parker v. U.S.:

Denver, Colorado: Regional Forester and staff; Executive Director, Rocky Mountain Center on Environment; Director of Field Services, The Wilderness Society; attorneys for the plaintiffs.

Sierra Club v. Hickel:

San Francisco, California: Director, Recreation Division, California Region, Forest Service; USDA Office of General Counsel Regional Attorney; Executive Director, Sierra Club; attorneys for the plaintiff.

Porterville, California: Forest Supervisor, Sequoia National Forest; Mineral King Staff Specialist, Sequoia National Forest.

Izaak Walton League v. St. Clair:

Milwaukee, Wisconsin: see Gandt listing above.

Duluth, Minnesota: Recreation Staff Specialist, Superior National Forest.

Ely, Minnesota: IWLA Wilderness Consultant Sigurd Olson.

Minneapolis, Minnesota: plaintiff's attorney.

In addition, copies of relevant correspondence and a complete set of the legal documents pertaining to both sides of each of these cases were obtained.

Research Approach Summarized

If we grant that science can include qualitative scales, and that "untestable" systems exist in social science, yet we should still be able to apply the scientific method to this study through:

(1) impartial gathering of data (regarding the variables in the system--area, organization, opportunities for public involvement, etc.) by observation of a system;

(2) making preliminary generalizations from the data by inductive reasoning;

(3) testing the validity of the generalization and the deductive conclusions that logically flow from the theory (by making more observations); and

(4) arriving at a verified hypothesis, or theory.

It is recognized that the interview partakes of two elements of subjectivity: the reports of the respondent or subject, and the reports made about the respondent by the interviewer or observer. Additionally, it is recognized that probing--"a secondary, spontaneous, purposeful, supplementary comment or question used to add to both the completeness and accuracy of response and to further the cooperation and motivation of the respondent"--creates a bias problem. Yet these are the only tools we have at hand to find out what is going on in this dynamic and important social area.

We are reassured by Aristotle's observation, "An educated man demands no more exactness than is allowed by the subject-matter being dealt with," and by Kaplan's comment, "Careful observation and shrewd even if unformalized inference have by no means outlived their day."[3] Hopefully, our verbal model will explain the behavior of some aspect of the system, as an expression of the researcher's view of the system based upon his experience, his knowledge of past work, and the data.

As stipulated earlier, this thesis constitutes an investigation of a single case: the Gandt v. Hardin, or Sylvania Recreation Area, case. The chapters which follow

---

[3]Abraham Kaplan, The Conduct of Inquiry (San Francisco: Chandler Publishing Company, 1964), p. 283.

deal strictly with this case history: the resources at stake; the land-ownership history; the evolution of the Forest Service management plan and the extent of public involvement in same; and the evolution and "resolution" in court of the conflict between the Forest Service and the Save Our Sylvania Action Committee over how the Sylvania area should be developed.

CHAPTER III

SYLVANIA: THE RESOURCES AT STAKE

Historic Background

> Sylvania is unique. There is no area like it nor will there be, giving in one compact area a vignette of virgin northwoods and primitive lakes. . . . It is reminiscent of the bygone days of the frontier when unbroken forests stretched from the Atlantic to the Great Plains and the Voyageurs traversed by canoe the endless lake chains of the north.[1]

The 21,000-acre Sylvania Recreation Area lies 355 miles north-northwest of Chicago, at the western end of Michigan's Upper Peninsula, with its southern boundary resting on the Michigan-Wisconsin border. Its 33 square miles, all within Gogebic County, constitute fourteen percent of the land owned by the federal government within the Watersmeet District, one of the 900,000-acre[2] Ottawa National Forest's six ranger districts.

Sylvania was not always "unique." Once it was much like other lands hunted by the Chippewa and Ottawa

---

[1]The University of Michigan, School of Natural Resources, Sylvania (Published with the cooperation of the Forest Service, U.S. Department of Agriculture: Olsen Publishing and Printing Company, 1965), pp. 4-5.

[2]Forest Service net ownership; gross size is 1.5 million acres.

Indians.[3] Unlike surrounding terrain, however, it survived relatively unscathed[4] the impact of the first waves of miners and loggers across the "U.P."[5] During this period Sylvania was protected inviolate by its private owners as their personal hunting and fishing preserve. Today, publicly owned, it exists as a remnant of our northwoods virgin forest and wild lake heritage, valuable because "untouched" areas of this kind now are rare in this region.[6] Such areas have distinctive and important

---

[3]U.S., Department of Agriculture, Forest Service, A Study of Proposed Federal Purchase and Forest Service Management of the Lands and Waters of the Sylvania Tract located within Ottawa National Forest, Michigan (Waukesha, Wis. [Milwaukee]: Delzer Lithograph Company, 1964 [1965], p. 5.

[4]Most of the pine was cut in the late 1880's or early 1890's. At this time there were virtually no markets for hardwoods and hemlock, and these species were not cut.

[5]Professor Willis Frederick Dunbar provides these dates in his chapter on "The Upper Peninsula, 1865-1960" (Michigan: A History of the Wolverine State [Grand Rapids: William P. Eerdmans Publishing Company, 1965]): The copper rush, principally to Houghton County, began in 1844 and Michigan copper production reached its height in 1916; iron mining began in 1846, and the State's iron production reached its height in 1920; the migration of lumbermen to the Upper Peninsula began in the 1880's, lumber production in Michigan hit its height in 1888, and by 1910 the lumberjacks were beginning to move on. See also: Stewart H. Holbrook, Holy Old Mackinaw: A Natural History of the American Lumberjack (New York: The Macmillan Company, 1938); and Stewart H. Holbrook, Iron Brew: A Century of American Ore and Steel (New York: The Macmillan Company, 1939).

[6]The 747,128-acre Boundary Waters Canoe Area in northern Minnesota is "unique in the National Forest Wilderness System--it is the only lakeland Wilderness,"

scientific, educational, cultural and recreational values, as proponents of wilderness preservation--including Forest Service employees Art Carhart, Aldo Leopold and Bob Marshall--have been pointing out since the early 1920's.[7]

Geological and Biological Characteristics

> Sylvania is an offspring of glacial action. For 25,000 years, ice of the Pleistocene age coursed across its billion-year-old bedrock. When, about 10,000 years ago, Sylvania emerged from the last continental glacier, its form was much as it is today. Hundreds of feet of glacial moraine, characterized by broad rolling hills and lowlands studded with lakes and ponds, is the result.[8]

---

according to Search for Solitude (U.S., Department of Agriculture, Forest Service, PA942 [Washington, D.C.: Government Printing Office, 1970], p. 30). Stewart M. Brandborg, in A Handbook on the Wilderness Act (Washington, D.C.: The Wilderness Society, 729 15th Street, N.W., 1970, pp. 41 and 48), lists seven additional areas in the Michigan-Wisconsin-Minnesota region as candidate areas for possible inclusion by Congress in the National Wilderness Preservation System. These include Isle Royale National Park and several national wildlife refuges. See also: John William Humke, "A Comparative Study of Four State Natural Area Systems with Recommendations for Michigan" (unpublished M.S. thesis, Michigan State University, 1970), ch. 3.

[7]Arthur H. Carhart, a landscape architect, recommended in 1922 that the wilderness of what was to become the Boundary Waters Canoe Area be preserved; Aldo Leopold, as Forest Supervisor of the Gila National Forest in New Mexico, won the establishment of the Forest Service's first designated "primitive area"--the Gila--in 1924; Robert Marshall, as director of the agency's recreation division in the 1930's, oversaw expansion of the Forest Service's primitive area system and helped organize The Wilderness Society.

[8]Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 7.

Straddling the Mississippi River-Lake Superior (St. Lawrence River) divide at elevations ranging from 1,700 to 1,860 feet, the Sylvania area receives an average of 34 inches of precipitation annually, including 150 inches of snow. The vegetative cover holding its sandy and gravelly loam soils[9] in place and thriving in this long winter-short summer environment is the climax forest of the region--the northern hardwoods-hemlock type--supplemented by other species. Scattered groups of "monarch" white and red pine (including the largest known red pine in North America), white cedar swamps, bog-margin stands of black and white spruce, balsam fir, and tamarack, and an understory including ironwood and moose maple provide relief from the closed canopy of the sugar maple-yellow birch-basswood-eastern hemlock climax forest monotype. Groves of paper birch, jack pine, and trembling and bigtooth aspen and occasional specimens of black cherry, red maple, black ash, white ash, American elm, and red oak[10] bear witness to the harsh effects that wind, sleet, frost cracking, snow breakage, drought, sunscald, flooding (including beaver impoundments), and browsing have had on

---

[9]See U.S., Department of Agriculture, Forest Service, Sylvania Area Soils Report (Milwaukee: June 1966).

[10]Forest Service, Study of Proposed Federal Purchase of Sylvania, pp. 8-9.

the climax forest from time to time,[11] disturbing the soil, letting in sunlight, and temporarily providing ideal conditions for these sun-loving species. Forest fires have not occurred in Sylvania "except for minor unimportant acreages burned years ago."[12]

The area is referred to by the Forest Service as "near-virgin"[13] because "white pine was logged at the turn of the century"[14] and because "240 acres . . . were clearcut during World War II, . . . a small salvage cut [because of windthrow] was made a few years ago, [and] a few acres near lodges and guard cabins were clearcut for fuelwood 30 to 60 years ago."[15]

Abundance of surface water and extraordinarily high water quality are two keys to Sylvania's popularity as a recreation area. Some 4,100 of the area's 21,000 acres are water surface. Thirty-six named lakes and as

---

[11] R. N. Cunningham, Forest Resources of the Lake State Region (U.S. Department of Agriculture, Forest Resource Report Number 1 [Washington, D.C.: Government Printing Office, 1950]), pp. 28-29.

[12] Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 11.

[13] Ibid., p. 1.

[14] Ralph D. Kizer, "Sylvania the Way It Is," speech presented by the Forest Supervisor, Ottawa National Forest, to the Vilas County Chamber of Commerce, Phelps, Wis., Sept. 8, 1961, p. 1. (Mimeographed.)

[15] Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 11.

many unnamed lakes provide sixty-six miles of shoreline. Six of the lakes are over 250 acres in size. Perched high on the watershed, Sylvania's lakes are described as "young and fragile."[16] Most have no inlet; only three have flowing outlets. Not only can they easily be polluted but, practically sterile, they can easily be over-fished.[17] For these reasons, the lakes' relatively few but large gamefish are being protected with special fishing regulations.[18]

Sylvania long has been famous for its white-tailed deer population (a browse line is evident) and high deer hunter success record.[19] Private clearcut areas around Sylvania provide excellent summer range, while Sylvania, with its tight overhead cover, is good winter range. Previous owners of Sylvania and the Land O' Lakes Sportsmen's Club attracted deer for many years by providing

---

[16] Ibid., p. 8.

[17] U.S. Forest Service, Information and Education [Division], "Sylvania," Milwaukee, n.d., p. 2. (Mimeographed.)

[18] In some lakes, fish taken must be returned to the same waters; in other lakes, unusually large minimum size limits have been established. Only artificial lures may be used. See U.S., Department of Agriculture, Forest Service, "Sylvania Recreation Area" (Map containing special fishing regulations [Milwaukee: Forest Service Regional Office, 1967, revised 1970]).

[19] "Where Deer Are," Detroit Free Press, Nov. 7, 1965.

hay.[20] Black bear are present in Sylvania, as are coyotes, otter, mink, beaver, porcupine, snowshoe hare, ruffed grouse, woodcock, loons, and pileated woodpeckers. Fishers, once extinct in Michigan, have been re-established and can be found in Sylvania. Waterfowl use the area's lakes during migration. Within the area is a blue heron rookery attracting some 100 herons annually.[21] Bald eagles nest and reproduce in Sylvania, making it a wildlife refuge to the extent that a Forest Service policy provides special protection to rare species of wildlife on national forest lands.

Difficult to put into words is the "wilderness atmosphere"[22] attributed to Sylvania. Forest Service documents can describe the area as "singularly unspoiled" and proclaim that "today it stands virtually alone as a testament to a former grandeur that has all but disappeared from a great territory."[23] But the peace of mind that accompanies a period of solitude in even such a small "island" of wildness as Sylvania has to be experienced to be appreciated.

---

[20] A. Richard Guth, Recreation Office, Ottawa National Forest, personal letter, Nov. 24, 1970.

[21] U.S., Department of Agriculture, Forest Service, "Sylvania Recreation Area" (Map with text section entitled "A Wildlife Domain" [Milwaukee: Forest Service Regional Office, 1967]).

[22] Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 38.

[23] Ibid., p. 7.

CHAPTER IV

SYLVANIA: LAND-OWNERSHIP HISTORY

The "Sylvania Tract" as described in the 1965 prospectus[1] constituted all of Michigan Townships 43 and 44 North, Range 40 West, and parts of Sections 31, 32, and 34 of Township 45 North, Range 40 West--"14,000 acres of practically untouched forests . . . [plus] a total of 4,000 acres of clear northland waters."[2] The present Sylvania Recreation Area includes not only this acreage but also 3,000 acres of contiguous Ottawa National Forest lands, making it a management unit of some 21,000 acres.

The native Indians lost their right to occupy the western part of Michigan's Upper Peninsula in 1842 with the signing of the Treaty of La Pointe.[3] In 1873, the United States bestowed the first land patents of record in T44N, R40W on Ebenezer Hubbard (544 acres) and on Iremus K. Hamilton (480 acres). In 1884, land patents in

---

[1] Ibid.; see "Proposed Development Plan" map, inside back cover.

[2] University of Michigan, Sylvania, p. 5.

[3] Dunbar, Michigan, p. 361.

this township were granted to George M. Wakefield (7,086 acres) and to William Watson (1,500.5 acres).[4]

The Sylvania Club is Organized

With the turn of the century came the acquisition of these and thousands of acres of contiguous wildlands by the newly organized "Sylvania Club" and the exclusive use of these acres as a "private playground for wealthy people."[5]

---

[4]"History of Ownership of Sylvania Club and Related Properties," two-page document supplied by L. Wayne Bell, Lands Officer, Ottawa National Forest, Ironwood, Mich., 1970. (Photocopy.)

[5]Kizer, "Sylvania the Way It Is," p. 1. The "History of Ownership" document (footnote 4, above) provides these details: In 1901, an officer of the United States Steel Corporation, Thomas Cole, bought the former Watson tract from the Illinois Steel Corporation for $6,000, deeded a one-sixth undivided interest in this property to each of five other U.S. Steel executives (James Gayley, Thomas Morrison, D. M. Clemson, W. E. Corey, and D. G. Kerr), and kept a one-sixth undivided interest in this 1,500-acre tract for himself. In 1902, this "Sylvania Club" group purchased an additional 10,818 acres in several transactions. In 1903, Kerr sold a one-twelfth interest to a Mr. Walker who in turn sold it to Otto Davidson. Between 1903 and 1918, the club consolidated its ownership in T44N, R40W by purchasing several more small tracts. In 1920, Cole sold his one-sixth interest to copper magnate William Boyce Thompson, and by the end of 1923 Thompson owned a two-thirds undivided interest in the club property, having also purchased the one-sixth interests of Gayley, Morrison, and Clemson. In 1922, Davidson received patent from the United States for all the islands in "Sylvania" not previously patented and deeded them to the club members according to their respective interests. Ownership of Thompson's two-thirds interest passed to his daughter, Margaret Schulze, in 1928, upon his death. In 1940, Margaret Schulze, who had

By 1943, after 42 years of existence, the Sylvania Club's holdings had been consolidated to the point where they were held by only two people: Laurence P. Fisher of Detroit, who owned a three-fourths interest in the club's 14,000 acres, and C. M. Christiansen of Phelps, Wisconsin, who owned the other one-fourth interest in the club's lands. In that year, Fisher and Christiansen signed an agreement giving one party the option to buy the other's interest if he could equal the highest outside offer for it.

Christiansen died in 1954, willing all his interests in the Sylvania area to his two sons, Philip C. and Robert L. Christiansen. L. P. Fisher died intestate in 1962, and the L. P. Fisher Real Estate Liquidating

---

become the wife of Anthony J. Drexel Biddle, Jr., ambassador to Poland, sold her title to two-thirds of Sylvania to Fred Fisher.

C. M. Christiansen of Phelps, Wis., who had become a club member in 1937 with his purchase of Davidson's one-twelfth interest, enlarged his club holdings with the purchase of the one-sixth interest of the Corey heirs in 1941. After Fred Fisher's death in 1942, Laurence P. Fisher of the Fisher Body Corporation family of Detroit purchased the two-thirds interest in the club from the Fred Fisher heirs for $175,000. In 1943, Laurence Fisher bought from the Kerr heirs their one-twelfth interest in Sylvania and also purchased the Maplewood Hunt Club and other lands in T44N, R41W from the Gogebic Timber Company. In 1944 he purchased part of the Snap Jack Lake property and in 1955 purchased the balance of the Snap Jack property, including buildings, from Sarah King. L. P. Fisher's last Sylvania area purchase was NE NE Section 5, T44N, R40W, bought in 1957 from Mary Kelley.

Trust, set up in 1963, listed his widow, four brothers, three sisters, a nephew, and a neice as heirs.[6] The Fisher heirs sold all their interests in their lands in T44N, R41W (land which lies to the west of the "Sylvania Tract" proper) to L. P. Fisher's widow, Dollie May Fisher, in 1963.

Forest Service Negotiations

When the Fisher heirs (through the executor of the estate, the National Bank of Detroit) made known their desire to dispose of several of their properties including Sylvania to settle the estate,[7] word regarding this state of affairs was conveyed to members of the Michigan Congressional delegation. One such contact involved communication between the Forest Supervisor of the Ottawa National Forest at the time, John O. Wernham, and Miss Muriel Ferris, legislative assistant to United States Senator Philip A. Hart.[8]

Support for Forest Service acquisition of Sylvania came from many quarters. On November 27, 1963, the Gogebic County Board of Supervisors, concurring with earlier

---

[6]Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 9.

[7]University of Michigan, Sylvania, p. 7.

[8]John O. Wernham, private interview held in Duluth, Minn., July 24, 1970.

resolutions by the Watersmeet Township Planning Commission and the Watersmeet Township Board, approved a resolution encouraging the U.S. Forest Service to attempt to purchase the Sylvania property but qualifying its support of federal acquisition with provisos calling for preservation of the tax base, for opportunities for private persons to purchase lake frontage in Sylvania to increase the tax base, and for future renegotiations with Watersmeet Township, apparently in connection with taxes or payments in lieu of taxes.[9]

The Fisher heirs, on the basis of the deceased's expressed desire to keep the land intact under some kind of conservation management program, looked with favor on the U.S. Government as a possible buyer. In 1964, representatives of the Forest Service, U.S.D.A. were allowed to enter the property to carry out a timber survey and inspect the buildings. This was the only opportunity Forest Service personnel had to enter and evaluate the property prior to actual transfer of the title to the United States in 1966. The timber in Sylvania was estimated at that time to be worth $4 million.[10]

On April 16, 1964, the Michigan Conservation Commission (now the Natural Resources Commission) adopted a

---

[9]Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 49.

[10]Forest Service, "Sylvania," Milwaukee, p. 1.

resolution stating that Sylvania's "acquisition by the U.S. Forest Service and management of the Sylvania National Recreation Area would best serve the public interest." Passed after a presentation to the Commission had been made by Forest Supervisor Wernham, this resolution was sent, on the day it was passed, to every member of the Michigan Congressional delegation.[11]

The Ottawa National Forest's annual report for fiscal year 1964, released on September 1, 1964, included these modest remarks regarding Sylvania:

> Following a request from members of the Michigan Congressional Delegation, the [staff of the Ottawa National] Forest examined and submitted a preliminary report on the desirability and feasibility of the acquisition of the Sylvania Tract by the Forest Service. This near virgin tract . . . is a unique reminder of the magnificent unspoiled northwoods of bygone years. The Gogebic County Board of Supervisors and the Watersmeet Township Board initiated action to have the Forest Service consider acquisition of this important tract.[12]

The idea that the Forest Service should acquire Sylvania was not without vocal opponents, who predicted dire results as a result of the possible loss of $30,000 in real estate taxes paid annually by Sylvania's private owners to Gogebic County, Watersmeet Township, and

---

[11] Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 50.

[12] U.S., Department of Agriculture, Forest Service, Ottawa National Forest: Progress Report, Fiscal Year 1964 (Ironwood, Mich.), p. 7.

Watersmeet Township School District.[13] These opponents of public acquisition favored the proposal of another potential purchaser, a private partnership which was "nearly successful" in buying Sylvania.[14] The plans of this partnership were described as follows in the August 24, 1964 edition of the Ann Arbor News:

> If successful in their attempt to purchase [Sylvania], they plan a huge recreational complex of cottage development, with shopping centers, marinas, apartments and resort hotels, convention facilities, dude ranches, and winter sports areas.

Opponents of federal land purchases in the Upper Peninsula included a group called Forum on Resources of Upper Michigan (FORUM). The November 6, 1964 issue of the Escanaba Daily Press provided an account of a tour of Sylvania on the previous day by members of FORUM's executive committee: Lynn Sandberg (Celotex Corporation), William Vesser (Upper Peninsula Power Company), Richard Hammerschmidt (Cliff-Dow Chemical Company), Bruce Buell (American Can Company), and Dr. Hereford Garland (Michigan Technological University). They were led on their tour by Sylvania part-owner Philip C. Christiansen. This quotation, apparently meant to express the opinion of the group, was attributed by the Daily Press to Dr. Garland:

---

[13]Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 25.

[14]Kizer, "Sylvania the Way It Is," p. 2.

> Our interest . . . in the tract is in line with our concern that forest properties not be taken off the tax rolls and made into government operations without good reason in the public interest . . . The Christiansens have the first claim on the property if the Fisher Estate disposes of its interest and Philip Christiansen told us that he and his brother would exercise this option. . . . The Christiansens want to take over and manage the property on a multiple use basis. (This means producing timber and also providing recreation.) . . . It appears necessary to counter the conflicting and derogatory rumors which have been circulated with an objective statement. The basic feasibility and basis of the proposal that the tract be acquired by the U.S. Forest Service needs careful scrutiny by all concerned. Sylvania represents an opportunity for a totally new type of resort home community development. . . . The fiasco of the Isle Royale National Park and its costly failure to lure public recreationists cannot be used against Sylvania, for the conditions are not comparable. The proposal of the U.S. Forest Service states that there will be 835,000 man days of recreational use of the tract by the 10th year it is under federal ownership. . . . Can Watersmeet Township's economic dilemma afford to wait?

In the midst of the struggle for approval of its Sylvania Tract acquisition proposal, the Ottawa National Forest was given, free of charge, 1,100 acres adjoining the southwest side of the Sylvania Tract with 1-3/4 miles of common boundary and including several lakes and access to the Cisco Chain of Lakes. The land was bequeathed to the Forest Service by Juliet T. Goodrich of Chicago.[15]

The preliminary report to the Michigan Congressional delegation referred to in the Ottawa National Forest's annual report was expanded to become an

---

[15]Forest Service, Ottawa National Forest: Progress Report, p. 7.

illustrated, 64-page booklet entitled A Study of Proposed Federal Purchase and Forest Service Management of the Lands and Waters of the Sylvania Tract located within Ottawa National Forest, Michigan. Released to the public by the Forest Service early in 1965, and containing a proposed development plan map, this study produced by the staff of the Ottawa National Forest at Ironwood, Michigan not only provided the agency's rationale for its acquisition of the area but laid out in detail the agency's tentative plans for the development, management and future use of the area.

This booklet was not only distributed to Congressmen. Potential supporters in Michigan and Wisconsin received copies of it as well.[16] One thousand copies were printed.[17]

---

[16]For example, Regional Forester George S. James mailed a copy to the late James Rouman, Executive Director, Michigan United Conservation Clubs, Lansing on Feb. 19, 1965 with a covering letter stating, in part: ". . . We believe this report will be of interest to you. The Secretary [of Agriculture] has decided that Federal ownership of Sylvania is feasible and in the public interest. He has instructed us to proceed with the initial steps pointing to acquisition of the Tract. If you have further questions about this proposed acquisition or if there are aspects of the case on which you would like more information, please advise."

[17]Richard Guth, Recreation Staff Officer, Ottawa National Forest, private interview, East Lansing, Mich., Oct. 7, 1970.

Because they sum up very well a lengthy and important Forest Service statement on its future plans for Sylvania--a statement which was widely circulated--the "Conclusions" and "Recommendations" sections of this study are reproduced herewith (emphasis supplied):

Study Plan Conclusions

The Sylvania Tract, an area of national significance, should be acquired by the United States Government for the following reasons:

1. The Outdoor Recreation Resources Review Commission in its report to the President and to the Congress in January 1962, stressed the importance of vigorous, well-directed actions to meet the needs of the American public for outdoor recreation opportunities now and for the future. These actions are needed to preserve, develop, and make accessible to all the people the area and facilities necessary and desirable to assure the physical, cultural, and spiritual benefits of outdoor recreation.

   The forests and waters of Sylvania, located within a day's drive of the population centers of the midwest, offer a rare opportunity to help meet present and future needs for public outdoor recreation. This opportunity to serve the public interest, unless soon acted upon, may be irretrievably lost.

2. Acquisition of the Tract by the United States Government would be in full accord with the intent and purpose of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578; Stat. 897). This Act was signed into law September 3, 1964, to establish a fund to assist state and Federal agencies in meeting present and future outdoor recreation demands and needs of the American people.

3. Intensive management of these lands for outdoor recreation, high quality forest products, watershed, and wildlife and fish purposes can best be assured under the traditional principles of

multiple use and sustained yield of the Forest Service, U.S. Department of Agriculture. The Sylvania Tract lies within the boundaries of the Ottawa National Forest. The facilities and staff of this National Forest are already available to assume responsibilities for administering, protecting, and developing this area in the best public interest with maximum efficiency and economy.

4. The greatest value of the Sylvania Tract, socially and economically, lies in keeping the Tract intact so that balanced use of its unique endowment of rich resources can be sustained and enjoyed by the public now and by generations yet to come. Forest Service management can assure the maintenance of the Tract's values.

5. Development of Sylvania as a public recreation area would draw more tourist travel into the Upper Peninsula of Michigan. Its unusual attractions would encourage recreationists to extend their stay in what is presently an economically depressed area.

6. Development and management of Sylvania under principles of sustained and balanced use could well act as a catalyst in improving the local economy. Complementary private development of service centers, resorts, and recreation residences in the surrounding area could well result in a recreation complex of major economic significance. Attractions such as Sylvania have often proved to be centers around which private investments develop and flourish. These in turn provide a more diversified and stable tax base for local governmental services.

7. Gogebic County's economy has been primarily based upon iron ore mining since 1884. The importance of this local industry has drastically diminished. Employment in the Gogebic County mines decreased nearly 80% within the last decade. Logging and milling, the next most important industry in the County, declined since World War II. One of the principal means to improve the local economy is to produce an expanding yearlong recreation industry. A key factor in bringing this about would be the acquisition and development of the Sylvania Tract's recreation resource for public use coupled with multiple use management of other renewable surface resources.

8. The Sylvania Tract offers advantages for research and educational purposes which are not available elsewhere. Scientific investigation in the provinces of water quality, recreation-user preferences, wildlife habitat, and timber quality, to name a few, are possible. The findings would have application in the wide field of resource conservation and use. Conservation education could be dispensed to university groups using the area as a field laboratory and to visitors through a variety of interpretive services. The Tract would serve as an excellent multiple use demonstration area.

9. Water frontage having recreational value in Gogebic and Vilas Counties is and will continue to be predominantly in private ownership. Lakes within the Tract would be used to meet accelerating demands for public water recreation.

10. The State of Michigan and Gogebic County are not in a position to purchase, develop, and operate this property. There is much public support for purchase of this Tract by the United States as part of the Ottawa National Forest. The expressed interest of Gogebic County, Watersmeet Township, the Michigan Conservation Commission, and others in having this area acquired and developed under National Forest programs places a responsibility on the Forest Service, U.S. Department of Agriculture, to actively work toward acquiring the Sylvania Tract for the public benefit. The opportunity for such purchase is limited and requires prompt action.

Study Plan Recommendations

In view of the findings and conclusions reached in this study and in recognition of the rare and unique opportunity the Sylvania Tract offers to serve the long-term needs of the American public for outdoor recreation, the following recommendations are made:

1. That the United States acquire all title interest in the Tract. The Forest Service should proceed at once to obtain an option from the principal owner.

2. That the land and water resources of Sylvania be managed by the Forest Service under its

traditional principle of multiple use and sustained yield with full recognition given to the outstanding recreational qualities of the area.

3. That to best serve the public needs, a program of development and intensive management should begin promptly upon vesting title in the United States. The development program should be completed as rapidly as demands and funds justify.

4. That, in the interests of maximum efficiency and economy, the Tract be made a part of the Ottawa National Forest for purposes of administration and management.

5. That, in recognition of the importance to local governments of tax revenues from this Tract, some measure of "in-lieu-of-tax" payments be considered which will minimize the adverse effects upon affected government units during the period of transition from private ownership to full development and management under Federal control.

Another prospectus--a handsome, 20-page, four-color booklet entitled simply Sylvania, and released in March, 1965--was prepared in Ann Arbor, Michigan during the same period that the Forest headquarters staff at Ironwood was working on its study. Professor Kenneth P. Davis, at that time chairman of the University of Michigan's Forestry Department (now on the faculty of Yale University's School of Forestry), described his role in this project, and the project's significance, in recent correspondence:

> I became involved in the areas soon after it became known that the tract was available for sale. It seemed to me, along with rather general opinion, that the tract should go into public ownership rather than be privately developed. A grant of $10,000 was made available by the American Conservation Association of New York to the School of Natural Resources of the

> University of Michigan to make a study of the matter and prepare a report for general distribution. I became Director of this project. In close cooperation with the Forest Service, and various others, the brochure "Sylvania" was printed. . . . This brochure was widely distributed at the time of the hearings and actions on the Sylvania purchase. I think it correct to say, and the Forest Service supports this, that this brochure had a great deal to do with mustering the general support needed to purchase the tract. . . . To a considerable degree, therefore, the brochure was the general basis of understanding on which the land was purchased.[18]

The Sylvania booklet concludes in this vein: "In the American way of things, public endeavor requires public support. Sylvania is no exception; individual, organizational, and legislative support is needed. . . ." Wide public distribution of the colorful Sylvania brochure coincided with consideration of the Sylvania acquisition budget item by the Appropriations Committees of the United States Congress.

Congressional Hearings

On February 18, 1965, during hearings in Washington, D.C. on H.R. 6767, the Department of the Interior and Related Agencies Appropriations Bill for 1966, Forest Service Deputy Chief M. M. Nelson gave this response

---

[18] Kenneth P. Davis, personal letter to Martin E. Hanratty, May 12, 1970. Ottawa National Forest officers dealt directly with American Conservation Association officials to obtain this grant, according to Richard Guth, Ottawa Forest recreation staff officer, personal interview, October 7, 1970.

(excerpted, emphasis supplied) to Senate Appropriations Subcommittee Chairman Carl Hayden's request for a justification of the proposed Sylvania tract purchase:

> The Sylvania tract . . . is one of the outstanding opportunities for a purchase of land for use of the general public recreation [sic]. . . . We consider Sylvania extremely unique for recreational development. . . . It would be developed with recreation as the prime use. There would be some timber development. There would be research and education opportunities. There are some wildlife areas. There is some of the area that would be set aside as a natural area. Also in the educational field there is an opportunity for a regional study area for outdoor education in the conservation field.[19]

Later in these same Senate subcommittee hearings, Chairman Hayden received for the record Michigan Senator Philip A. Hart's statement of support for Forest Service acquisition of Sylvania:

> There is in the budget a proposal from the Forest Service to spend the sum of $7,182,500 in the State of Michigan under the land and water conservation fund. The major portion of this money is for acquisition of the so-called Sylvania tract in the Ottawa National Forest in the Upper Peninsula. I wish to record my support for this proposal and my hope that the money will be made available promptly so that this magnificent area may be developed and managed for its full recreation and other resources.[20]

Four days later--on February 22, 1965--Senator Hart's office distributed the following press release,

---

[19] U.S., Congress, Senate, Committee on Appropriations, Department of the Interior and Related Agencies Appropriations, Hearings, before a subcommittee of the Committee on Appropriations, Senate, on H.R. 6767, 89th Cong., 1st sess., 1965, p. 316.

[20] Ibid., p. 1745.

reproduced here at some length, again because of its specific exposition of the Forest Service's development plans for Sylvania and also because Senator Hart's approval of these plans clearly is implied, his office having issued the release:

> Senator Philip A. Hart and Congressman Raymond Clevenger (D-Mich) today announced that the U.S. Forest Service has agreed to buy the Sylvania Tract in the Upper Peninsula and is negotiating with the owners.
>
> The Sylvania Tract is 18,000 acres of privately owned woods and lakes in Gogebic County adjoining the Wisconsin border. In a letter announcing the impending purchase, Secretary of Agriculture Orville Freeman described it as "one of the most beautiful and unspoiled tracts in the Lake States."
>
> Freeman told Hart and Clevenger that he proposes to add the tract to the Ottawa National Forest to preserve its natural beauty and develop its recreation potential.
>
> In a joint statement, Hart and Clevenger commented:
>
> "This is an excellent step toward development of the UP's great tourist potential. Moreover, it would create a new and needed payroll. The Agriculture Department estimates that development of the tract will require an estimated 625 man-years of work and a total expenditure of some $10 million.
>
> "This is in addition to the estimated $437,700 yearly operating costs that would continue indefinitely.
>
> "Selective timbering would also be allowed and the Department estimates that 21 million feet of saw timber and 400,000 cords of pulpwood could be cut in the first 10 years without injury to landscape or wildlife.
>
> "And, of course, the magnificent scenery, hunting and fishing can be expected to bring in thousands of tourists."

> The two also noted that the Department of Agriculture report recommending the purchase suggests three ways to soften the tax loss to local governments.
>
> Currently, the local county, township and school district collect $30,000 annually in taxes from the tract. Hart and Clevenger said they would consult with local officials to decide which method might best help offset this loss. . . .

Nine days after this release--on March 3, 1965--Deputy Chief Nelson, during House hearings on H.R. 6767, responded to House Appropriations Subcommittee Chairman Winfield K. Denton's question, "For what purpose do you want to acquire the 18,352 acres in Ottawa National Forest in Michigan?" with this statement (excerpted, emphasis supplied):

> Mr. Chairman, that is probably the most outstanding possibility that we have for the acquisition of a key recreation property in the Nation today. . . . we would propose to manage [it] with recreation as the chief resource. It has a lot of wildlife resource, in addition to other recreation. Our estimates are <u>it would accommodate, after some development, about 800,000 visitors a year</u>. The State of Michigan has made some estimates of how much these visitors spend, and they say it is between $6 and $7 a day. So that would bring into the economy about $4 or $5 million. It has some old-growth timber . . . and <u>we would propose to do some selective cutting of that timber as we open the entire tract. That could increase the veneer production on the Ottawa National Forest by as much as 21 percent</u>. And we feel positive that this can be done without hurting the recreational qualities of the land. . . . dollarwise it is no doubt the biggest single purchase we have ever proposed. This is a project we have gone into deeply and worked on an appraisal. . . . We have . . . worked with the University of Michigan, and they have made a study of the management of this tract in relation to its effect on other recreation in the vicinity, both in Wisconsin and in Michigan. They indicate it would be desirable to manage this tract as we propose it in our report,

> and it would have a beneficial effect rather than a detrimental effect on the other recreation economy based in the area in this vicinity. . . . We have worked with the State and they have recommended that this is a tract that we should buy completely, because it is all within the national forest. . . . There are other reasons also; I understand the State has other areas, especially closer to Detroit and the higher population centers of their own State. They feel the use on this Sylvania property is more in the nature of interstate use. This is because it is located on the west end of the Upper Peninsula, and most of the people would be coming from Minnesota, Wisconsin, Illinois, and even the people from Iowa make heavy use of this lake country for vacations.[21]

Perhaps the most comprehensive statement of the Forest Service's rationale for its acquisition of Sylvania, outside of its lengthy published prospectus, is contained in a "Statement on Sylvania" made by Ottawa National Forest Supervisor John O. Wernham to the Gogebic County Board of Supervisors on April 13, 1965. Included are references to "private interests . . . committed to having an . . . interest in grabbing the Sylvania Tract" and an emphasis on timber harvest opportunities under Forest Service management:

> The pros and cons of a publicly owned, developed, and managed Sylvania Tract have been under consideration for many months by the concerned local units of government and the citizens of Gogebic County. You have all studied the Sylvania reports by the Forest Service, the Christiansen Brothers, Watersmeet Township, and the University of Michigan.

---

[21] U.S., Congress, House, Committee on Appropriations, Department of the Interior and Related Agencies Appropriations for 1966, Hearings, before a subcommittee of the Committee on Appropriations, House of Representatives, 89th Cong., 1st sess., 1965, pp. 1546-48.

Support has been overwhelmingly in favor of administering this important tract as part of the Ottawa National Forest, providing that fair and equitable Federal payments in-lieu-of-taxes are provided in accordance with necessary new legislation.

Insofar as I know, there are only one or two private interests that are now committed to having an active and strong interest in grabbing the Sylvania Tract. I believe that only a small number of local citizens are hopeful that such an interest will acquire Sylvania, whether or not the timber is selectively logged and recognizing that lake frontage sold for summer homes and resorts will bring increased returns in ad valorem property taxes.

Under private ownership of the Sylvania timber, there will be no expectation of the resulting establishment of any additional sawmilling or timber processing plants in Gogebic County. Present sawmilling capacity in this territory is more than sufficient to handle timber now available, including Sylvania, for harvest in this county and adjoining counties.

Under national forest administration of the Sylvania timber, it will be managed under the principles of multiple use and sustained yield. It will be sold by regular bidding process. Timber operators, and including small operators, will have an opportunity to purchase Sylvania timber stumpage in scales of various sizes from the National Forest. These many operators have as much or even a greater need for this timber than a single sawmill owner of the property who could be expected to process most, if not all, of the sawlogs and veneer logs in his own plants. . . .

I have never fished in the closed lakes of Sylvania. I look forward, along with a large number of other sportsmen, to an opportunity to fish these waters and to enjoy them without observing the shorelines ringed with docks, cottages, and resorts.

The waters of Sylvania should be open to public use and are especially deserving of the best possible care. Exploitation, through sale of the unspoiled lake frontage for summer home and resort use, will only add Sylvania's lakes to the long list of similarly used lakes and will not attract the great army of recreationists to the west end of the U. P. that a publicly and fully developed Sylvania would help to do.

> We need a publicly developed Sylvania to better put the west end of the U. P. in the recreationist's plans as a must place to visit.
>
> A publicly developed Sylvania will attract more summer recreationists than almost all of the other existing and potential recreation developments on Ottawa National Forest lands. This will bring much higher use demands on other national forest recreation resources and also bring greater recreation business to the private sector in Gogebic and other adjacent counties.
>
> Thus you can have your cake and eat it too.
>
> I do not believe that you would wish to see Sylvania become a Coney Island type of development. There is grave doubt Sylvania's high quality waters under private exploitation would be safely and adequately protected from the dangers of pollution or that aesthetics of waterfront and roadside would be fully protected.
>
> It is hoped that appropriations to purchase Sylvania will be restored by the United States Senate. I am hopeful that conferees of both Houses in the Congress will agree to provide funds to acquire this all important tract and its outstanding multiple use forest resources. There is yet a good chance that this will be accomplished. This will be good news to many people who recently felt great despair when announcement was made that the House Appropriations Committee failed to provide funds for buying Sylvania this year. . . .

As Mr. Wernham noted, the Bureau of Outdoor Recreation's Land and Water Conservation Fund federal land acquisition budget item for Forest Service purchase of Sylvania ran into opposition in the House of Representatives' Appropriation Committee. That it did so is not particularly surprising, considering the total absence of specific support for the project in the House hearing record (other than the Forest Service testimony). The local Congressman, Raymond F. Clevenger, made a presentation

to the House Appropriations subcommittee on March 1, 1965 but said not one word to the subcommittee at that time about Sylvania.[22] And none of the national conservation organizations, including the National Audubon Society[23] and the National Wildlife Federation[24] whose representatives testified in support of the entire Land and Water Conservation Fund budget, mentioned Sylvania specifically.[25] Senate sponsor Philip A. Hart privately expressed concern

---

[22]U.S., Congress, House, Committee on Appropriations, Department of the Interior and Related Agencies Appropriations for 1966, Hearings, before a subcommittee of the Committee on Appropriations, House of Representatives, 89th Cong., 1st sess., Part 2, 1965, pp. 638-9. (Mr. Clevenger did speak out on behalf of the Sylvania appropriation during House floor debate on the Interior appropriations bill on March 30, 1966 [Congressional Record, pp. 6321-6322].)

[23]Ibid., p. 696.

[24]Ibid., p. 691.

[25]Neither had the Senate Appropriations subcommittee heard any national conservation group representative speak specifically in favor of the Sylvania appropriation. (U.S., Congress, Senate, Committee on Appropriations, Department of the Interior and Related Agencies Appropriations, Hearing, before a subcommittee of the Committee on Appropriations, Senate, on H.R. 6767, 89th Cong., 1st sess., 1965.) Representatives of The Wilderness Society (p. 1856), the National Wildlife Federation (p. 1601), the American Institute of Park Executives (p. 1835) and the Citizens Committee on Natural Resources (p. 1839) did testify before the Senate subcommittee in favor of the entire Land and Water Conservation Fund budget as proposed by the Administration, which included the Sylvania project.

regarding the fate of the Sylvania appropriation, and sought more expressions of "grass roots" citizen support for it.[26]

While the struggle for the money to buy Sylvania was going on in Washington, delicate negotiations also were under way in Gogebic County, Michigan, between Forest Service representatives and the County Board of Supervisors. Federal purchase of Sylvania, it was understood by the Forest Service, hinged on endorsement of the project by the county in which the purchase unit was located. Not only did the National Forest Reservation Commission traditionally require that the consent of the county board

---

[26]In a June 2, 1965 letter to Stewart Myers of Grand Rapids, president of the Michigan United Conservation Clubs (MUCC), Senator Hart stated: "On the Sylvania project we are completely at the mercy of the House conferees. . . ." Myers, according to correspondence on file at MUCC headquarters in Lansing, contacted numerous influential individuals on behalf of the Sylvania project, thanking Michigan Governor George Romney for his support of the proposal, asking Michigan members of the House to seek restoration of the Sylvania appropriation (Myers to Congressman John Dingell, April 27, 1965: ". . . we have become extremely disappointed in Billy [Sunday] Farnum [Member of Congress from Michigan's 19th District; Democrat; freshmen member of the House Appropriations Committee] allowing the Sylvania Appropriation to be withdrawn from the House Appropriation Bill. . . .), and encouraging conservationists in Ohio to seek the support of Congressman Michael J. Kirwan--a House conferee--for the Sylvania appropriation. Letters to Congressmen urging passage of the Sylvania appropriation also were sent by Michigan members of the Sierra Club including Donald Kucera (now of Tucson, Ariz.) and Mr. and Mrs. Arthur Morley (now of San Diego, Calif.), according to Virginia Prentice, Chairman, Mackinac Chapter, Sierra Club, private interview, East Lansing, Mich., Oct. 21, 1970.

of supervisors be forthcoming before the Forest Service could negotiate to buy private lands with public money--a restriction adopted to protect county governments from having large portions of taxable land taken off their tax roles--but recent Department of the Interior and Related Agencies Appropriations Acts had included specific language to the same effect. For example, the 1966 Act stated: "Funds appropriated under this Act shall not be used for the acquisition of forest lands . . . without approval of the local government concerned."[27]

Promises Made to Gogebic County

During this period of negotiations with the local governing body to win its firm support for Forest Service acquisition of Sylvania, certain understandings were reached in an attempt by the federal agency to make up for the local governmental units' anticipated loss of tax base. To understand the conditions which Gogebic County ultimately placed on its approval of the purchase, the economic climate in the area at that time should be considered.

The area had been designated a poverty area. It suffered from high unemployment and outmigration rates.

---

[27]Public Law 89-53--June 28, 1965, under "Administrative Provisions, Forest Service."

The 1960 population was down six percent from that of 1910.[28] Therefore, the county was insisting upon not only an equitable method of payment in lieu of the tax loss which it would suffer if the land passed into public ownership, but also, hopefully, some way to bring new economic life into the area over the long run.

Anticipated tax revenue loss, as shown in the following chart,[29] was a constant problem throughout these negotiations:

Tax District	Gross Annual Tax Loss If Sylvania is Purchased by Forest Service	Possible Offsetting Federal Payments	Net Annual Tax Loss If Sylvania is Purchased by Forest Service
Gogebic County	$10,200	$ 1,800	$ 8,400
Watersmeet Township	5,400	---	5,400
Watersmeet School District	14,400	14,400	---
Total	$30,000	$16,200	$13,800

The offsetting payments of $1,800 to Gogebic County would be limited to National Forest revenue-sharing

---

[28] U.S., Congress, Senate, Committee on Public Works, Opportunities for Economic Development in Michigan's Upper Peninsula (Washington, D.C.: U.S. Government Printing Office, 1961), p. 1.

[29] Forest Service, Study of Proposed Federal Purchase of Sylvania, p. 26.

payments amounting to 25 percent of gross receipts from the sale of timber and other resources. This figure was actually estimated to be $7,200, but under Michigan law only 25 percent of this would be available to the county itself.

It was believed by the Forest Service that the $14,400 tax loss suffered by the Watersmeet Township School District would be offset by the board's participation in the benefits offered under Sections 2 and 3 of Public Law 874, enacted to provide financial assistance to local educational agencies in areas affected by Federal activities. (This has proven to be the case.[30]) Watersmeet Township also would benefit from Forest Service construction in Watersmeet of a visitor information center (originally estimated to cost $150,000 but ultimately costing almost $500,000 to build and equip[31]).

---

[30] A. Richard Guth, Recreation Officer, Ottawa National Forest, personal letter, Nov. 24, 1970: "[Public Law 874] only considers lands acquired by the Federal Government after December 31, 1938. The Watersmeet School District was not eligible for 874 funds prior to the acquisition of Sylvania. Our acquisition of Sylvania made them eligible." The district received $28,932 in 1966-67, $37,240 in 1967-68, and $28,308 in 1968-69 based on total federal ownership in the school district, resulting in a net increase in tax revenue since the public acquisition of Sylvania, according to Joseph E. Vestich, Watersmeet District Superintendent of Schools, personal letter, Nov. 4, 1970. See Appendix A.

[31] March E. Lefler, District Ranger, Watersmeet District, Ottawa National Forest, private interview, Watersmeet, Mich., July 22, 1970. The auditorium-equipped

Two bills were introduced in Congress by Senator Hart in 1965 to provide the county with in-lieu-of-tax payments on a declining scale over a period of years, but neither of the bills passed.[32]

---

visitor information service center, modeled after the Forest Service visitor center at the "entrance" to the Boundary Waters Canoe Area at Ely, Minn. and located at the junction of U.S. Highways 2 and 45, functions as a year-around conservation education facility and as a gateway to the western Upper Peninsula. Tourist- and sportsman-oriented maps and publications produced by both Federal agencies and the State of Michigan are distributed by its Forest Service staff, and interpretive services are provided. Annual operating budget for the center is $28,000. See Appendix A.

[32]S. 3456, introduced on Aug. 25, 1965 and S. 2655, introduced on Oct. 15, 1965. The text of S. 2456: "A bill to provide for certain payments to be made with respect to property acquired by the Secretary of Agriculture for national forest purposes in Gogebic County, Michigan, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to minimize the impacts upon the local tax authorities from the loss of tax revenues because of the acquisition by the United States for national forest purposes of the property known as the Sylvania tract . . . which has constituted a substantial part of the tax base of the county and of Watersmeet Township and Watersmeet School District, payments, as herein specified shall be made as the close of the fiscal year from any national forest receipts not otherwise appropriated. Such payments shall be made to the tax collector of the county of Gogebic for distribution to and use by the respective taxing authorities concerned in the same proportion and manner as are taxes on other such property. The first such payment shall be made at the close of the fiscal year following the close of the last tax year for which taxes were assessed and levied on such property prior to its acquisition by the United States. The first such payment shall be equal to the amount of taxes last assessed and levied thereon, and thereafter for nine succeeding years a like amount shall be paid. Each year

A great deal of attention was devoted by the Forest Service to the economic impact the recreation area would have on the nearby communities. The agency's

---

following the first ten years the amount to be paid shall be reduced by 10 per centum of the original payment until the twentieth year and thereafter when no such payment shall be made."

The text of S. 2655: ". . . To provide . . . That upon acquisition by the United States for national forest purposes of the property known as the Sylvania tract . . . payments as herein specified shall be made at the close of each fiscal year from any national forest receipts not otherwise appropriated. Such payments shall be made to the tax collector of the county of Gogebic for distribution to and use by Gogebic County, Watersmeet Township, and Watersmeet School District in the same proportion and manner as are taxes on other property. The first such payment shall be made at the close of the fiscal year following the close of the last tax year for which taxes were assessed and levied on such property prior to its acquisition by the United States. The payments to be made in each of the first five years shall be equal to three-fourths of 1 per centum of the purchase price of such property to the United States. The payment to be made for each year during succeeding five-year intervals shall be the equivalent of the original payments adjusted at the beginning of each five years to reflect the current market value by applying the index of the statewide average value of farm real estate per acre as determined by the Secretary of Agriculture. Sec. 2. Not earlier than the close of the tenth fiscal year in which payments are made in accordance with Section 1 hereof, and before the end of the twelfth year of such payments, the Secretary of Agriculture, in collaboration with the governing officials of Gogebic County, Watersmeet Township, and Watersmeet School District, shall review the impact upon the tax revenues of the county, township, and school district of the acquisition of the Sylvania tract by the United States, including but not limited to the difference between the tax revenue which such taxing authorities might have received if such property had not been acquired by the United States and the amounts being received by such authorities from the Federal Government because of the acquisition thereof, and also including but not limited to the actual or potential increase in tax and other revenue which could properly be

purchase proposal envisioned recreational development costing $10,613,000; 800,000 visits were expected per year.[33] An increase of $1 million to $1,300,000 in real personal income in the immediate area and the creation of 200 to 270 new jobs, both in Michigan and nearby Wisconsin, was forseen.[34]

What concessions or commitments actually were made by the Forest Service during its Sylvania local negotiations? First, there is the official county board resolution expressing the board's understanding of the situation:

> WHEREAS the Gogebic County Board of Supervisors adopted a resolution on December 2, 1963 encouraging the United States Forest Service to appraise and attempt to purchase the Sylvania Tract Property in Watersmeet Township; and
>
> WHEREAS the Sylvania Tract has been appraised and the Congress of the United States has appropriated certain monies for its purchase; and

---

attributed to the development of such tract and the use of the recreational and other resources thereof and the relation thereof to the services currently required to be furnished by such taxing authorities. The Secretary of Agriculture shall report the results of such review and make such recommendations as may be appropriate to the Congress before the end of the thirteenth year. Sec. 3. The provisions of section 13 of the Act of March 1, 1911 (36 Stat. 961), as amended (16 U.S.C. 500), shall not be applicable to the lands covered by this Act."

[33] Forest Service, Study of Proposed Federal Purchase of Sylvania, pp. 54-57.

[34] Ibid., p. 23.

WHEREAS the Watersmeet Township Board and Planning Commission and the Gogebic County Board of Supervisors have expressed their concern and diligently sought a solution to the problem of the resulting loss in tax base and loss of tax income to these local governmental units should Sylvania be acquired by the United States Forest Service; and

WHEREAS United States Representative Raymond Clevenger and Mr. William Welsh, representing Senator Philip A. Hart, have expressed concern over passage by the United States Congress of legislation introduced by Senator Hart and Congressman Clevenger which would provide in lieu of tax payments to local governments when the United States Forest Service acquired Sylvania; and

WHEREAS the Gogebic County Board of Supervisors still recognize there will be significant long-term economic and conservation benefits to come from public ownership and development of the Sylvania Tract; and

WHEREAS Senator Hart's representative, Mr. William Welsh, Representative Clevenger and officials of the United States Forest Service appeared at an informal meeting of the Gogebic County Board of Supervisors on June 3, 1966 and made certain commitments concerning the development of natural resources in the Watersmeet area;

BE IT RESOLVED the Gogebic County Board of Supervisors favors the immediate purchase of the Sylvania Tract by the United States Forest Service.

BE IT FURTHER RESOLVED that Representative Clevenger, Senator Hart and/or the United States Forest Service immediately after or before acquisition of the tract by the United States Forest Service make every effort to fulfill the commitments made to the Gogebic County Board of Supervisors at the informal meeting June 3, 1966. These commitments include:

1. All humanly possible efforts will be made to provide adequate in lieu of tax payments to offset the immediate losses in tax base and resulting tax monies which will have a serious adverse effect on the governmental operations of Watersmeet Township and Gogebic County. This may be done by legislation enacted by the United States Congress, payments made by one of the many philanthropic conservation organizations or by any other means which would not cause an additional burden on Gogebic County tax payers.

2. All humanly possible efforts will be made to secure the necessary financing and proceed with the orderly planning and development of the Sylvania Tract for the utilization of all its natural resources.

3. The United States Forest Service will plan and construct and operate a Visitor Information Service Center similar to the present Ely, Minnesota Visitor Information Service Center on the Superior National Forest.

4. The United States Forest Service will prepare a prospectus and solicit bids for the development of a major resort within Watersmeet Township. This resort will be comparable in scope to the Gateway Inn at Land O'Lakes, Wisconsin or the Northernaire at Three Lakes, Wisconsin.

5. The United States Forest Service will prepare a prospectus and solicit bids for a major ski area development at Paulding Hill.

6. The United States Forest Service will proceed with the construction of a dam to increase the depth of Sucker Lake and work with the Michigan Department of Conservation in making this increased water body into a significant sport fisheries.

7. The United States Forest Service will immediately proceed with the detailed planning for the Black River Recreation Area and will make every effort to secure the funds needed to initiate major development work by July 1, 1967.

IN addition to the aforementioned items, the Gogebic County Board of Supervisors respectfully requests that the United States Forest Service consider including County Roads 206 and 210 into the Ottawa National Forest road system and maintain and/or reconstruct these roads to the standards required by the Forest Service.

Be it further RESOLVED, that the United States Forest Service have an annual meeting with the Board of Supervisors to discuss their plans for the development of county resources in Gogebic County.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to Secretary of Agriculture Orville Freeman, United States Senators Philip A. Hart and Robert P. Griffin, Congressman Raymond Clevenger, Governor

George Romney, State Senator Joseph S. Mack, State Representatives Russell Mellman and James K. Constantini, Edward Cliff, Chief of the United States Forest Service, George S. James, Regional Forester, Region 9, Ottawa National Forest Supervisor M. W. Kageorge, Wayne H. Aspinall, Chairman, Public Land Law Review Commission, and Paul H. Carlin, Assistant Director for Federal Ownership Problems.

Moved by Supervisor Basso, supported by Supervisor Nezworski, that the foregoing resolution be adopted and that the Board of Supervisors drawup a plan for the establishment of a trust fund to be drawn from for the payment to Watersmeet Township, Watersmeet Township School and Gogebic County in lieu of taxes.

Motion carried.

STATE OF MICHIGAN)
)SS
COUNTY OF GOGEBIC)

I, Rudolph J. Fgizi, Clerk of the County of Gogebic, do hereby certify that this is a true copy of a resolution which was adopted at the Board of Supervisors meeting held June 15, 1966.

Secondly, we have the current Ottawa National Forest supervisor's recapitulation of the agency's "position in a nutshell on buying Sylvania":

> We promised to develop it primarily for a variety of recreational opportunities, but not to exploit it or, if you will, "liquidate" the recreational development opportunities for short-term economic gain.
>
> We promised to maintain the high quality of Sylvania's waters.
>
> We promised to utilize Sylvania's timber on parts of the tract where there would be no material conflict with recreation.
>
> We promised to protect and to provide better habitat for wildlife, again on portions of the tract where there would be no material conflict with other recreation uses.

> We promised to develop other recreational attractions in the surrounding Ottawa National Forest which would complement Sylvania and help bolster the economy of the area.
>
> We promised to construct a Visitor Information Service Center at the junction of Highways 2 and 45 in Watersmeet.
>
> We promised to provide better access from Wisconsin.[35]

Additionally, there was an unwritten condition agreed upon to the effect that the Forest Service would not buy a resort site on Long Lake, to permit private interests to develop this site and thus provide a source of tax revenue for the county.[36] A major portion of Long Lake lies within the Sylvania area.

Were these concessions necessary? According to Supervisor Kizer,

> these commitments were not made merely to placate local individuals who may have had selfish aims. These were commitments we fully believe--and still believe--to be desirable and necessary. These were commitments made honorably by the Forest Service to honorable men. We are not now going to back away from these commitments.[37]

---

[35]Kizer, "Sylvania the Way It Is," p. 4.

[36]John O. Wernham, private interview, Milwaukee, Wis., July 20, 1970.

[37]Kizer, "Sylvania the Way It Is," p. 4. The expression, "the service was trapped into making concessions," was used by Forest Service personnel during a conference with them in Milwaukee on July 20, 1970.

However, the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1967 (Public Law 89-435, signed on May 31, 1966) no longer included language requiring approval by the "local government concerned" of Forest Service land acquisition projects.[38]

Congress Appropriates Acquisition Funds

And how was the struggle in Washington resolved? On June 14, 1965 members of the "committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6767) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1966" submitted their conference report to their respective Houses. Sylvania was mentioned favorably in the conference committee's recommendations:

> Amendment No. 18: Allocates $17,300,000 of the land and water conservation fund to the Forest Service instead of $12,000,000 as proposed by the House and $19,785,150 as proposed by the Senate. The increase provided over the House bill includes: $300,000 for Forest Service wilderness areas in Idaho and $5,000,000 for the Sylvania tract in Michigan.[39]

---

[38] And Sylvania actually was purchased with "Fiscal 1967 money," according to John Wernham, personal interview, Milwaukee, Wis., July 20, 1970.

[39] U.S., Congress, House, Department of the Interior and Related Agencies Appropriation Bill, 1966, Report No. 513, 89th Cong., 1st sess. (House Reports, Jan. 4-Oct. 23, 1965 [Washington, D.C.: Government Printing Office, 1965]), p. 8.

Therefore, when the Department of the Interior and Related Agencies Appropriation Act of 1966 was signed on June 28, 1965, it included, under the heading, "Bureau of Outdoor Recreation--Land and Water Conservation,"

> For expenses necessary to carry out the provisions of the Land and Water Conservation Fund Act of 1965 (78 Stat 897), including . . . acquisition of land or waters . . . (3) not to exceed $17,300,000 shall be available of the Forest Service. . . .

Thus the money for Sylvania's acquisition was assured.

In summary: The National Forest Reservation Commission[40] gave the Forest Service permission to negotiate for Sylvania.[41] Congress made Land and Water Conservation Fund money available for Sylvania's purchase on June 28, 1965.[42] The Gogebic County Board of Supervisors approved the purchase on June 15, 1966.[43] The Fisher Estate's

---

[40] A federal body made up of the secretaries of the Army, Agriculture, and the Interior, two senators, and two representatives and which must approve certain Forest Service land purchases.

[41] Kizer, "Sylvania the Way It Is," p. 5.

[42] "[T]the land was acquired under [the authority of] the Weeks Act of 1911 . . .": Gandt v. Hardin (W.D. Mich. 1969) (Civil Docket No. 1334) Transcript of Proceedings, Dec. 9-10, 1969, p. 254.

[43] "Only because the 1967 Appropriations Act [signed on May 31, 1966] no longer required local approval of Forest Service land acquisition projects," in the opinion of Gogebic County Extension Director Andrew Bednar, personal interview, East Lansing, Mich., Oct. 28, 1970.

interests were purchased for $4,315,000, transfer of title via quitclaim deed taking place on June 22, 1966. The Christiansen brothers' interests were purchased for $1,425,000, transfer of title via quitclaim deed taking place on June 24, 1966.[44]

Secretary of Agriculture Orville L. Freeman arranged for a victory celebration, sending the following invitation, on July 29, 1966, to supporters of the Sylvania project:

> I want to invite you to attend a ceremony in Room 218, Administration Building, Department of Agriculture, on Thursday, August 4, at 3 p.m. At that time we will officially accept title to the Sylvania property which is a pristine tract of 18,000 acres of land and water in Michigan's Upper Peninsula. The Department of Agriculture recently completed negotiations for this outstanding property under the Land and Water Conservation Act which is administered by the Department of the Interior's Bureau of Outdoor Recreation.
>
> The purpose of holding a ceremony next Thursday is twofold. First, I want to officially express the Department's appreciation to the Members of Congress and to conservation leaders who played such an

---

[44]According to notations of the two quitclaim deeds, copies of which were obtained from the Forest Service. A Forest Service memorandum entitled "Schedule A, File Nos. 3-23-2617 and 3-23-2616, Tract No. 1662" indicates that a title insurance policy was prepared as of July 28, 1966 by Lawyers Title Insurance Corporation, with the title subject to certain easements, rights-of-way, and "minerals and mineral rights outstanding of record in third parties. . . ." In a letter to Secretary of Agriculture Orville L. Freeman dated Aug. 2, 1966, the Attorney General of the United States advised the Secretary that, with regard to the Sylvania project, "the title evidence and accompanying data disclose valid title to be vested in the United States of America. . . ."

important part in making the acquisition of this outstanding property possible. In addition, we are so proud of this new addition to the Ottawa National Forest in Michigan that we want to take the opportunity to show a short color film which highlights the wonderful forest setting, its crystal clear lakes, the wildlife, and the recreational opportunities which will be developed in the years to come.

I hope it will be possible for you to be with us on August 4. . . .

Sincerely,

Orville L. Freeman[45]

Thinking of the local taxpayers back home in the "U.P." and distressed because neither of his special federal-payments-in-lieu-of-taxes bills for Watersmeet Township passed, Senator Philip A. Hart sought relief for these citizens from other quarters, as the following excerpts from a widely circulated form letter from his office, dated August 8, 1966, indicate:

Last week the Forest Service of the U. S. Department of Agriculture completed the purchase of the Sylvania Tract in northern Michigan as a major addition to the Ottawa National Forest. . . .

One of the most difficult aspects of the negotiations to acquire the land was the requirement that the local government consent to the purchase. Gogebic County, Michigan is the county with the highest unemployment and one of the most depressed economies in the state. The impact of the tax loss falls on the county all this year, and particularly on Watersmeet Township. There will be some compensating federal programs that will help ease this impact, but in the

---

[45]Letter from Secretary Freeman to James L. Rouman, Executive Director, Michigan United Conservation Clubs, Lansing, Mich., July 29, 1966.

next two or three years this tax loss comes quickly and with serious hardship. The compensating federal programs in and of themselves are not sufficient to ease this burden.

In discussions with the County Board, I joined in agreeing that a special effort should be made to help raise a private fund that could be used to make payments to the local governing units to compensate for the immediate impact of the tax loss over the next two or three years. This is an unusual situation, but I believe it is one which merits special effort, inasmuch as with this pledge it became possible to purchase the tract without further complicating delays.

It is my hope that your organization would be willing to make a one-time contribution to this effort. We are urging many diversified groups to contribute.

The recently established tax-exempt Michigan Wildlife Foundation has agreed to act as the recipient of contributions and disburse the moneys to the local governments. Checks should be made payable to "Sylvania Account" Michigan Wildlife Foundation, and should be mailed to P. O. Box 2235, Lansing, Michigan, 48911. . . .

Your consideration of this request will be most warmly appreciated, and will contribute, I know, to fulfilling an obligation which exists not in law, but in fact to assist in a very difficult local problem in the next two or three years for these citizens of Watersmeet Township. . . .

Philip A. Hart[46]

---

[46]How successful was this appeal to the general citizenry--particularly to conservation groups--to help Watersmeet Township meet its obligations in the face of decreased real estate tax revenues? The Iron Mountain News, Iron Mountain, Mich., on March 30, 1970, provided the following report, in cutlines under a three-column photograph: "TAX RELIEF?--Gerald Goodman, left, Region One vice-president of the Michigan United Conservation Clubs, is shown presenting Watersmeet township supervisor Frank Basso with the final checks from a trust fund which had been set up to give the township some relief for tax base lost through the acquisition of the Sylvania Tract by the U.S. Government. The 18,000-acre tract brought

Dedication Day

The climax of the acquisition stage of the Sylvania project came on September 22, 1967--"Dedication Day"--when Mrs. Lyndon B. Johnson and Secretary of Agriculture Freeman "graciously paused within the Ottawa National Forest to dedicate Sylvania Recreation Area."[47] Also present for the ceremony on the north shore of Clark Lake were Senator

---

non-taxable lands in the township to over 70 percent, Basso said, representing an annual loss of approximately $34,000. The trust fund was set up by organizations and individuals concerned of [sic] the plight of the township but failed to come anywhere near the loss suffered, bringing in only about $900. The Forest Service did make some concessions to the township by promising road improvements and other physical projects, Basso noted. The MUCC served as administrator for the short-lived trust fund, the money which will be used toward the construction of a tourist information booth at Watersmeet."

For an up-to-date (January 25, 1971) set of figures on payments that have been made to Gogebic County and Watersmeet Township which could be considered financial compensation in connection with the acquisition of Sylvania, see Appendix A.

[47]U.S., Department of Agriculture, Forest Service, Eastern Region, Contact Special: Sylvania (Milwaukee, Wis.: Forest Service, No. 2204, 1967), p. 1. This eight-page house organ-type publication included reproductions of several photographs (including one of the First Lady reading the bronze Sylvania Recreation Area dedication plaque, captioned: "Monument to the spirit of the Forest Service") and a thank-you to the Forest Service employees of the region from Regional Forester James: "The ceremonies on this day raised the Sylvania Recreation Area and the Ottawa National Forest to a higher plateau of public recognition and respect. This encouraging public attitude stems from the initiative and the long hours put in by many of you . . . those who build paths for others to walk. . . ."

Hart, Congressman Philip Ruppe,[48] Forest Service Chief Edward P. Cliff, former Ottawa Forest supervisor John Wernham, the current supervisor at that time, Michael Kageorge,[49] and others.

In a brief article in The Living Wilderness magazine soon afterward, Mrs. Johnson described her enthusiastic reaction to "the silence of Clark Lake" and to Sylvania in general in lyrical terms.[50] In a footnote to this article, the Wilderness Society editor, Michael Nadel, observed:

> The First Lady may well be proud of her part in the dedication of the 18,000-acre Sylvania tract. . . . This scenic paradise should be protected against the chainsaw. Hopefully, recreational development will be thoughtfully discriminate, and make possible a day-use type wilderness which could eventually enter the National Wilderness Preservation System.

---

[48] Republican successor to Rep. Clevenger following the 1966 election.

[49] Gogebic County Extension Director Andrew Bednar describes Wernham as one who had a "very humane approach" and who "felt the pulse of the county supervisors," while terming his successor, Kageorge, "a company man who didn't care about local interests." Personal interview, East Lansing, Mich., Oct. 28, 1970. By way of contrast, Prof. Thomas Mowbray (personal interview, Green Bay, Wis., July 21, 1970) describes Kageorge as "good; [he was] worried about the Whitefish Lake road."

[50] Mrs. Lyndon B. Johnson, "Sylvania Recreation Area," The Living Wilderness, Vol. 32, No. 101 (Spring 1968), pp. 3-5.

Forest Service Proposal Unopposed by Conservationists

Despite some minimal evidence to the contrary, such as a series of letters from a Washington, D.C.-based staff member of The Wilderness Society to Michigan conservationists indicating the Society's interest in encouraging the preservation of Sylvania's wildness,[51] the record shows that the United States Forest Service and U.S. Senator Philip A. Hart won the Sylvania-acquisition battle with little help[52] and that during this critical period there was practically no publicly expressed opposition from conservationists regarding the agency's widely advertised tentative development and management scheme for the area.[53] Local economic and political considerations being

---

[51]Letters from M. Rupert Cutler, Assistant Executive Director, The Wilderness Society to James L. Rouman, Executive Director, Michigan United Conservation Clubs, dated June 15, 1965 and June 1, 1967; letter from Cutler to Clarence J. Messner, Michigan Natural Areas Council, Ann Arbor, dated July 7, 1967.

[52]Congressman Clevenger assisted in winning the June 15, 1966 resolution of approval from the Gogebic County Board. Muriel Ferris, personal interview, Washington, D.C., Oct. 14, 1970.

[53]Kizer, "Sylvania the Way It Is," p. 3: ". . . there was at the time [of its acquisition] almost no pressure from any source to have Sylvania placed into the Wilderness Preservation System under the protection of the Wilderness Act of 1964. After an hour of studying newspaper clippings and magazine articles all dealing with Sylvania prior to purchase, I finally found one paragraph . . . in the Ann Arbor News, August 24, 1964. It said:

what they were, wilderness conservation groups did not criticize the Forest Service purchase proposal. They may have felt that to overtly campaign for a $5 million appropriation for the acquisition of an area to be managed in its entirety in accordance with the terms of the 1964 Wilderness Act would create a strong negative reaction in certain quarters, particularly in the Upper Peninsula, a reaction which could have hurt the purchase plan's chances of approval by Congress.

Little wonder, then, that the Forest Service personnel in Watersmeet, Ironwood, Milwaukee and Washington who had successfully engineered the acquisition phase of the Sylvania project proceeded to refine their plans without providing for a series of public forums at which they would formally solicit the opinions of interested citizens on various management alternatives and keep a record of these opportunities for public involvement in the decisionmaking process. They were confident that they were on the right track, that such expensive, time-consuming procedures were unnecessary, and that informal, unrecorded conversations with key citizen leaders regarding the management plan would suffice.

'Conservationists have expressed regret that no one has offered to come forward with the money to buy Sylvania and preserve it as it is . . .' This same article . . . concluded: 'Sylvania undoubtedly will be developed. Exactly how, public or private, remains to be seen.'"

CHAPTER V

SYLVANIA: EVOLUTION OF THE MANAGEMENT PLAN

Revision of the preliminary development scheme for Sylvania in the "proposal to purchase" was inevitable. The 1964 study, released in early 1965,[1] was based on skimpy knowledge of the area and was basically a sales tool, painting as favorable a picture as possible with regard to a Forest Service-owned Sylvania's positive impact on the local economy.[2] After transfer of the property to the United States Government and after more detailed studies of Sylvania's resources had been made by Forest Service and university specialists, evidence was found to indicate that the recreational carrying capacity of Sylvania's soils and particularly its cold, infertile waters was less than anticipated earlier.[3] Additionally,

---

[1]U.S., Department of Agriculture, Forest Service, A Study of Proposed Federal Purchase and Forest Service Management of the Lands and Waters of the Sylvania Tract located within Ottawa National Forest, Michigan (Waukesha, Wis. [Milwaukee]: Delzer Lithograph Company, 1964 [1965]), 58 pp.

[2]Richard Guth, private interview, East Lansing, Mich., Oct. 6, 1970.

[3]Forest Service, "Sylvania," Milwaukee, p. 2.

individuals and groups who had remained silent during the delicate acquisition negotiations now came forward to express concern about the developments envisioned in the 1964 document. More than two years of re-thinking the 1964 study, using newly available and more accurate data, culminated in a Sylvania Recreation Area Management Plan which was released to the general public in December 1968.[4]

Useful insights may be gained from a comparison of the expressions of general management philosophy contained in the two documents--the purchase proposal and the management plan. Note the emphasis on intensive management, commodity yield, and economic benefits in these quotations from the 1964 proposal to purchase (emphasis supplied):[5]

> . . . the Sylvania Tract offers a rare opportunity to gain for the public an important vestige of our early American heritage--<u>not to be locked up for viewing as a museum piece</u>, but an area to be protected, wisely used, and managed for the public good under the traditional principles of multiple use and sustained yield practiced by the Forest Service. . . .
>
> Tourists will be drawn to the area in great numbers. New revenues from tourists travel would increase direct income to private businesses and provide an increased tax base on adjoining private lands through developing services and facilities catering to the

---

[4]U.S., Department of Agriculture, Forest Service, <u>Sylvania Recreation Area Management Plan, Ottawa National Forest</u> (n.p. [Milwaukee]: 1968), 48 pp.

[5]Even this high level of development was considerably less than that provided for in the Christiansen brothers' private development proposal.

traveling public. . . . the estimated 800,000 recreational visits to Sylvania under public development will result in significant benefits directly and indirectly to the local economy. . . .

Management of Sylvania primarily for its key recreational values would not preclude use and development of its other resources. . . . important timber values may be realized through carefully planned selective harvests of the forest cover. . . .

Local unemployment . . . would be considerably reduced. Annual employment requirements after the Tract is fully developed are estimated at nearly 80,000 man-days. . . . An aggressive program of development is needed to provide for public recreation needs. . . . By adding the Sylvania Tract to Ottawa National Forest, its natural recreational attractions can be developed to the fullest. . . . Sawtimber and veneer most needed to sustain the local timber economy can be in part supplied from the Tract. . . .

. . . Developments and services to add to the enjoyment and educational aspects of visitors' experiences will include a major outdoor amphitheatre for formal programs, guided and self-guiding interpretative trails, and management demonstration areas. . . . Some small lakes will be left undeveloped for the enjoyment of solitude. . . . Virgin forest areas will be reserved for special studies, public viewing and interpretation. Botanical areas, especially in and around some of the muskeg and swamps, would add interest for the forest visitor. A group of lakes in the northeast portion of the Tract will be set aside for a canoe route, complete with portages and wilderness type camping. . . .

The timber resources will be utilized through carefully planned cutting operations and practices. . . . Growth of high quality timber will be favored by long term rotations and short cutting cycles. This will permit management of the forest cover . . . to maintain the aesthetic qualities of the Tract for many other uses. . . .

. . . Establishment of wildlife openings, food plots and cover and improvement of stand conditions will be closely correlated with timber harvesting to maintain and/or increase wildlife populations. . . .

> . . . The Tract will provide an excellent opportunity for research for production of quality timber products under virgin forest and other stand conditions. . . .
>
> High quality timber products, such as those occurring on this tract, are in short supply to meet demands of veneer plants and sawmills in this area. Timber available for harvest would be offered under competitive bid processes used by the Forest Service. Many small sawmills and loggers would accordingly benefit. . . .
>
> . . . The volume of timber that can be harvested from the [Ottawa National] Forest each year for the first ten years may be increased by approximately 7%. Sawtimber and veneer stock, for which the greatest need exists, may be increased by approximately 21%. . . .
>
> . . . The per year increase of direct personal income from visitors to the area would . . . be $1,000,000 to $1,350,000. In terms of individual jobs, this would create 200 to 270 new jobs in the area.
>
> . . . selective harvesting and primary processing would also add a stable increased employment in the area. On this basis, an estimated 4 million board feet could be cut each year resulting in 22 full year jobs. . . .
>
> Development of Sylvania by the Forest Service would require an estimated 625 man-years of work. A total expenditure of more than 10-1/2 million dollars including materials and labor will be needed to fully develop the area to meet public needs. . . . Permittees and concessionaires will also need to spend from 1-1/2 million to 2-1/2 million dollars. . . .

Objective Becomes Maintenance of "Unique Quality"

Contrast the above intensive-development language with the protection-oriented statements with which the 1968 management plan opens its discussion of Sylvania (emphasis supplied):

The following plan is designed to utilize the resources of Sylvania in providing a significant outdoor experience in a forest setting which has retained much of its original character. Management is directed at maintenance of a sylvan environment and high water quality. . . .

The principal objective . . . is to maintain the unique quality of [Sylvania's] forest lands and waters. . . .

. . . To prevent overdevelopment, camp grounds, picnic grounds and swimming areas accessible by auto will be limited to the periphery of Sylvania. Most developments for essential services will be adequately provided on adjacent private land.

Access to most of the interior lakes will be limited to waterways with portages or by way of hiking over-land. Facilities adjacent to these interior waters will be those needed for wilderness camping. Selected lakes will be left undeveloped. . . . care will be exercised to retain or enhance the natural scenic beauty of the lakeshores and travel routes.

A virgin forest area . . . will be preserved for its botanical interest. . . . A pioneer zone, a combination of lakes, islands and hilly terrain, will be delineated to maintain the natural and primitive forest environment. It will be open to public use by foot trails.

. . . fish and wildlife will be given special attention for management of sporting values rather than maximum game and fish production. . . . Establishment of wildlife openings, and cover improvement of stand conditions will be closely correlated with selective timber harvest to maintain adequate wildlife populations for public hunting and enjoyment. . . .

Timber harvests and timber cultural operations will be permitted in selected areas. The objective will not be the maximum production of timber, but to maintain an environment for recreation, as well as ecological and other resource values. . . .

Management goals and objectives [include]: Manage trees, shrubs, forbs, and grasses in order to maintain the environment for recreation, a vigorous biologic community, and to protect water quality [and] (s)timulate the local economy through the promotion of public

use of the recreational and wildlife resources, and by timber harvest appropriate to enhancement of the sylvan environment.

"Sylvania is divided into four zones to provide for . . . achievement of management goals," the management plan states, explaining that "[g]ood zone management is the key to reaching overall objectives and providing the best compatible use of all resources." Comparisons are made below between the "Management Zones, Objectives, and Activitity Coordination" described in the 1964 purchase proposal and the "Management Zones" outlined in the 1968 management plan. The phrases quoted have been chosen to emphasize the differences in the administrative zoning provisions in the two documents:

1964

Water Influence Zone [o]bjectives [include provision for] scenic drives. Allowance is made [along lakeshore] for roadside scenic overlook parking sites, and frequent . . . water vistas for motorists. [S]wimming beaches [and] boat landings . . . must be provided. [S]ome small lakes, muskegs, and swamps [will be maintained] in their natural setting. Travel Influence Zone borders specified roads which will carry significant volumes of public travel. [W]idth will [be] sufficient . . . to manage the scenic view. Objectives [include] opportunities to view demonstrations of multiple use resource areas. [C]onstruction of dams [not permitted] unless it will significantly improve the environment for associated resources. [R]egulation[s will be sought] to provide for special water activities such as water skiing and scuba diving. Timber harvest will generally be limited to that needed for public safety, for control of diseases and insect infestations and to make the area more usable for public recreation. The cutting of selected trees may be permitted if the aesthetics of the general area will not be adversely affected. . . . Intensive wildlife management activities will be conducted. . . .

Special consideration will be given to the routing of scenic drives to take advantage of good water vistas.

1968

Water and Travel Influence Zone . . . includes areas of varying width along lakeshores, streams, roads, and trails. . . . [I]t is in this zone where most visitors will get their greatest visual impression and enjoyment of Sylvania. . . . [O]bjectives . . . are to enhance the visual enjoyment of scenic values along travel routes, maintain water quality, and provide water-oriented recreation developments without detriment to the scenic and water values. [W]idth . . . will include the sight distance from the road, trail, or water surface during the season when vegetation is in full leaf. Along access roads and trails, limited manipulation of cover is permissible to provide vistas, to salvage blowdown, or control insects and diseases when it will not detract from esthetic values. . . . Within water zones, vegetative cover manipulation will be limited to control insects and diseases, and to salvage unsightly blowdowns. . . . Temporary haulways will not be permitted. . . . Slash . . . will be chipped and scattered. . . . Trees and understory cover may be removed as required to provide for recreation facilities. . . . The present [1967] natural water levels on lakes will be maintained.

1964

Special Area Zones . . . will be established. . . . Reserved virgin timber areas of 20 to 500 acres will be selected. Cutting will be withheld as long as these timber stands retain significant value for public viewing interest and for special studies by research groups and students. . . . These reserved stands may be best served by hiking trails. . . . Botanical areas containing 40 or more acres of bog or muskeg with some adjacent highland . . . will be reserved. Public access by trails . . . with educational signing will be provided. Collection of plant or soil specimens will be permitted for scientific or administrative purposes only. A field administrative headquarters with an office and some residences. . . . will be constructed. . . . An Amphitheatre with the stage on a lakeshore and adequate auto parking will be needed as a conservation education measure and to provide related appropriate entertainment. The site will be on a small lake with a beautiful setting. . . .

1968

Pioneer Zone . . . where the natural beauty of an undeveloped forest environment will be maintained . . .

offers a quality recreation experience by primitive means of travel over a system of foot trails and waterways. The objective will be to maintain this area in its natural state; preserving its scenic, primitive forest environment for inspiration, and recreation. . . . Only facilities for wilderness-type recreation will be provided. Minimum facilities for camping (those needed for sanitation, fire protection, and tent sites) will be provided. Overnight camping will be confined to designated sites. Visitor use may be regulated . . . to prevent deterioration of the primitive environment. All existing roadways will be blocked and allowed to revert to trails. . . . Vegetative cover manipulation will be limited to emergency measures necessary to control insect or disease infestations, [and the] salvage of large areas of blowdown timber, when authorized by the Regional Forester. Botanical Zone . . . includes a combination of bogs, muskeg, virgin forest types, and other ecological communities. . . . The natural values of this zone may be adversely affected by development and improper use. Management will be directed toward preservation and maintenance of the natural environmental values for the purpose of scientific study, public education and inspiration. Development will be limited to trails. . . . Vegetative cover manipulation . . . will not be permitted. Removal and collection of plant or soil specimens will not be permitted except by permit. . . . only when such collections would not be detrimental to the ecological values being maintained.

1964

General Forest Zone . . . will include . . . the bulk of the Tract's hunting range, as well as the timber harvest area. . . . Access roads will be located in this zone to serve forest cover management needs, the hunter on foot, other hikers, winter snow vehicle recreation users, and horseback riders. Objectives of management will be: To obtain optimum sustained production and use of quality timber . . . To provide wildlife openings and game food areas . . . To conduct ecological and resource management research. . . . Recreation construction will be limited to such improvements as roads, hiking and riding trails, and primitive hunting camps. . . . Slash disposal and [timber] cutting practices will be modified . . . to maintain a pleasing recreational environment. . . . Cutting will be limited along water courses, small lakes, and ponds . . . and logging debris will be kept out of waterways. . . . Timber management plans and sale area prescriptions will provide for the creation and maintenance of wildlife opening and food plots. . . .

1968

> General Forest Zone . . . will have the least intensive recreational development . . . more intensive management measures for wildlife . . . greater potential . . . for vegetative cover manipulation. . . . [N]o recreation development other than trails and portages. A few very primitive campgrounds may be constructed. . . . Management will include . . . openings for benefit of wildlife. . . . Opportunity for observation of birds and other non-game species for recreation enjoyment will be provided where feasible. Timber will be managed to develop a vigorous forest of all age classes. Emphasis will be given to maintaining its present large tree character with controls to minimize impact on the sylvan environment. . . . [H]aulways required for the removal of timber products will be incorporated into hiking and snowmobile routes where feasible and desirable.

A comparison of the descriptions of the specific development and management ideas contained in the preliminary (1964) and revised (1968) documents is instructive. Again, key phrases typifying the approach in each of these widely available public documents have been taken out of context for this purpose:

1964

> This general plan presents a desirable choice of an overall multiple use of resources development opportunity [sic]. . . . Expected recreation use demands would require an aggressive program of road, campground, swimming beach, trail, portage, picnic ground and related facility construction for a number of years. . . . A two-lane, blacktop all-purpose road will enter the Tract near a mid-point on the north boundary from U. S. Highway 2, and pass to the south to serve a central hub between Clark and Loon Lakes. It will then cross the east boundary of the Tract about 1-1/2 miles south of its northeast corner, and proceed north of Duck Lake and to U. S. Highway 45. . . . [G]eneral purpose access roads . . . primarily for timber hauling and fire protection, will normally be closed to public vehicular traffic in other than the winter season. . . . Parking overlooks . . . will be located . . . on scenic waterfront routes. . . .

The general purpose road system should be completed as soon as possible . . . to permit early intensive protection and management of the area. . . . Camping facilities, including commercial trailer camp facilities under permit, should at least be sufficient to handle . . . 2,000 [families] within 20 years. . . . The nine lakes in the northeast part of the Tract will be designated as a canoe area. . . . The central hub public service center between Clark and Loon Lakes is to be constructed and operated by a concessionaire. . . . This single commercial service center will handle boat and canoe livery, hunting, fishing, and camping equipment, bait, saddle horse stable, groceries, fuel, refreshments, souvenirs, trailer park, and guides. . . . The "Sylvan" amphitheatre and stage, with parking area, should be built by the fifth year to handle 500 visitors. . . . The swimming beach and day use area between Clark and Loon Lakes should be developed within the first 5-year period. . . . Organization camps are planned. . . .

1968

This plan does not contemplate meeting all of the future demands which may be sought for various types of recreation opportunity. Instead it contemplates what is considered to be full development within the stated policies and objectives for maintaining the environmental character of Sylvania. Facilities accessible by auto are planned on lands adjacent to periphery lakes. They will be served by spur roads from the existing exterior roads. . . . In the balance of Sylvania, wilderness-type facilities, trails, and portages will be provided in accordance with policies for various zones. Some lakes will remain undeveloped and accessible over land without trails. . . . Transportation of motors across National Forest lands in Sylvania is not permitted except over roads open to the public and boat launch sites serving lakes open to the use of outboard motors. . . . No aircraft or amphibious craft . . . and no [houseboats] shall be moored to, used on, or transported over National Forest lands. . . . Garbage or refuse dumps will not be established. The use of saddle horses may be permitted only on designated trails. Overnight use will not be permitted. Corrals, feed caches, or outfitting stations will not be constructed, established, or used within the area. . . . Use of motor vehicles, except snowmobiles in winter, will be confined to designated improved roads open to the general public. . . . Visitors will be required to carry out unburnable refuse unless containers are provided on-site. . . . Roads

> serving the periphery of the area will . . . be in keeping with the area's character. . . . Construction [of hiking trails] will be to the minimum standard that will provide a safe means of travel. . . . The following sites are planned for development: (1) Clark Lake Day Use Area [capacity 500 people at one time], (2) Clark Lake Campground [500 people], and (3) Indian Lake Campground [750 people]. The day use area on the north end of Clark Lake will be the most intensely developed site in the Sylvania Recreation Area. Swimming beaches will be improved at the Clark Lake Day Use Area and Indian Lake. . . . Wilderness-type camping . . . will be accessible only by water or hiking. . . . Sites will contain one to three family units. . . . Wilderness camps within the water influence and trail zones will be limited to not more than 150 units. . . . Standards [for facilities at family units] will be: (a) Tables--5-foot; (b) Toilets--Pit toilets with sealed vaults; one per site; (c) Tent Pad--Sand, 14' x 16'; Fireplace--Fire ring; Boat Landing--Natural usually, but rock or small logs may be placed parallel with shore where needed to prevent erosion and for safety; Sign--One rustic sign [per site]. . . . It is planned to develop a suitable area [for organizational camping] in proximity to Sylvania. . . .

Not only do the 1964 proposal and 1968 plan show considerable disparity in the intensity and location of recreational developments planned, but a similar disparity is evident in the area of timber management:

1964

> [A]pproximately 21 million feet of sawtimber and 40,000 cords of pulpwood could be cut in the first ten years the Sylvania Tract is managed by the Forest Service. . . . It is expected that management of the forest cover will yield up to 2 million board feet of sawtimber and veneer stock and 4,000 cords of pulpwood on an annual basis. . . . Diseased and overmature timber in the general forest zone will be salvaged over about the first 45 years of management in three separate cuttings. Residual forest stands will thus be gradually improved by attaining full stocking and proper distribution of size and age classes to maintain pleasing forest conditions on a long-term basis.

> Defective volume will be reduced to a practical minimum. . . . The concentrated pattern of proposed multiple use and high sustained yield on this Tract make it especially valuable for research. . . .
>
> 1968
>
> The objective of vegetative cover manipulation of trees, shrubs, ferns, mosses, and grasses will be to maintain the scenic and sylvan environment over a long period of time by removal and planting off vegetation as necessary. All work will be done to maintain the environment for recreation and ecological values; maintain an environment of big trees; maintain the variety of tree species to the approximate present composition. . . . [T]imber harvest through commercial sales will be permitted where appropriate. Harvest operations will be limited to the period December 1 to March 31. . . . Logging methods will be prescribed to do the least possible damage to tree and ground cover; logging camps will not be permitted. . . . Log decks and landings will be kept to the minimum required. . . . Intensive slash disposal methods will be required. . . . There will be opportunity for semi-wilderness research. . . .

The 1964 proposal speculated that many of the twenty-six buildings standing within Sylvania's boundaries at the time of its acquisition by the Forest Service[6] might be restored and retained for use as commercial public service facilities, museums, organizational camp buildings, groups training centers, or "tract custodian" dwellings. All now have been razed in accordance with the 1968 plan, and their sites have been revegetated.

1968 Plan Protects More of Sylvania's "Interior"

The 1964 proposal eventually put the Forest Service in an awkward position. For example, by

---

[6]Kizer, "Sylvania the Way It Is," p. 1.

September 1969, Ottawa Forest Supervisor Kizer was stating publicly that

> . . . even the Forest Service had some rather grandiose ideas of how to develop the tract. Originally, the Forest Service envisioned the possibility of a full scale recreational development. A main road was mentioned . . . which would have bisected the tract from the north, extended to the very heart of Sylvania. . . . Other roads were contemplated which would have provided easy automobile access to all of the major lakes in Sylvania--and many of the smaller ones.
>
> Originally the Forest Service considered it possible to install 30 drive-in type camping and picnicking areas, an administration building and amphitheatre in the center of the area, and 7 organizational camp sites.
>
> [Much] of the remaining, undeveloped land area, it was thought, could be open to rather intensive silvicultural, fish, and wildlife management practices. It was estimated that 21 million board feet of sawtimber and 40,000 cords of pulpwood could be harvested in the first 10 years under more or less intensive timber management.[7]

By October 1970 the Forest Service was describing the 1964 proposal as primarily a sales prospectus based on "sketchy" resource surveys, implying that it was no longer a working document.[8] In its place, the Forest Service now

---

[7]Kizer, op. cit., p. 2.

[8]Richard Guth, Recreation Staff Officer, Ottawa National Forest, statements made before a recreation policy class (PRR 842), Michigan State University, East Lansing, Mich., Oct. 6, 1970. Even more development-oriented than the 1964 study, apparently, was its unofficial precursor. Prof. Kenneth P. Davis, in his May 12, 1970 letter to Martin E. Hanratty, noted that "I also had a hand in considerably toning down an earlier and preliminary land use and development plan prepared by the Forest Service which

has a plan which calls for the development of only four percent of Sylvania's total land area, and less than one-half of one percent of its 66 miles of shoreline. With few exceptions, the developments will be located on the outer rim of Sylvania, resulting in "almost no impact to the interior."[9] Instead of 20-acre remnants of virgin timber and 40-acre botanical preserves, as outlined in the 1964 study, Sylvania today is administratively zoned to protect "as is" (except for some limited water-access campsite facilities) 1,600 acres surrounding the lakes in the northwest part of the recreation area (the "pioneer zone"), and to protect with only minimal trail improvements some 5,000 acres tentatively called a "botanical zone" until a more descriptive name can be agreed upon and adopted.[10] The remaining 4,600 acres of forested land in Sylvania are to be managed "to maintain a healthy stand of

---

seemed unduly concerned with mass recreational development and "multiple use" in general. . . . the land was not purchased merely to add land to the Ottawa National Forest for general national forest purposes but more particularly recreational uses for which it has tremendous potential, the quality of which is to be maintained in major degree. . . . Starting back from the preliminary plan, there has been indeed a great deal of evolution in planning for the use of the tract. A good many people in and out of the Forest Service, as individuals and as groups, had a hand in the development of a plan for the use of the area. A number of rather basic changes were made, and all in the right direction as far as I am concerned."

[9]Kizer, "Sylvania the Way It Is," p. 7.

[10]*Ibid*.

big trees by selecting and removing individual trees which are suppressed, diseased, insect infected, or otherwise in danger of being wasted."[11] A current summary of the agency's management plans by zone is as follows:

> Pioneer Zone: The most primitive part of Sylvania where natural beauty is emphasized. A scenic combination of rolling terrain, forest, clustered lakes and islands. The only travel is by motorless boat on the lakes, or by foot on land. All facilities are of a primitive nature, and they are kept to a minimum. Facilities include tent pads, fire grills and rings, in-the-ground refuse containers, and sealed pit toilets (the last two maintained regularly by Forest Service crews). These camp site locations are carefully located and kept away from lake shores so as not to disturb the natural harmony of the lakes, but still close enough to be convenient for the canoe camper. Use of camp sites is regulated by registration, on first come, first served basis. A time limit stay of 15 days is imposed.
>
> Botanical Zone: A combination of bogs, muskegs, virgin forest types, and other ecological communities rating careful protection. The zone is quite extensive, containing some 5,000 acres in all. Management is directed toward preservation and maintenance of the natural environmental values for the purpose of scientific study as well as public education and inspiration. Development is strictly limited to a few trails and informative signs.
>
> Water and Travel Influence Zone: Includes areas of varying width along lake shores, streams, roads, and trails. Within the zone are natural public travel routes through the area. The zone includes a corridor along the access roads confined to the fringe area, around lakes and along trails. This zone will have the greatest impact of visitor use. To make provision for it, drive-in camping facilities will be located on the northern edge where sanitary conditions can be maintained. A swimming beach is provided near the campground. All disturbances of vegetative cover are

---

[11] Ibid.

confined to the minimum necessary to accommodate the facilities and to ward off dangers of tree blow-downs where people gather. The area will be carefully maintained to keep it clean and aesthetically pleasing.

General Forest Zone: Includes all the area not included in other zones and comprises about one-fourth the total area of Sylvania. This zone is important for watershed management. Recreation use will consist mostly of hiking, hunting, snowmobiling, and cross-country travel. Wildlife habitat is of great importance in the zone. At the present time, because it is mature forest, Sylvania does not provide good habitat for such favored species as deer and grouse. The habitat can be improved by careful management practices. This will include the selective cutting of timber to better open the forest to sunlight and give browse vegetative species a chance to develop. One small timber sale has already been made in the area, and logged during the winter months when there was little recreation use in Sylvania. Emphasis will continue to be on developing a vigorous forest of all age classes, and to maintain the large tree character so outstanding in the area.[12]

"Aside from the broad concept of zoning," Forest Supervisor Kizer has pointed out, "[the Forest Service has] undertaken a number of other steps to insure that Sylvania is adequately protected." These include:

a waste monitoring system designed for the early detection of possible pollution problems.

Special fishing regulations to maintain quality fishing in Sylvania's lakes. . . .

The closing of the existing interior road system to motor traffic. Most of the roads will be allowed to revert to hiking trails.

Establishing a new road system away from Sylvania's interior, a system which will allow Forest Service contact with and control over the number of visitors.

---

[12]Forest Service, "Sylvania," Milwaukee, pp. 3-4.

Special restrictions on the harvest of timber, to include only winter logging. Special clean-up will also be the rule.

The closing of Sylvania lakes to the use of outboard motors, with the exception of those on the borders where private summer home owners may legally use motorboats.

The removal of many buildings which had been constructed by the former owners and which have no value in the Forest Service management of the area.

The relocation of County Road 535 to the northern edge of Sylvania, and the obliteration of portions of the old road.

The installation of adequate sanitary systems to prevent the pollution of lakes and streams.

The restricting of snowmobiles to designated trails, and limiting their use to a minimum snow depth of six inches.

The restricting of camping to designated camping sites.[13]

By the time the 1968 management plan was released, the Forest Service had begun to realize that "Sylvania is a contrast"[14] with other, more developed areas in the region. No longer was an investment of $13 million in developments contemplated there; less than $3 million in facilities was seen as desirable.[15] No longer were 800,000 visitors a year expected--although 300,000 per year by

---

[13]Kizer, "Sylvania the Way It Is," pp. 8-9.

[14]Forest Service, Sylvania Management Plan, 1968, p. 36.

[15]Ibid., p. 45.

1975 is forseen.[16] But a maximum-number-of-visitors-per-day figure will be established, according to present plans, and when it is, would-be visitors will be turned away when that daily capacity figure, or saturation point, is reached.[17] Pre-registration by mail for Sylvania's campsites--an advance reservation system--also is being considered.[18]

Reasons for the Shift in Emphasis

When compared on an item-by-item basis, the 1964 purchase proposal and the 1968 management plan are seen to be quite different in their emphasis, with a change from intensive to extensive development--but still not to total preservation--obvious. This shift in management emphasis toward resource protection may have come about both as a result of specific inputs from outside the agency and as a result of inputs from Regional Office staff and a new Forest Supervisor, some of whom apparently were "tuned in"

---

[16] Guth, remarks at MSU, Oct. 6, 1970. Most of this use will be concentrated at the north end of Clark Lake, in the beach-day use area. Supervisor Kizer (personal interview, Lake City, Mich., Jan. 9, 1971) believes that the management plan itself sets a capacity figure by the number of camp sites and auto parking places called for in the plan; "people will be turned away when these sites are full."

[17] Guth, remarks at MSU, Oct. 6, 1970.

[18] *Ibid*.

to the early rumblings of what was to become the Earth Day-centered nationwide outpouring of concern in 1970 over the "environmental crisis." Informal meetings and exchanges of correspondence with interested individuals and citizen groups certainly did much to confirm the planners' suspicions that the tide of public opinion was turning toward favoring preservation of such unspoiled areas as Sylvania. The planners' own increased knowledge of the area's resources seems to have led them to a similar conclusion regarding the appropriate level of development and use of the area.

Between July 1966 and December 1968 few outright demands for the preservation of Sylvania as a wilderness area were heard, or at least preserved for the record. We have noted The Wilderness Society's footnote to Mrs. Johnson's The Living Wilderness magazine article in which the hope is expressed that Sylvania would not be developed so as to preclude future action by Congress to include at least part of Sylvania in the National Wilderness Preservation System. Other than this "Spring 1968" comment, most of the statements urging wilderness-type administration of Sylvania were made after the release of the 1968 management plan (in September, to an ad hoc advisory committee, and in December, to the public generally).

The "Public Involvement" Record

The Forest Service appears to have sought the views of many interested parties during the management plan review period (1966-1968). Unfortunately, it did not do so on the kind of organized, formal basis that leaves behind a record of both the suggestions made and the responses to these suggestions by the agency. The Milwaukee Regional Office prepared in June 1969 a ten-page document entitled Sylvania Recreation Area: Public Involvement which states that "[s]ince the acquisition of Sylvania . . . the Forest Service has made a continuing effort to solicit opinions on the management direction for this area [and a] broad cross-section of organizations, experts and the general public [was] involved in the planning for this area." Described as only a partial listing, this document offers as proof of the foregoing assertion a listing of four categories of involvement: (1) show-me trips and press tours; (2) formal talks and public appearances; (3) outside consultation and special studies; and (4) special meetings.[19] Listed under the first two headings are the

---

[19] Cf. "Nixon's Stats," Time, Vol. 97, No. 2, Jan. 11, 1971, p. 8: "Sensitive to talk about the supposed isolation of the President, the White House staff has compiled a self-conscious and almost overwhelming scoreboard revealing that in his first two years in office, Richard Nixon: Talked with Governors more than 150 times . . . [and] had 'more than 200 personal and telephone contacts' [with the press]--meaning that Nixon spoke to a reporter on the average of once every 3-1/2 days."

names of the groups involved, the total number of persons present on each occasion, and the date of the involvement. A summarization of the first category shows that, during the 26-month management plan review period, show-me tours of Sylvania led by forest officers were conducted for at least two groups of local government officials, three groups representing state government, six groups of federal officials (including Congressmen), six groups of extension agents, teachers and schoolchildren, two resource-management and scientific professional groups, and three citizen conservation groups. Additionally, some 19 representatives of the press were shown around Sylvania by Ottawa Forest staff members during this period.

The second category in this Sylvania public involvement report can be summarized as follows: twenty-one speeches by forest officers to local service clubs, church groups, chambers of commerce and other local, non-government citizen groups; six local radio and television interviews; one address to a college audience; three statements before local government bodies; one appearance before a state conservation commission (regarding fishing regulations); two presentations to federal units (the Public Land Law Review Commission and the Secretary of Agriculture's Committee on Multiple Use of the National Forests); three speeches to regional chapters of professional resource management societies; and three meetings with

citizen conservation groups representing the urban constituencies of southern Michigan and southern Wisconsin. Many informal conversations between interested individuals and Forest Service officials at the policy-making level therefore apparently did take place, but there seemed to be a tendency on the part of these officials to get people together to defend what already had been decided.[20]

The public involvement report lists, under "Outside Consultants and Studies on Resource Management," four special studies--fisheries management, vegetative cover, water quality, and economics--and, as "outside consultants," the commissioners of the Michigan Natural Resources Commission,[21] four top staff members of the Michigan Department of Natural Resources, and four members of the faculty of the University of Michigan.[22] "Public" as used

---

[20]"The important thing is that we discussed and debated with all who were interested. Looking back, it seems that something different should have been done, but it seemed right at the time." Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1971.

[21]When asked on Oct. 19, 1970 in Ann Arbor, Mich. about the extent of his involvement in the Sylvania planning process, Michigan Natural Resources Commission Chairman E. M. "Matt" Laitala of Hancock stated that, while he had had frequent informal conversations with Forest Supervisors Wernham and Kageorge, there had been "nothing official" about this relationship.

[22]DNR staff listed: Charles Harris, Deputy Director; Glenn Gregg, Parks Director; Wayne Tody, Fisheries Director; Dorias Curry, Regional Director, Marquette. University of Michigan faculty listed: Dr. Keith Arnold, Dean, School of Natural Resources; Dr. Hans Brinser,

in this category appears to mean fellow resource management professionals. "Professional consultants" would have been a more descriptive term here.

The fourth and final category in the public involvement report, "special meetings," covers two sessions: the July 17, 1968 meeting in Land O' Lakes, Wisconsin, of the Secretary of Agriculture's Advisory Committee on Multiple Use of the National Forests, and the September 20, 1968 meeting in Houghton, Michigan of the Sylvania "Ad Hoc Advisory Committee."

Analysis of the roster of attendance at the Secretary's Multiple Use Advisory Committee meeting shows that this was the make-up of the group: one Assistant Secretary (John A. Baker); six Forest Service employees (including Chief Edward P. Cliff); three engineering and construction specialists; one economist; one geographer; one rancher; a television executive; a college director of

---

Economics Department; Dr. Walter Chambers, Landscape Architecture Division, School of Natural Resources; Dr. Edward Voss, Associate Professor of Botany, U of M Biological Station. Perhaps indicative of the extent of the involvement of these outside experts in Sylvania planning is this excerpt from a letter to Dr. Jerome O. Gandt of Green Bay from Patrick J. Sheehan, Information Officer, Ottawa National Forest, dated Sept. 22, 1969: "The list [of Sylvania plants] was prepared by Dr. Edward Voss, Curator and Associate Professor at the University of Michigan Herbarium. Although the list is quite comprehensive, it is not all-inclusive. Dr. Voss spent about six days in Sylvania during 1967 and 1968, which as you know, is not adequate time to completely research all of the plant life in the area."

reading services; one state natural resources department director (Lester P. Voight of Wisconsin); and two others whose occupations cannot be determined from the roster description.[23] Most of the "civilians" on the committee were from the far-western states.

Comments of the Secretary's Advisory Committee

The report of the Secretary's Advisory Committee on Multiple Use of the National Forests is unique in that it appears to be the only set of written suggestions regarding Sylvania's administration submitted to the Forest Service prior to the release of the draft 1968 management plan and preserved for the record. For this reason, the Forest Service's questions to the Committee and the Committee's responses are reproduced here:

---

[23]Citizen members of the advisory committee: Philip R. Bradley, Consulting Mining Engineer, Berkeley, Calif.; John Hernandez, Associate Professor of Civil Engineering, New Mexico State University, Las Cruces, N. Mex.; Clair A. Hill, Clair A. Hill & Associates, Redding, Calif.; Leonard Horn, V Eleven Ranches, Wolcott, Colo.; Maxine C. Johnson, Assistant Director, Bureau of Business and Economic Research, University of Montana, Missoula, Mont.; Mrs. Garland D. Kyle, Director of Reading Services, Arkansas AM&N College, Pine Bluff, Ark.; James P. Paul, Paul Construction Co., Scottsdale, Ariz.; William L. Putnam, President, Springfield Television Broadcasting Corp., Springfield, Mass.; Gordon Van Vleck, Plymouth, Calif.; Lester P. Voight, Secretary, Wisconsin Department of Natural Resources; Gilbert F. White, Professor of Geography, University of Chicago, Chicago, Ill.

The management of Sylvania presents the Forest Service with . . . problems which, in many respects, are confronted on somewhat similar areas. These areas, which, while still National Forest land, are generally recognized as being distinctly unique because of values which require special consideration in the planning of their access and their development for public use. These problems relating to the manner in which the areas are considered as parts of larger National Forests are

--will a business-as-usual approach to National Forest planning and management, regardless of how good it may be, be sensitive enough to optimize the public values that are inherent in the area's recognized unique characteristics?

--will the pattern of administration in which these areas, regardless of their recognized unique values, are considered as parts of other administrative areas, and in which they may be only a part of the responsibility of the administrators involved, optimize the area's public contributions?

These questions could be restated

--can planning and developing for normal National Forest management objectives, even when the constraints of special-area designation (or special costs such as the more than $5 million price tag on Sylvania) are recognized do the job required,
--or must the areas be subjected to special planning processes directed to them alone?

--can on-the-ground Forest Officers satisfactorily administer such areas while also administering other areas (which sometimes results in the special area being fractioned between two or more officials each with larger overall areas of responsibility), or should National Forest administrative area boundaries be modified to always consider the special areas as warranting the undivided attention of at least some competent Forest Service officials?

In considering these questions as they relate to Sylvania, one can easily see that the area's future development is progressing somewhat differently from the larger National Forest unit of which it is a part. Still, considering its history, its relatively uniquely planned low-level of development and the resulting cover conditions and the price it cost:

Is this differential attention different enough? Are the resulting plans calling for rather sophisticated "undevelopment" right for Sylvania? Should there be still less development? Or in view of the growing pressures that can be expected, should the level of development be intensified? Has the rather intensive development of private lands in the area of Sylvania been adequately considered insofar as it might indicate the development most appropriate for Sylvania? In such special situations should the area be made a National Recreation Area?

The Committee's Comments:

Johnson: We urge you to use caution at Sylvania and go slow. In the administration of this unique area care must be taken to provide for individual treatment. We believe that this can be done under the present administrative structure. You should be administering more than one of these.

Use should be made of interdisciplinary experts and consultants, including sociologists, to study the area and make recommendations for its use and development.

You have done a good job at Sylvania. Development should not be intensified. Do not hurry! Do not be pressured! Developments on private land may help with the development of Sylvania. You should get busy and find out not only the demands for Sylvania but the closely related demands on the adjoining area.

Paul: Sylvania is an exciting area. If you appoint separate administrators they may work too hard to justify their areas. Administration should be broader. I urge you not to overplan for "fads," which may be taken care of by the private sector and industry.

Should it be a [National Recreation Area]? I don't think so. It should be a part of the working forest area. Maxine Johnson would say o.k. if it would help budgetary-wise.

Baker: Historically the reason I went hard on NRA's [National Recreation Areas] was as a social-political device. It gives a particular status.

Paul: I see no objection to calling for NRA status, but I want to see business as usual. Use timber sales as required to best serve the needs of the area. It

is important to keep in best natural state. I am worried about the disturbance of the timber since I really don't mind seeing an old dead tree.

Hill: NRA managed under the multiple use concept for recreation is o.k. If recreation is primary then you should give serious consideration to the NRA approach.

White: Under multiple use, which is zoning for primary uses, the NRA just formalizes primary use with multiple use being the controlling feature. If it helps from a political point, then give it the name.

The Committee recommends that:

1. Forest areas with unique values must be treated individually.

2. These areas should be included in the established administrative system.

3. To insure recognition of all unique aspects in the planning stages, we suggest the use of interdisciplinary consulting teams from private firms and universities.

4. The Forest Service proceed slowly with any further development--indeed, that it resist all such pressures for early development.

5. We recommend consideration of Sylvania as a National Recreation Area.

6. The Forest Service be commended for its treatment of the Sylvania area.

The Chief's Comments:

We appreciate receiving these helpful recommendations. We will carefully analyze them in our planning and development of the resources of Sylvania. My present feeling is that Sylvania is well identified as a special area. It is well enough known that little would be gained by designation as a National Recreation Area.

Current Forest Service literature suggests that the Sylvania management plan was the result of a series

of meaningful, in-depth, give-and-take conferences with interested citizens:

> The Management Plan [was] put together after several years of careful study and in consultation with interested groups and individuals. . . . Much effort has been made by the Forest Service to inform the people about the management plan for Sylvania, both in its evolution and its execution. An ad hoc committee was formed of interested groups and individuals to help develop a management plan. To inform the public about what Sylvania had to offer, press releases and special articles were written by those most knowledgeable about the area. Key writers for newspapers and magazines were taken on trips into the area, resulting in many well-written articles and stories in a variety of publications. Much correspondence was written and is still being written to inform interested inquirers. Officials and dignitaries have been shown the area. . . .[24]
>
> . . . We had to develop a specific management plan which all of us in the Forest Service could buy in on. Not only that--we had to have a plan which the public, both local and nation wide, would recognize as being good.
>
> The Forest Service went to great lengths to invite and explain its management proposals to a cross section of Americans. We were not only after public understanding of the preliminary phases of our planning, we wanted and solicited opinions, advice, ideas, thoughts, hunches--anything we could get from anybody who was interested. A lot of people were interested. . . .[25]

---

[24] Forest Service, "Sylvania," Milwaukee, pp. 3-4.

[25] Kizer, "Sylvania the Way It Is," p. 5. Addressing the 1971 Annual Meeting of the Michigan Bear Hunters Association at Lake City, Mich. on Jan. 9, 1971, Supervisor Kizer stated that "there was more and better involvement of the public in Sylvania than in any other Forest Service project," adding that he "wish[ed] we had tape-recorded all the conversations we had with interested people." See Appendix D for new U.S.D.A. guidelines for public involvement in agency decisionmaking.

The responsibility for putting the management plan together fell to Forest Supervisor Michael W. Kageorge; no master planning team, as such, was involved.[26] "Survey data from all disciplines was considered; the [management plan] evolved as a result of the interplay of 50 to 100 people."[27] Still, it appears to have been largely an internal process. (For example: "The Regional Office [reviewed] a sequence of several maps [suggested by the Forest Supervisor]. . . ."[28])

The Ad Hoc Advisory Committee Meeting

On May 24, 1968, "when the plan was in the final stages of development,"[29] Regional Forester George James

---

[26]Ralph Kizer, personal interview, East Lansing, Mich. Apr. 13, 1970. In this connection, Section 300 of the Forest Service Recreation Planning Handbook (draft copy, Oct. 28, 1969) states: "The term 'master plan' is used by some agencies to describe their recreation plans. This term is not used in Forest planning as management units are not comparable. It may be necessary under some situations to relate National Forest plans to the master plans of others. If so, the most nearly comparable unit is the Recreation Management Composite Plan."

[27]Ibid. According to Virginia Prentice, Oct. 21, 1970, Richard M. Leonard of San Francisco, member of the Sierra Club board and The Wilderness Society governing council, was given a tour of Sylvania by the Forest Service during this period "and agreed with the Forest Service plan." Other influential persons also were taken, one at a time, on similar guided tours.

[28]Conference with Regional Office staff members, Milwaukee, Wis., July 20, 1970.

[29]Kizer, "Sylvania the Way It Is," p. 5.

appointed "a group of outstanding citizens to review and advise [emphasis supplied] him on how to improve it."[30] An "opportunity to comment" on the plan was given this Forest Service-chosen group, representing diverse interests, on September 20-21, 1968. Those selected by the Regional Office to participate in this "advisory meeting" were sent this invitation:

> We would like to invite you to meet with us on September 20-21 to discuss the development and management being proposed for Sylvania. Our purpose in this meeting is to present the draft plan and provide an opportunity for a cross section of conservationists and the general public to comment on the plan.
>
> The meeting will start with a visit to Sylvania in the afternoon of the 20th. Following the Sylvania visit the group will drive to Houghton for dinner and an evening program at Michigan Technological University. On the morning of the 21st the Sylvania plan will be presented and discussed. The meeting will conclude with a luncheon at the University. The enclosed agenda gives additional details. . . .
>
> Sincerely yours,
> George S. James
> Regional Forester[31]

Fifteen of the 50 invitees to the "ad hoc meeting on Sylvania" showed up to participate in the discussions

---

[30] Ibid.

[31] Letter to James L. Rouman, MUCC, Lansing, Mich., Aug. 22, 1968, following up an initial letter of invitation dated May 24, 1968. Rouman, although on a tour of the Upper Peninsula speaking to sportsmen's clubs that week, did not attend the ad hoc meeting.

at Houghton.[32] They were: Dr. Keith Arnold, Dean, School of Natural Resources, University of Michigan (formerly Director, Pacific Southwest Forest and Range Experiment Station, U.S. Forest Service); Dr. Eric Bourdo, Dean, School of Forestry, Michigan Technological University; Dr. Gene Hesterberg, School of Forestry, Michigan Technological University; Prof. Richard Crowther, Michigan Technological University; Dr. Robert Marty, Department of Forestry, Michigan State University (formerly Director of Forest Economic Research, U.S. Forest Service); Charles D. Harris, Michigan Conservation Department; Frank Basso, Gogebic County Board of Supervisors; Dr. Culver Prentice, Northern Great Lakes Regional Development Commission; C. A. Samuelson, Kimberly-Clark Corporation; Tom Brogan, Northern Hardwoods and Hemlock Association; George Rossman, Grand Rapids Herald, Grand Rapids, Minnesota; Miss Genevieve Gillette, Michigan Natural Areas Council; Donald Quinn, Sierra Club; Mr. and Mrs. Don Edgar, National Campers and Hikers Association; John Zass, National Campers and Hikers

---

[32]Richard Guth, personal interview, Ironwood, Mich., July 22, 1970. The Mackinac (Michigan) Chapter of the Sierra Club, organized in October 1967, was not invited to send a representative, nor was it sent a copy of the draft management plan from the first printing; by the time copies were received by this group, the plan was "practically adopted," although the Sierra Club chapter objected to several features of the plan: Virginia Prentice, personal interviews, Ann Arbor, Mich., Oct. 19, 1970 and East Lansing, Mich., Oct. 21, 1970. The Save Our Sylvania Action Committee was not organized until July 1969.

Association; and Miss Charleen Knight, Department of Conservation and Resource Development, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Seven Forest Service staff members served as hosts.[33]

The only record made of this meeting was a brief set of notes taken by Deputy Regional Forester Harold C. Nygren, chairman of the meeting. These notes were the basis of two documents on file in the Milwaukee Regional Office: a draft press release, apparently never used as such, and a memorandum outlining what was covered at the meeting and what changes were made in the plan as a result of the exchange of views. The draft press release, dated September 23, 1968, offers these insights:

> Representatives of a cross section of conservation groups and forest industry met at Michigan Technological University at Houghton last weekend to review a proposed plan for development and management of the Sylvania area of the Ottawa National Forest.
>
> In opening the meeting Harold C. Nygren, Deputy Regional Forester, said, "Sylvania was acquired as a result of the interest and support of many individuals and organization. In the two years since acquisition, the Forest Service has given a lot of thought as to how Sylvania should be developed and managed. Our thoughts have been put into a draft plan. This meeting will give us an opportunity to review the plan with you and to have the benefit of your advice and counsel."

---

[33]U.S., Department of Agriculture, Forest Service, Eastern Region, Sylvania Recreation Area: Public Involvement ([Milwaukee, Wis.]: photocopy, 1969), pp. 9-10.

A panel consisting of Dr. Keith Arnold, . . . Mr. Charles D. Harris, . . . and Dr. Robert Marty, . . . commented on the plan. Dr. Arnold noted that the proposed plan closely followed the original proposal for Federal acquisition, emphasizing timber management for the purpose of maintaining an environment for recreation. He pointed out that timber stands must be kept healthy to assure a suitable environment. He said the proposed plan seemed to provide a proper balance between public use and preservation.

Deputy Director Harris suggested that more attention be given to safeguards against overuse. He cautioned that the "Human carrying capacity" of the area might be exceeded to the detriment of the basic soil and water resource. He also suggested that Sylvania be used to research and develop methods of managing hardwood timberland to retain a park environment.

Dr. Marty pointed to the need for research to determine public recreation preferences. He suggested the Sylvania plan be improved by more emphasis on scenic drives and interpretive service through booklets and pamphlets.

With minor exceptions, those participating were in general agreement with the plan.[34] Miss Genevieve Gillette, President of the Michigan Parks Association, was pleased that the plan provides for a wild area but felt that more wilderness will be needed in the future. Several others recommended that any further development needed to accommodate recreation use be kept outside of Sylvania. Private campgrounds for this purpose were suggested.

In the discussion on Wilderness, C. A. Samuelson of Iron Mountain, and Supervisor Frank Basso of Watersmeet Township, did not deny the need for wilderness areas but cautioned that the needs of the local government for an adequate tax base and the need of the local economy for payrolls cannot be ignored.

The growing sport of snowmobiling came under considerable discussion. Don Quinn, of Escanaba, expressed

---

[34] No alternatives were provided by the Forest Service for the participants to weigh or choose between. Constructive criticism of the plan would have required the participants to formulate alternatives on the spur of the moment.

> concern over administrative problems, safety, and the possible damage to vegetation from these vehicles. Ranger Marsh Lefler agreed that snowmobiling brings new problems. Lefler's greatest concern with snowmobiling was the hazardous ice condition common on Sylvania's lakes. Early snow often prevents safe ice conditions on some lakes.
>
> At the close of the meeting Supervisor Michael Kageorge of the Ottawa Forest indicated that several substantive and clarifying revisions will probably be made in the draft plan as a result of the advisory meeting.

Nygren's memo to the file, summing up the results of the ad hoc advisory committee meeting, consisted of these brief remarks:

> Major points discussed at Sylvania ad hoc meeting: General comments--1. Auto use on access roads will be important. (Marty) 2. The present plan gives less emphasis on roads than the original plan. (Arnold) 3. The Forest Service should attempt to bar motors on Crooked Lake. (Marty) 4. There are no provisions for feeling public pulse. (Marty) Development--1. Should have more trails for hikers and wilderness campsites. (Marty) 2. Wilderness is the highest use of the area and development should be outside. (Prentice) 3. Go slow on developing snowmobile trails. (Quinn) 4. There should be less development inside with more private development on the outside of the tract. (Prentice and Gillette) 5. The Forest Service is backing down on its promises to develop the tract. (Basso) 6. Eliminate the proposed access road to Big Bateau. (Quinn)
>
> Changes as a result of ad hoc meeting: The following are changes that were made in the Sylvania Recreation Area Management Plan as a result of the ad hoc meeting and other citizen group comments. 1. Eliminated proposed access road to Big Bateau Lake. 2. Added provisions for future restricting of the use of motor driven watercraft. . . . 3. Limits width of snow craft to overall width of 42 inches. . . . 4. Modified trail standards to reduce clearing and tread width.

Placing all of this in the best possible light, Supervisor Kizer sometime later recited this optimistic

view of what the "ad hoc advisory committee" exercise meant to the Forest Service and to the management of the Sylvania Area:

> The Forest Service was aided immeasurably by the formally appointed committee as well as by those who went out of their way early in the game to let us know what their desires were. Forest Service planners and resource management experts carefully considered all the pros and cons of every idea presented to them. Many of those ideas were incorporated into the final Sylvania Recreation Area Management Plan approved by Regional Forester George James last December [1968].[35]

Others have described the Sylvania ad hoc committee as a "creature" of the Forest Service, noting that the Forest Service appointed its members, chaired the meeting, refused to let it function as an independent body, obviously hoped that the committee would approve the draft management plan, kept no verbatim record of the discussion, and dissolved the committee after its one and only meeting. The ad hoc committee played the role of citizen-group legitimizer for the agency's plan.

Regional Office Reactions

One school of thought within the Milwaukee Regional Office maintains that public involvement in Forest Service decisionmaking to any additional degree than that provided in the Sylvania example would, in effect, put the Forest Service out of business:

---

[35]Kizer, "Sylvania the Way It Is," p. 6.

> We didn't run fast enough with Sylvania. We didn't think there was any strength in the purists. The name of the game changed in the middle of the planning period, when preservation came to the fore. We would have had timber sales going earlier, if the report of the Boundary Waters Canoe Area Review Committee[36] [chaired by Dr. George A. Selke] hadn't resulted in the shifting of Regional Office thinking regarding the Sylvania plan. Now, preservation is in, use is out; what do we do? We can tie up the whole U.S. Forest Service organization in litigation. The question is, What can the Forest Service get away with, with minimum public involvement?[37]

Another school of thought, brought to the surface during the same meeting in Milwaukee, considers revised procedures and attitudes essential. Some of the comments made in this vein are paraphrased as follows:

> In our future planning efforts we will have to conduct a more thorough resource inventory and do a better job of documenting the reasons why certain courses of action have been chosen over other stated alternative courses of action, from standpoints including environmental impact. Assignment of priorities and sound planning will permit "dominant" use, particularly in "special areas." True, there has been a jelling out of a regional philosophy over time, from

---

[36] Ten-page letter from Selke to Secretary of Agriculture Orville L. Freeman, Dec. 15, 1964. See also, "Statement by Secretary Freeman on the Report of the Review Committee for the Boundary Waters Canoe Area," Jan. 12, 1965, 7 pp.

[37] Meeting at the headquarters office of the Eastern Region, U.S. Forest Service, Milwaukee, Wis., July 20, 1970; present were Henry W. DeBruin, Director, Information and Education Division, Forest Service, Washington, D.C.; John O. Wernham, Assistant Chief, Recreation Division, Eastern Region, Forest Service, Milwaukee; Donald Girton, Assistant Chief, Information and Education Division, Eastern Region, Forest Service, Milwaukee; Jack Curtis, Office of General Counsel, U.S. Department of Agriculture, Milwaukee; and L. L. Leighty and M. R. Cutler of Michigan State University.

> different points of view, as we adjust to outside pressures. But we have not utilized the potential inputs of the research arm of the Forest Service in our special area planning, and we should. No public hearings were held on the Sylvania management plan. Public hearings or meetings should be held early in the planning process, with adequate notice given and with the general public invited, to reduce objections later based on lack of public involvement. A non-Forest Service officer should conduct the hearing or meeting, of which a complete verbatim transcript should be made. Don't go to hearings with your decision already made; if you do, you'll be smoked out. Go to the public with a set of alternatives, instead. What kind of projects require hearings? Who should be notified? How should the hearings be publicized? Who should run the hearings? How much will they cost? These questions must be explored.[38]

Members of the Regional Office staff supplemented the comments of the ad hoc advisory committee by obtaining the reactions of a number of other groups prior to putting the finishing touches on the management plan. For example, several suggestions made by the John Muir (Wisconsin) Chapter of the Sierra Club were adopted.[39]

The Sylvania Recreation Area Management Plan, in its final form, was submitted to the Regional Forester by Forest Supervisor Michael W. Kageorge on November 29, 1968 and approved by Regional Forester George S. James on December 5, 1968. Within a year the adequacy of this management plan was to be tested in federal district court.

---

[38] Ibid.

[39] Ibid.

CHAPTER VI

SYLVANIA: THE MANAGEMENT PLAN COMES UNDER FIRE

> . . . if there ever was anybody who was guilty of laches, it was the plaintiffs in this case, and particularly the Number One and apparently principal plaintiff, Dr. Jerry Gandt. He had a copy of Exhibit 1 for the plaintiffs [the 1968 Sylvania Recreation Area Management Plan] as soon as it was printed. He had access to the personnel of the Forestry [sic] Service, he had access to the area, he knew from the plan . . . what use was anticipated to be made of the area. . . .
>
> So the plaintiff has been guilty of laches, in the opinion of this Court.[1]

The Gandt v. Hardin phase of the Sylvania story begins where the evolution-of-the-management-plan phase ends: with the formal adoption of the management plan by the Regional Forester. Judge W. Wallace Kent's decision a year later (quoted in part above) was based partially on the premise that Dr. Jerry Gandt "slept on his rights" and

---

[1] Gandt v. Hardin, ___ F. Supp. ___ (W.D. Mich. 1969) (Civil Docket No. 1334, Dec. 11, 1969), at pp. 23-24 of the hearing proceedings. Laches is a technical term related to the timeliness of the filing of plaintiffs' action; see Penn Mutual Life Insurance Co. v. Austin, 168 U.S. 685, at page 696: "Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. . . ."

filed suit too late to halt implementation of the 1968 plan. This account will describe how the Green Bay, Wisconsin dentist and his associates sought for a year an "administrative remedy" for their complaint, why they concluded there was no administrative remedy in this case, how they sued as a last resort, and how they lost their case--partly because the judge concluded they hadn't sued the Forest Service soon enough and partly because they were unable to prove "abuse of administrative discretion."

This period, from December 5, 1968 (when the management plan was signed by the Regional Forester) to November 12, 1969 (when the Save Our Sylvania Action Committee filed its complaint), can be viewed in retrospect as a "countdown" situation; the clock started to run with the signing of the plan. Under the legal doctrine of "laches," one must act in a "timely manner" in order to preserve his right to sue. But one must also be able to demonstrate in court that all administrative remedies have been exhausted.

Letters Urge Modification of Management Plan

One of the private citizen participants in the September 1968 ad hoc advisory session was a medical doctor, B. Culver Prentice, from Ashland, Wisconsin who also served on the Northern Great Lakes Resource

Development Committee. A Forest Service employee prior to attending medical school, Dr. Prentice became "the prime mover for wilderness [preservation] in Sylvania."[2]

The campaign he initiated for preservation-oriented modifications of the Sylvania management plan began with an exchange of correspondence with Regional Forester James and with visits with the leaders of the Wisconsin Resource Conservation Council and the Center for Resource Policy Studies at Madison, Wisconsin. These groups were encouraged by Prentice to file objections to the management plan with the Regional Forester. The tone of the correspondence at this stage was mild, conciliatory, constructive, and hopeful. This, for example, is Dr. Prentice's letter of recommendations to Regional Forester James, dated September 30, 1968, which stipulates goals the Save Our Sylvania Action Committee was later organized to seek:

> From the very outset I have been delighted that the U.S. Forest Service was able to acquire the Sylvania Tract. I am still delighted that it is in their hands. On September 20th and 21st it was my considerable pleasure to participate in an Advisory Meeting relative to the development plan projected for the Sylvania Tract. At this meeting there was a rather free exchange of ideas between Forest Service personnel and various segments of the public. It is my impression that all who wished to had their say, and certainly we all benefited from the discussion. I would like to put in writing to you some of my feelings in regard to the development of this magnificent tract.

---

[2]Richard Guth, private interview, East Lansing, Mich., Oct. 6, 1970.

First and foremost it would seem to me that the highest use for this tract would be for it to remain as wilderness. That is to say that insofar as it requires management at all, it should be "managed" as wilderness. Set as it is in the midst of the vast acreage of the adjacent four national forests in upper Michigan and northeastern Wisconsin, this mere 18,000 acres could well be left without management in the ordinary sense of the word. To a very gratifying degree this is actually provided for in the proposed "Pioneer Zone" and "Botanical Zone" in the management plan. I am, however, distressed by repeated use of terms such as "timber management, vegetative cover management, salvage of unsightly blow-downs, limited timber harvest operations, and timber cultural operations." These would appear to me to be totally out of place in the management of a wilderness tract such as Sylvania.

The management plan further makes provision for the establishment of a very much enlarged picnic area at the north end of Clark Lake and the placement of enough camp sites on the northeast end of Clark Lake to accommodate 500 people, which is to say approximately 125 camp sites. Past experience would of course tell you that this will be only the first 125 camp sites. There is already a rather large and very nicely kept picnic area at the north end of Clark Lake, which being there seems inevitable, particularly in view of the new visitor information center and concession stand presently being built in that area. However, I am loathe to see expansion of this into more picnic areas and particularly into camp grounds down the shore of Clark Lake. . . .

As the re-routed County Highway #535 is presently laid out, and as the plan calls for, there would be both launching sites on Crooked Lake and on Clark Lake, as well as carrydown spots on Helen Lake, Snap Jack Lake and Long Lake. In addition to this there is already a boat access or at least carrydown access on Devil's Head and Indian Lakes where group camping and organization camping are very appropriately planned. These are all to greater or lesser degree peripheral areas and probably would serve the public well as planned. However, in the course of the Advisory Meeting it became apparent that some very real thought had been given to, at the very least, carrydown and at the very most, actual roads and boat launching sites to Whitefish Lake and Big Bateau Lake. Both of these latter lakes are included in the "Botanical Zone" and

there is no question in my mind that they should be accessible only by portage or canoe. There is presently an approximately one-half mile portage into the west side of Whitefish Lake which does not seem out of keeping, and certainly a road should not be extended to it for a carrydown. There was discussion of the fact that Wisconsin private holders on Big Bateau Lake have motorboat access to this lake and while this is unfortunate, it is not a reason to aggravate an unavoidably bad situation by making this lake available by road and carrydown. Which brings up quite another point, namely that of power craft on Crooked Lake. Here, as on Big Bateau Lake, the Forest Service has a reasonable and unavoidable agreement with private holders relative to the use of power crafts on this lake. Certainly private holders and even outside private enterprise operating from private holdings wish to operate power crafts and even run pontoon boat charters from these private holdings and the Forest Service is powerless to prevent this. However, to aggravate this clearly undesirable circumstance by condoning concessionaires doing likewise as implied in the development plan, is to make an already bad situation worse. Particularly is this true since Crooked Lake is bordered by and extends into the projected "Pioneer Zone." Indeed it would seem desirable in the extreme to commence now making every effort to, if not totally prohibit power boats on Crooked Lake, at least to confine such power craft to the extreme northern extremity of this lake.

Mention of Clark Lake brings to mind a section "f" on page 29 of the Sylvania Recreation Area Management Plan indicating that overhead lights may be placed at Clark Lake and Crooked Lake boat launching ramps. It would be difficult to think of a more jarring note in this wilderness tract than such overhead lights!

There was evidence of a willingness on the part of the Forest Service to provide for the use of snowmobiles on the Sylvania Tract. I would suggest considerable caution in pursuing this. In the first place, consideration has been given these winter sportsmen on the various surrounding national forest lands so that they need not invade the Sylvania Tract to achieve their recreational goals. Moreover, like power craft of all sorts, they are gigantic consumers of distance and would find very little really to interest them other than the lakes themselves, which in large part according to the district ranger are frequently hazardous for winter travel of any sort. One hesitates

to exclude any segment of the public, but the exclusion of motorboats would almost categorically seem to exclude snowmobiles from the Sylvania Tract.

As might be expected there was discussion as to what to do with or about Thompson Lodge. As very aptly put by some of the Forest Service personnel there is a good deal of local mystique attached to this edifice, and beyond that has no discernable use where it is. Certainly where it stands, if it is to be maintained, it will consume endless monitary appropriations in its maintenance and serious consideration should probably be given to either razing it or dismantling and re-erecting it on Forest Service lands outside the Sylvania Tract to be used as a point of historic interest and possibly a concessionaire stand.

Both Mr. Carl Tubbs and some of the Forest Service Personnel gave voice to the hope that the Sylvania Tract might provide a laboratory for forest management. Certainly adequate provision has been made on federal, state and private lands for this very necessary aspect of forest management and silva-cultural experimentation need not encroach on what should be a wilderness tract.

I think everyone was pleased with the concepts of the "Pioneer Zone," the "Botanical Zone," and the "Water and Travel Influence Zone." Having touched virtually every section corner and being on every lake except Marsh Lake on the Sylvania Tract, I could not agree more with the concepts embodied in these three zones. A study of Dr. Voss' report makes the concept even more appealing. The concept of the "General Forest Zone" seems to be a bit more tenuous. Except for the extreme periphery of the tract, if it would be possible to adhere to the idea that this is a wilderness area and not a timber management area, I believe the interests of the people most interested in Sylvania would be best served.

Group camping and organization camping as projected on Indian Lake and Devil's Head Lake on the periphery of the tract seems a very useful thing. All of the state, federal and private agencies who have been involved in this type of development in other areas have been happy with the type of use involved as well as considerable influence on both attitudes and economics in the adjacent communities.

I should like to reiterate that in my opinion the Sylvania Tract is in the proper hands and that such

> meetings as the Advisory Meeting on September 20th and 21st provide people such as myself with very much appreciated opportunity to take part in your venture.

In response, Regional Forester James on October 11 assured Dr. Prentice that the doctor's letter, report, comments, expression of confidence, participation, and contribution to the discussion all were "greatly appreciated" and that,

> As the result of the meeting we intend to clarify portions of the Plan. We are also considering some of the substantive revisions suggested. . . .

Dr. Prentice's suggestions were reinforced on November 18, 1968, by W. B. Lord, Director of the Center for Resource Policy Studies and Professor of Forestry at Madison, Wisconsin. Dr. Lord's three-page letter to Regional Forester James included these observations:

> This letter concerns the Forest Service's proposed plan for the development and management of the Sylvania area on the Ottawa National Forest. I do not have a copy of this plan and have not had a chance to study one carefully. However, I understand that it calls for several kinds of development which I believe to be inappropriate. I speak from a background of some familiarity with both the Sylvania area, in which I have canoed and hiked twice last summer, and the Upper Peninsula-Northern Wisconsin area, in which I have lived for a time and have long worked, as a forestry student at the University of Michigan, as a research forester for the former Lake States Forest Experiment Station, and as a professor of forestry at the University of Wisconsin.
>
> In Sylvania the Forest Service has an opportunity to create a unique and invaluable recreational area. It has the potential to become a week-end Boundary Waters Canoe Area. The resources are there and it is within striking distance of major population centers.

It would be a grave mistake to allow it to become like the rest of the Ottawa National Forest, not because that Forest is unattractive (it isn't) but because in Sylvania we can create that diversity which is now held to be a prime goal for environmental management. . . .

I note that you propose a no cutting area of considerable size, although including well under half of the area. I hope that you will exclude timber harvests from all of Sylvania. Surely this area of less than a township cannot be strategic to the forest industries of Wisconsin and Upper Michigan. It is only a tiny fraction of the commercial forest land in the region, and still a small fraction of the available timber volume. No local industry can plead dependence upon it because it has seen little timber harvesting in the past. The significant point is that it is the only reasonably extensive area in the region, which now supports mature timber stands and which can be allowed to become an approximation of an old-growth northern hardwoods forest. . . .

I'm sure that my suggestions would be opposed by many who live near Sylvania. There is no doubt that the economy of the Upper Great Lakes region has been sagging with little relief since the lumber and mining industries reduced their operations after removing the high grade resources originally found there. We have long recognized the plight of these counties and have supported a long series of public programs to assist them. However, it would be a serious mistake to think that every community has a God-given right to prosper and grow, no matter how unfortunately located it may be, how great the subsidy it may require, or how great the sacrifice of unique natural values it may entail. Instead, the Upper Great Lakes region can thrive only if the use of its resources and the location of its people and industries are carefully planned in such a way as to be economically viable, aesthetically pleasing, and capable of drawing to it visitors representing a wide range of locations and interests. . . .

These are my reactions to your plan for Sylvania. I believe that we stand on the threshhold of rational and integrated regional land use planning, and of developing the institutional devices to make such plans acceptable to both local people and interest groups with broader representation. I believe that the Forest Service and other public land management agencies have both the opportunity and the

> responsibility to keep open the options for very special areas like Sylvania in anticipation of such planning becoming a reality. I hope that you agree with me.

The inputs of Drs. Prentice and Lord apparently came too late; with four minor changes from the preliminary draft (see Nygren's memo, p. 105, supra), the Sylvania Recreation Area Management Plan was adopted, reprinted, and sent to the Regional Office's mailing list of interested persons and organizations in late January, 1969, covered with this letter:

> We are pleased to send you a copy of the management plan for the Sylvania Recreation Area.
>
> This plan sets forth the decisions and policies for management of Sylvania and maintenance of its unique qualities. It was reviewed by many individuals with diverse interests. All suggestions were considered--many were adopted.
>
> We appreciate your personal interest in management of Sylvania.[3]

Resolutions Call for Sylvania Development Moratorium

At this point in time the doors seem to have been closed to the public, insofar as Forest Service consideration of suggestions for changes in the Sylvania management plan is concerned. An official plan had been adopted,

---

[3]Letter from George S. James, Regional Forester, Milwaukee, Wis. to James L. Rouman, Executive Director, Michigan United Conservation Clubs, Lansing, Mich., Jan. 29, 1969.

Forest officers had a policy document to implement, and requests for revisions in the plan were brushed aside.

Some of the citizen conservation groups in the region felt that they had patiently awaited distribution of the preliminary management plan, then found themselves locked out of the decisionmaking process just when their cumbersome, democratic, resolution-passing and policy-making machinery was beginning to function with respect to the Sylvania issue. As they saw the situation, they had been given a tantalizing peek at the inner workings of the agency, via the ad hoc advisory meeting, then shut out of the game with the adoption, soon after that meeting, of the final plan. The pressure for additional changes in the plan inevitably began to build.

On February 1, 1969, the Wisconsin Resource Conservation Council,[4] meeting at Madison, passed a resolution recommending the following:

> 1--the 18,000 acre Sylvania tract qualifies and should be included in the National Wilderness System.

---

[4] "[A]n organization of state, area, or local clubs, and institutions having specialized or general interest in an intelligent solution of our natural resource development and conservation problems"; member groups: "CNRA, Wis. Lakes P.O., N.E. Audubon Society, Paper Ind. Info. Ser., Geneva Lake Civic Assoc., Country Beautiful, Dane C. C. League, Fond du Lac C. C. Al., Farmers C.& E., U. of Wis., S. Bay Co. Sportsmans Club, Fed. Women's Club, Green Lake A. Assoc., St. Croix A.C.C., La Budde Ch. IWLA, Sierra Club."

> 2--that the Chief of the Forest Service classify the tract as a "research natural area" under U.S.F.S. regulation U-4 or managed in its natural condition under U.S.F.S. regulation U-3 (a).
>
> 3--that the U.S. Bureau of the Budget suspend approval for any development of the Sylvania tract until above possibilities are thoroughly studied.

The Forest Service's response to this resolution challenging its official plan was prompt, firm, detailed, and defensive. To Martin Hanson of Mellen, Wisconsin, Secretary of the Wisconsin Resource Conservation Council, came the agency's reaction in the form of two letters, one from Chief Edward P. Cliff (dated February 28, 1969), the other from Regional Forester George S. James (dated March 7, 1969). The Chief's letter:

> . . . I can fully appreciate the concern that members of your Council have for protection and management of the Sylvania area. I share that concern. For this reason, Regional Forester James assigned the best talent available to make an exhaustive study of the area and its resources. The cooperation and expertise of State and other agencies were also enlisted in this endeavor. Detailed information was collected on soils, waters, vegetation, game, fish, etc. It was only after analysis of all of this information that the plan of management was prepared.
>
> I agree with Dr. Prentice that not all National Forest areas need be managed for the full range of resource uses. The plan for Sylvania, which provides for careful control of uses as well as substantial areas in the pioneer management zone which will continue virtually undisturbed, gives full recognition to this concept.
>
> I cannot agree, however, that the area qualifies, nor that it should be managed, as wilderness. It is penetrated by roads; one which will no longer be open

to public use extends to the heart of the area. These and the buildings in the area are not compatible with wilderness designation.[5]

---

[5]The Act of Congress establishing the 3,750-acre Great Swamp National Wildlife Refuge Wilderness Area (Public Law 90-532, dated Sept. 28, 1968) provided for the removal from within the designated wilderness area of a public road and several buildings, and for the restoration over time of the natural environment, using native plant species. The Act of Congress establishing the 25,150-acre Seney Wilderness, the 147-acre Huron Islands Wilderness, and the 12-acre Michigan Islands Wilderness within national wildlife refuges in Michigan (Public Law 91-504, dated Oct. 23, 1970) provided for the protection under the Wilderness Act of a portion of the Seney refuge (in Michigan's Upper Peninsula) "characterized by string bogs and logged over white pine forests that have been burned since logging. . . ." (See U.S., Congress, House of Representatives, Designating Certain Lands As Wilderness, Report No. 91-1441, Committee on Interior and Insular Affairs, House of Representatives, 91st Cong., 2nd sess., 1970, p. 9.) Temporary non-conforming structures, developments, and uses also can be found in national forest wilderness and primitive areas (see, e.g., U.S., Congress, Senate, San Gabriel, Washakie, and Mount Jefferson Wilderness Areas, Hearings, before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, Senate, on S. 2531, S. 2630, and S. 2751, 90th Cong., 2nd sess., 1968, p. 90, testimony of The Wilderness Society Executive Director Stewart M. Brandborg regarding recent logging in the Mission Mountains Primitive Area, Mont., and the land use history of the Shining Rock Wilderness, N.C.). A contrasting position on this issue was expressed by Forest Service Director of Recreation Richard J. Costley in a March 24, 1971 memorandum to Forest Service Director of Information and Education Henry W. DeBruin: "[The Wilderness Society's attitude] reflects a wooly, but opportunistic philosophy on the part of many 'professional' wilderness militants that 'wilderness' can be man-made. This is wholly unacceptable to the Forest Service's concept of wilderness, a concept which is based completely upon the philosophy spawned by Leopold, Carhart, and Marshall. True the Congress recognized some sort of a 'grandfather' implication in accepting certain non-conformities in the original 54 'instant' wildernesses. But its definition of the wilderness ideal (also in the Act) does not provide for the kind of non-conformities that exist in the Sylvania Tract. The Forest Service's objective is to have a worthwhile Wilderness System; one that can be defended; not one pock-marked with non-wilderness non-conformities. . . ."

Item 2 of the resolution suggests that Sylvania be made a research natural area. This purpose is already served on about 5,000 acres which have been incorporated into a botanical zone. This zone will be protected in its natural state for purposes of scientific study, education, and inspiration. In addition, some 1,650 acres are in the pioneer zone. This, too, will be managed as a natural type area with facilities limited to trails and simple campsites.

There are already seven research natural areas in Wisconsin and Upper Michigan, three of them in the northern hardwood type represented in Sylvania, and plans are well along for establishment of such an area in the recently acquired McCormick tract in the vicinity of Champion, Michigan.

I cannot support, of course, item 3 of the resolution calling for suspension of development funds. I think the management provisions incorporated in the Sylvania plan will protect the unique values of Sylvania, while allowing reasonable public use and enjoyment of this important area.

The Regional Forester's letter:

. . . I am surprised that the stipulation to withhold funds for development of the tract was retained. In our discussion at the Madison meeting I said that we could not live with that sort of action if we expected to protect the environment and water quality. The public has the right to, and will, use the area in increasing numbers. The Forest Service is obligated to give protection to all of the resources in view of this increased impact. This requires money. Accordingly, you told me at that time that this section would be deleted from the Resolution. Therefore, I am indeed surprised and disappointed to learn that it was retained.

Much of Sylvania does not meet the criteria of a unit to be included in the Wilderness Preservation System. The Federal Government does not control all water access to the area. However, we plan to set aside approximately 6,000 acres for preservation and maintenance of natural beauty and other environmental values. This has not been formally designated under the Secretary of Agriculture's Regulation U-3; nor is such a designation necessary since we are treating

Sylvania as a Special Recreation Area. I gave you a copy of the final draft of our management plan for Sylvania that day in Madison. This plan was discussed in depth at the ad hoc meeting last September to which you were invited but unable to attend.

During the long period of negotiations leading to acquisition of Sylvania it was necessary for many commitments to be made concerning its use, development and protection between the Forest Service and Township and County officials and State and national legislators for the State of Michigan. At the outset, as you know, permission was needed from local Michigan authorities for acquisition of the tract by the Federal Government. These were honorable and justifiable commitments in keeping with the type of use and protection to which the tract is entitled. An attempt to prohibit the development and activities excluded under the Wilderness Act would be going back on the word we gave to elected officials in Michigan and to others.

The management plan developed for the Sylvania Recreation Area is the culmination of much time and effort in research, fact-finding and coordination with innumerable people and groups, conservation and otherwise, as well as agencies of government at Watersmeet Township, Gogebic County and State of Michigan levels. It is a good plan and we are receiving many favorable comments on our actions. . . .

On March 27, 1969, the Executive Committee of the John Muir (Wisconsin) Chapter of the Sierra Club adopted a resolution similar to that adopted by the Wisconsin Resource Conservation Council regarding Sylvania and sent it, together with the following letter, to President Richard M. Nixon:

The John Muir Chapter of the Sierra Club, which comprises the area of the State of Wisconsin, has authorized me as Chairman of the Executive Committee to forward the attached resolution.

The U. S. Government purchase of the Sylvania Tract of some 18,000 acres was supported by the Sierra Club because of its unique, pristine qualities. . . .

> The Sierra Club's John Muir Chapter views with alarm the prospective recreational development of this area by the U. S. Forest Service. The Executive Committee of the John Muir Chapter of the Sierra Club therefore forwards to you the attached resolution with the hope that you will use your influence to insure that the pristine qualities of Sylvania will be preserved forever.[6]

---

[6]Letter from P. J. Wipperman, Chairman, John Muir Chapter, Sierra Club, Middleton, Wis., March 27, 1969. The positions of the Sierra Club's John Muir (Wisconsin) and Mackinac (Michigan) chapters on Sylvania were somewhat at odds at this time. At the Sierra Club's April 19, 1969 Midwest Regional Conference, Douglas W. Scott of the Mackinac Chapter presented this Sylvania strategy statement and plea for caution: "The Forest Service has recently released its approved management plan for the 'Sylvania Recreation Area' in the Ottawa National Forest in Michigan's Upper Peninsula. The 19,000 area tract was purchased by the Forest Service, utilizing Land and Water Conservation Fund revenues, after prolonged and difficult negotiations involving local units of government and congressional committee chairmen. These negotiations included commitments by the Forest Service and by members of the Michigan congressional delegation that limited recreational development would be planned for the area. Conservationists should now be concerned with monitoring Forest Service planning and development of the area, because it includes unique natural features and values which should be retained in their primitive condition.

We are aware that the John Muir Chapter has urged that Sylvania be classified as a wilderness area. From a practical point of view, pressures for immediate wilderness designation of Sylvania or portions of the tract must carefully be evaluated. A number of very important and timely conservation issues face us in Michigan's Upper Peninsula--including pending development plans for the Pictured Rocks National Lakeshore and wilderness designation plans for four areas including Isle Royale National Park. The U.P.'s representative is now a member of the key House Committee on Interior and Insular Affairs. His good will is needed on these and many other conservation issues, and his heart is in the right place. However, an aggressive campaign for wilderness designation of Sylvania at this time would place him in a very difficult position and jeopardize our long-term interests. This is more than a local concern.

Our strategy, therefore, and the strategy we would like to see adopted by the Sierra Club, would be to work

with the Forest Service to delay any immediate development which would jeopardize the wilderness character of the Sylvania area, recognizing that limited development must legitimately proceed. At the same time, we will be working to build close bridges of cooperation with the key members of Congress who are involved with all these issues. By respecting the pressures they are under in the Sylvania case, we will improve our position to seek a middle course that will preserve the wilderness assets of Sylvania and of these other areas in the Upper Peninsula.

It is well to point out that the Forest Service will be very reluctant to move ahead on any wilderness review for Sylvania until 1974, when the pending reviews required by the Wilderness Act are scheduled for completion. The opposition of the local congressman, sitting on the key committee involved, makes it almost impossible to anticipate that a wilderness law for Sylvania could be pushed through over local and Forest Service opposition.

As the Chapter authorized to speak for the Sierra Club on matters involving Michigan, we believe that the Club should be represented by a united voice on this issue, working in close contact with the Conservation Department of the Club nationally, as this is a national, not just a local, issue. We wish to coordinate our strategy and efforts with other Midwest chapters, but the political situation involved, which also directly affects other Upper Peninsula projects as well as Apostle Islands and Sleeping Bear Dunes, argues persuasively for caution and circumspection now."

CHAPTER VII

SYLVANIA: DR. GANDT FORCES THE ISSUE

Dr. Jerome O. Gandt, a Green Bay, Wisconsin, dentist, entered the Sylvania Recreation Area management controversy on February 27, 1969, by sending a blunt, emotional, and prescient letter protesting Forest Service plans for Sylvania to Secretary of Agriculture Clifford Hardin, a copy of which was sent to Senator Gaylord Nelson of Wisconsin:

> I am writing in regard to the Sylvania Wilderness Area of Michigan. Since its opening, myself and my family have spent many hours enjoying this pristine, rugged wonder. My son and I have canoed and portaged most of the area. Although I have traveled widely, from the Alps to the Rockies, Sylvania ranks as one of the most outstanding wilderness areas.
>
> When Sylvania was initially opened to the public, the national forest supervisor publicly promised that Sylvania would be preserved forever as a wilderness area.
>
> However, September 29, 1968, the Milwaukee Journal published an announcement by Michael Kageorge, supervisor of Superior national forest, [sic] in which it was stated that auto campsites, a bathhouse, a concession stand, a small theater, boat landings, canoe launch sites, nature trails, and widening of the access road would be added to this area.
>
> The above "improvements" would totally destroy the wilderness aspects and turn Sylvania into just another filthy traveler's camp. But even more disturbing is the basic dishonesty of our government which promises

to safeguard an aspect of our American heritage on one day and breaks its promise the next.

Do you wonder why we have riots on our campuses when the establishment flaunts such immorality? Do you expect the youth of America to develope moral fiber when its government ignores its moral commitments?

The past decade I have become utterly disgusted with the rape of our natural resources. I can assure you that I will not hesitate to resort to litigation to protect the wilderness aspects of Sylvania [emphasis supplied].

Acknowledging receipt of his copy of the letter to Secretary Hardin, Senator Nelson responded on March 6, 1969 to Dr. Gandt as follows: ". . . I find that you and I are in complete agreement on this and many other points. . . ." What followed was a three-cornered exchange of correspondence which alligned Senator Nelson of Wisconsin with Dr. Gandt and Senator Hart of Michigan with the Forest Service. Excerpts from this correspondence:

"Your Views are Appreciated"

M. M. Nelson, Deputy Chief, Forest Service, assured Dr. Gandt on March 25, 1969 that "Secretary Hardin appreciates knowing of your views," adding:

. . . Your concern for the management of this unique area is understandable. The Forest Service, too, is determined that this area shall be managed so that the unique values will not be impaired. Management will be directed toward providing significant outdoor recreation experiences while at the same time maintaining a sylvan environment and high water quality. A management plan for the area was approved by Regional Forester George James on December 5, 1968.

> That plan can be reviewed in the Office of the Forest Supervisor in Ironwood, Michigan, or in the Office of Regional Forester at Milwaukee, Wisconsin.
>
> The management policies for the Sylvania Area were adopted only after careful study and consultation with numerous organizations, groups, individuals, and agencies of the State and local government. These policies are calculated to provide a range of recreation experiences consistent with protecting the area's resources and maintaining the quality of its recreation potentials. The Forest Service has never suggested that the area be managed for wilderness purposes; however, the plan calls for over 70 percent of the 19,020-acre area to be managed in its natural state in water, botanical, pioneer, and travel-influence zones. With the exception of 99 rustic campsites which occupy less than 40 acres, the only development within the interior of the area will be trails and portages. General public use will be limited to the periphery of the area where such use will have the least impact on the existing environment. . . .

Dr. Gandt sent a copy of Deputy Chief Nelson's letter to Senator Nelson on March 29, 1969, together with a covering letter to the Senator in which Dr. Gandt charged Deputy Chief Nelson with lying and negligent supervision:

> . . . Enclosed is my reply from the Department of Agriculture, signed by M. M. Nelson, Deputy Chief of the Forest Service. His false reply, and negligent supervision of our natural heritage cannot go unanswered.
>
> When Sylvania was put up for sale, I was in correspondence with a private group which sought to exploit this area. I thereupon supported the government's purchase [emphasis supplied] based on the statement that the wilderness aspects would be carefully evaluated and preserved.[1] Mr. M. M. Nelson's

---

[1]This statement places the date of the initiation of Dr. Gandt's personal efforts to preserve Sylvania's wilderness values as prior to the date of the area's acquisition by the Forest Service.

statement that: "The Forest Service has never suggested that the area be managed for wilderness purposes . . ." is a lie. Research in newspaper libraries will prove otherwise. Questioning of some of the employees who have worked in the Sylvania Information Building would also prove this a lie.

As a citizen of this country, I find less and less opportunity to live, even for a day, in a natural surrounding. It is my right to be free at times from transistor radios, portable TV's, Snowmobiles, Motorcycles and automobile exhaust fumes. Mr. M. M. Nelson's 30% Non-Wilderness Concept will criminally destroy Sylvania, for me and for my children. The Forest Service may feel free to apply its multiple use concepts to the thousands of available second growth areas under its jurisdiction.

Even more regretful, is the basic lack of truthfulness in a government Department, a good start in undermining confidence in our government in general. This is a very serious matter.

Some time ago, a Michigan newspaper quoted a local Michigan Legislator as saying that Sylvania should be developed to bring in tourist dollars and to keep out the "bug watchers." Obviously the Forest Service has prostituted itself to this type of mentality, thereby forfeiting its jurisdiction!

I am bringing this to your attention. I don't know who else I can turn to for help.

Senator Nelson Questions Chief Cliff

Senator Nelson assured Dr. Gandt, on April 7, 1969, that: "I share your deep concern about this matter and am in direct contact with Edward Cliff, Chief of the U. S. Forest Service, on what can be done about it."

Senator Nelson had indeed been in direct contact with Chief Cliff regarding the management of Sylvania. He had questioned the chief closely on this subject during a

March 7, 1969 Senate Public Lands Subcommittee hearing on a bill to establish a wilderness area in Montana. The colloquy follows:

> Senator Nelson. Do the areas which the Wilderness Act requires the Forest Service to review for possible addition to the wilderness system include any areas east of the Mississippi River?
>
> Mr. Cliff. No. We have no primitive areas east of the Mississippi. We have some wilderness, as you know, east of the Mississippi. The biggest one is in Minnesota--the Boundary Waters Canoe Area. There are three others, one in New Hampshire and two in North Carolina, that are classified as wilderness. . . .
>
> Senator Nelson. What I am getting at is that the wilderness law does not require you to review any of your lands east of the Mississippi for further inclusion in the wilderness system. It doesn't require you to do it, does it?
>
> Mr. Cliff. Not an absolute requirement. Of course, we are considering areas that are not in primitive areas, and we expect that there will be a number of these that will be considered. We will review them, and when we do review them and make recommendations, we will do it in accordance with the procedures set out in the Wilderness Act. . . .
>
> Senator Nelson. You have a number of areas which are within the eastern national forests, which you administer as wilderness areas, don't you? I think you call them pioneer zones, crest zones, backwoods management areas, and so on. These are administratively handled in that fashion, are they not?
>
> Mr. Cliff. We have some areas that are administered along the lines that Mr. Rahm has been expressing here [with respect to the proposed Lincoln Back-country Wilderness Area in Montana]. We have one in West Virginia that we call a back-country area. We permit people to enter this area only on foot.
>
> However, we do permit other forest uses in such an area which wouldn't be permitted under the Wilderness Act. We have a scenic area classification, under which we administer areas to protect their scenic and recreation values, but permitting some other types of uses.

The regulations for scenic areas are not as strict as wilderness areas, but we are managing the land for the preservation of outstanding scenic and recreational values, where that is justified.

Senator Nelson. Specifically, the 18,000-acre tract, Sylvania, which comes down to the borderline of the State of Wisconsin, is one.

A good part of the tract represents one of the choice wilderness areas east of the Mississippi, which has never been cut, or touched in any way. I understand you are preparing a development plan, and that there is considerable controversy over it.

Now, do you intend to review Sylvania for purposes of considering what part, or whether all 18,000 acres ought to be designated as part of the wilderness system?

Mr. Cliff. We have made a very intensive study of the Sylvania tract and have developed a plan for it.

The Sylvania tract is, of course, as you know, Senator Nelson, bisected by roads in places. It has permanent buildings, rather substantial ones, on it. It isn't all, or couldn't all, qualify as wilderness.

Senator Nelson. Just a moment. What substantial buildings are you referring to, those old houses?

Mr. Cliff. We have removed some of the old houses, but there is an old lodge there.

Senator Nelson. If you leave it alone, it will fall down.

Mr. Cliff. It is quite substantial now, and we don't know what we will do with it. The point is that the area is substantially developed and has been for a long time.

Part of our management proposal for that area is to keep a substantial part of it completely undeveloped. We have already installed canoe access campsites on a number of the lakes which are in use. People can get to them only by canoe or by boat. They consist only of a table, a cooking grill and a cleared-off space for setting up a tent.

It is a primitive type campsite, but we have a number of those in use already.

Senator Nelson. Can you permit a campsite developed with grills in the heart of that wilderness area without destroying its wilderness feature?

Mr. Cliff. The Wilderness Act does not permit installation of permanent structures. There are places in Sylvania where we need permanent structures to take care of the heavy use that people are making and will make of these areas, in order to protect the areas themselves. Such structures will not impair the high quality of the area.

Senator Nelson. But I think you know the issue at stake there is a visitor center, campsites, and so forth. Sylvania is really just a tiny jewel of 18,000 acres surrounded by two national forests with a total well over a million acres. . . . [W]hat is disturbing people concerned about that wilderness is that this 18,000 acres held in private hands from the very beginning and never cut--everything around it was a cutover, the whole works, and burned--and here in the heart of it is 18,000 acres, and you have the Ottawa National Forest, of 8 or 900,000 acres abutting Sylvania, and the Wisconsin side is the Nicolet National Forest with a half million acres.

You are sitting there with over a million acres on which you could build campsites or anything you please; why in heaven's name should we put anything in that very delicate wilderness area, of which we have almost none east of the Mississippi?

There isn't anything east of the Mississippi comparable to this tract. There are other wilderness areas, of course, but there is nothing in the North that I know of comparable to this particular wilderness area. This tract has delicate glacial lakes and unspoiled wilderness. When you have a million and a quarter acres to put anything you want on it, all of a sudden, bang, you are putting stuff in here. You are bringing roads up to lakes to make the lakes more accessible.

And I don't understand it.

Mr. Cliff. I am familiar with the proposals and the concerns that you are describing, Senator.

When we acquired that area, we did it with public announcement of the kind of management that we would give to it. We are not changing signals on these people at all. There were certain commitments made to the local counties, who gave up the tax base, as to how Sylvania would be managed and we are going to manage the Sylvania tract to preserve its natural beauty. There is a substantial part of the area where there will be nothing done except to keep it in a pristine condition. There will still be a need to have some minimum facilities to take care of people.

I would welcome an opportunity to sit down with you and go over our detailed plans, and the reasoning for them, or to have our local people do this, so that you have a full understanding of our intentions. I think that you would approve of most of what we are proposing to do.

Senator Nelson. I have been up there, and I have canoed into the area, and I have looked at it. We don't have anything else in the Midwest that I know of, and I don't think anywhere else in the United States east of the Mississippi, that is comparable to this wilderness area that I know of, and I am concerned about the idea of intrusions that will damage and destroy it, and it would not take very much.

You could keep your commitment to build all these facilities and visitors' centers without endangering this wilderness. All you have to do is back off that 18,000 acres into any other part of that national forest and build your roads in there, and the people will come.

But I don't know why--what you ought to be doing is clearing out those old estates in the periphery, and moving that visitor center out of there, and not move roads closer in, and do your developing, it seems to me, on the adjacent forestry lands.

That is what bothers me about this whole thing. I have canoed it, and looked at it, and I can see how you could destroy it very easily.

Mr. Cliff. We are certainly not going to destroy the beauty of the area, Senator. We realize our obligation. We have to take good care of it, and we certainly intend to do it. . . .

Senator Nelson. One more question on Sylvania, so that I will know where we stand.

What is the status, do you have a plan, and do you plan to implement it as of now?

Mr. Cliff. Yes, sir; we do have a plan.

Senator Nelson. I am sure you are aware that a number of the more thoughtful of our conservationists in the Midwest, and in my State, and those who know this wilderness, are very concerned about intrusions into it.

Have you talked with them about it?

Mr. Cliff. I haven't talked to them personally, Senator, but I have had correspondence with them.

Senator Nelson. What is the status now? Have you got a plan on paper, and nothing has been done to implement it?

Mr. Cliff. We have a plan on paper, and we have implemented part of this plan over the last 3 years.

We have put in canoe access camping spots on a number of the lakes. We built a major road into the north end of the Sylvania tract to the picnic area. We built a picnic area there. This is an area where there was already a road. We replaced an old road with an improved road that is fully landscaped.

Senator Nelson. Are you talking about the replacement of that road that ran along the shore of Clark Lake, is it?

Mr. Cliff. I don't remember the name. We have torn down most of the structures that were on the property. There are still some left.

We closed off some of the roads, and intend to keep them closed, and let them revert to hiking trails.

There were quite a number of low-standard roads through this property which disqualified it, in our opinion, for classification as wilderness.

The whole area certainly does not measure up to the definition of wilderness, as spelled out in the

Wilderness Act. This is one of our differences of opinion with the people that you are mentioning.

Senator Nelson. The whole 18,000 acres would not qualify as wilderness, but all of it would qualify as something between the wilderness and whatever else, but the real heart of that area is wilderness. There just has never been a tree cut, as far as anybody knows, and my concern is that if you build campsites in it, you get too much accessibility to it, so that the pressure will simply destroy that wilderness which is there.

Mr. Cliff. We don't intend to develop some of the lakes. We don't have any plan at all to do this. We plan to keep some of those lakes completely undeveloped and virgin, and not even put a fire grill on them. As I said, part of the area is classified, and planned to be managed as a pioneer area.

It will be available for research; or, if you want to hike through or carry a canoe to some of those lakes, you can do it. We are not providing facilities on them.

This is why I say I would like to have a chance to have some of our people sit down and show you our plan. It is a plan which is designed to protect the real superlative qualities of this area, and yet provide for people to use it.

Senator Nelson. I looked at your preliminary plans, but I have not seen the later ones. You had set some guidelines, and had material which I examined, but I would like to see the others.[2]

---

[2] U.S., Congress, Senate, Committee on Interior and Insular Affairs, Lincoln Back Country Wilderness Area, Montana, Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, Senate, on S. 412, 91st Cong., 1st sess., 1969, pp. 16-22. Sen. Nelson's line of questioning, suggested to him before the hearing by a staff member of The Wilderness Society, Assistant Executive Director M. R. Cutler, was felt to be "unfair to the Chief" by Ottawa Forest Supervisor Ralph Kizer (personal interview, Lake City, Mich., Jan. 9, 1971).

Senator Hart Supports Forest Service Plan

One week after this hearing, Senator Philip A. Hart found an opportunity to place "in the record" a statement designed to counter the pressure for the administration of the Sylvania Recreation Area as a wilderness area. Appearing before a Senate appropriations subcommittee, Senator Hart stated:

> Mr. Chairman, one additional thing. It is not a request for money you will be glad to hear. Thanks to you, there was established as part of the Forest Service the Sylvania section of the west side of our upper peninsula.
>
> Sylvania was a magnificent stretch that had been in the hands of two families for years. On the death of the second survivor of the joint ownership the land was acquired by the Forest Service and very explicit representation was made to the local governmental units that the land would be developed and that it would not be made into a wilderness.
>
> There is a suggestion current that this, indeed, is appropriate for earmarking as a wilderness area. I just want to explain to the committee that both the Forest Service and I in connection with the effort to persuade local communities to assist us in moving this land into the Forest Service, gave very explicit assurance that it would not be treated as wilderness.[3]

---

[3] U.S., Congress, Senate, Committee on Appropriations, Hearings, Department of the Interior and Related Agencies, pri and prin des "a van per year indi

[illegible] before a subcommittee of the Committee on Appropriations, Senate, 91st Cong., 1st sess., 1969, pp. 3179 [illegible]88. Sen. Hart's formal statement, submitted for the [illegible]d record (and probably drafted by the Forest Service), [illegible]bes those seeking wilderness status for Sylvania as [illegible]turbing element": "Mr. Chairman, in 1968 the Syl- [illegible] Recreation Area, in Gogebic County, experienced a 45 [illegible]nt increase in visitor day use over the preceding [illegible] jumping the total to 44,300 visitor-days. Surveys [illegible]te a growth of about 30 per cent in business in the

Dr. Gandt won a direct response from Secretary of Agriculture Clifford M. Hardin by sending the Secretary a copy of his letter to Senator Nelson in which he charged

---

area due in great part to development of Sylvania.

"The area is dependent upon further development of the area to make up for the loss of its tax base when the federal government took ownership of Sylvania. The original development plan programmed $98,000 for fiscal year 1970. The proposed budget contains only $17,000. The additional $81,000 would provide two flush toilets at the beach, complete picnicking and beach facilities having a capacity of 500 people and construction of a station at the main entrance to the area.

"Mr. Chairman, a disturbing element is showing up regarding the public role to be served now that Sylvania is part of the Ottawa National Forest in Michigan. It has been suggested that rather than develop Sylvania as a recreational area, it be included in the Wilderness Preservation System.

"To do that would be to break faith with the people of Gogebic County. When we appropriated the funds for the Forest Service to purchase Sylvania, commitments were made to local units of government that the area would be developed as a multiple use area to bolster the economy of Western Upper Michigan.

"It was on those grounds that the concerned parties agreed to establishing the recreation area.

"To do otherwise now would be to create serious hardships on the people of the area.

"In all good conscience, I cannot support any movement to include Sylvania in the Wilderness Preservation System. I expect the Forest Service to support the commitments made when it gain approval to purchase the tract.

"In that same vein, any slowdown in the development plan for Sylvania also works extraordinary hardship on the people of the area.

"For that reason I strongly support the budget request for $232,500 to complete a visitor information center at Sylvania and urge and additional appropriation of $81,000 to keep the development plan on schedule."

Senator Hart's current posture on Sylvania was summed up in an Oct. 28, 1970 letter by the Senator to

M. M. Nelson with giving him a "false reply." The Secretary, on April 22, 1969, took polite exception to Dr. Gandt's charges:

> You recently sent me a copy of a March 29 letter you wrote Senator Gaylord Nelson about management of the Sylvania Area in the Ottawa National Forest, Michigan. You indicated that a recent letter you received from Mr. M. M. Nelson, Deputy Chief of the Forest Service, contained false information, and you branded Mr. Nelson's statement that the Forest Service did not suggest the area as wilderness as "a lie."
>
> I can fully appreciate your strong feelings for Sylvania and your desire that its values be protected. It is a unique area of lakeland and old growth hardwood forest. To provide for public use of this beautiful area and yet maintain its resources and its charm requires most careful planning and skilled management.
>
> Since acquisition of this area by the Government was first proposed, there have been strong differences in viewpoint on how it should be managed. Some urged complete development so that the maximum number would be able to enjoy its special charm. Others wanted it to be closed to all use except by foot or canoe. Equally sincere and dedicated people held these opposing opinions.
>
> During the time negotiations with the previous owners were underway, a tentative management policy was developed by the Forest Service. A brochure outlining this proposed policy was published in 1965. It formed a part of the basis on which the decision to go

---

John E. Carroll of East Lansing, Mich.: "You will understand that I have not particularly wanted to get involved in the Save Our Sylvania quarrel. I was the one who obtained the Federal funds with which the Sylvania Tract was purchased, the Forest Service Plan made reasonably good sense to me, the Michigan Conservation groups and individuals with whom I work have not been upset by it, and I have relied on their judgment." These groups include the Michigan United Conservation Clubs and the Mackinac Chapter of the Sierra Club.

ahead with the purchase was formulated; by the Forest Service, by members of Congress, by the National Forest Reservation Commission, and by others. It also was basic to the decision by the County Board of Supervisors, without whose approval the transaction could not have been made. This brochure was also widely available to organizations and individuals interested in the area.

A duplicated copy of the brochure is enclosed. In the section entitled "Opportunities Through Public Development," you will note the type of development that was contemplated.

In developing the plan of management, the Forest Service has been careful to keep all substantial development on the outer edge of the area. If the management plan varies from the concept proposed at the time of acquisition, it is on the side of providing less public development, rather than more. While some roads are being improved, no additional area has been made accessible by car. In fact, a number of roads have been closed to public use, one of which penetrated to the heart of the area.

I am sure you will continue to find the naturalness you desire in most of the Sylvania. I hope you will continue to use this area as well as other portions of the National Forest System. . . .

Development Moratorium Requested

Dr. Gandt, in his May 9, 1969 response to the Secretary, specifically requested a moratorium on development work in Sylvania pending review of the plan by an outside group of ecologists and other "experts":

. . . I am pleased with the response and concern of the Department of Agriculture. It restores my faith in our form of government.

I also wish to thank you for the publication entitled "Sylvania" published before this tract was purchased in 1965 by the U.S. Government, and I am

grateful to Mr. James for sending me the publication entitled "Sylvania Recreation Area Management Plan" published in 1968.[4]

My original charge was that the U.S. Government is not keeping its promise to preserve the wilderness aspects of Sylvania. While indeed the term "wilderness" is not used in the 1965 booklet. This is only a matter of semantics. In the opening statement of this publication it states "Sylvania is unique. There is no area like it nor will there be, giving in one compact area a vignette of virgin northwoods and pristine lakes." Here, Mr. Secretary, your department states that there will never be another area like Sylvania. The publication then goes on to show that the value before purchase was due to its unmanaged nature. The booklet states that in this unmanaged area "trees are of all ages from veterans to seedlings." Yet in your booklet published December 1968 you speak of the necessity of management. I could continue point by point illustrating this antithesis between your publication of 1965 and 1968. The booklet of 1965 closes with a statement "To enjoy and not to destroy, to see and to appreciate, to use and not to abuse, to have now and in the future as part of our American heritage: This is the opportunity and challenge of Sylvania." Your 1968 publication makes a mockery of this statement.

In view of what is being done to Sylvania today the spirit of the 1965 publication is a lie. Therefore I maintain my charge that the U.S. Government deceived its citizens.

Furthermore what's additionally appalling is the spirit of the 1930's which is apparent in the publication of 1968. In the 1930's development of resources was necessary and there was little threat of overpopulation and mass pollution. Resources were here to be developed. You are aware of the population of the potential of Sylvania since you state in your 1965 publication "Sylvania is 355 miles from Chicago, 559 miles from Detroit, 265 miles from Milwaukee, 249 miles from Madison, and 160 miles from Duluth. It is within a day's drive for many people." Yet the

---

[4] Sent by Regional Forester James to Dr. Gandt on April 30, 1969. See Gandt v. Hardin (W.D. Mich. 1969) (Civil Docket No. 1334) Transcript of Proceedings, Dec. 9-10, 1969, p. 17.

safeguard which you outline in your 1968 plan are largely unenforceable against such a population potential. You make a mockery of the term "wilderness" where on page 40 you allocate $100,000 for wilderness campsites. I am impressed with the total lack of appreciation of the quality of the Sylvania area. Is the Forest Service supervising a tree garden? Has the Forest Service read its own statement . . . "there is no area like it nor will there be?"

Equally depressing is the total omission of any discussion of the rights of our wildlife to nest undisturbed. Totally lacking is of any concern, furthermore, over the ecological effect of man in Sylvania (including the presence of the Forest Service).

Gross errors had been made by enlightened conservationists in the past. We have not reached the apex of enlightment yet. The Forest Service states "How can the rich natural resources of the area be made permanently available? The answer is given by a single word: MANAGEMENT. Only through planned and integrated management of its varied resources can Sylvania achieve and maintain its full potential." The total lack of humility in this statement is frightening.

If management is the way to preserve the quality of Sylvania, why is there not a great clammer [sic] for people to invade other areas of the Ottawa National Forest which indeed must be superior to Sylvania after years of Forest Service management?

Your invitation in your letter for me to continue to use this area is spurious for I did not write you to maintain a private playground for my own use. I will be spending much time in Sylvania however, to photograph the violations of the unenforceable regulations set out in your 1968 plan.

In a short span of three years the U.S. Government has plotted out a plan which will profoundly alter the quality of Sylvania. I ask you Mr. Secretary to at least temporarily order a halt to this program until further review of this area can be made by calling in experts who are more sensitive to the nature of this area, and have respect and understanding for the complex aspects of nature [emphasis supplied]. Such men would not be so brash as to outline a plan such as proposed by the Forest Service.

Dr. Gandt received no direct response to his request for a development moratorium and a review of the Sylvania plan by an impartial outside committee. Meanwhile, an attempt at opening up the management plan for additional public comment and discussion also had failed.

Public Hearings Requested

At the request of Martin Hanson, Secretary of the Wisconsin Resource Conservation Council, Congressman Henry S. Reuss of Milwaukee, Chairman of the Conservation and Natural Resources Subcommittee of the House Committee on Government Operations, had written to Chief Cliff on March 4, 1969, making the following request:

> [I]t would be appreciated if you would advise us when and where you plan to schedule possible hearings at which persons and groups interested in this area may have an opportunity to present their views on the proposed management and development plan for the Sylvania Recreation Area.

As Congressman Reuss reported to Martin Hanson on April 22,

> In response to my inquiry as to when the Forest Service plans to schedule a hearing on the proposed management plan for the Sylvania Recreation Area in Ottawa National Forest, . . . we have received a letter from the Deputy Chief of the Forest Service advising us as follows:
>
> "No public hearings are proposed; however, any persons interested in the management of this area are always welcome to make their views known to the Supervisor of the Ottawa National Forest at Ironwood, Michigan."

Wilderness enthusiasts in Wisconsin still did not give up the hope that public hearings on the management plan would be held, according to a letter to Congressman Reuss from Dr. B. C. Prentice, dated May 14, 1969, in which Dr. Prentice stated: ". . . Certainly the Forest Service reply indicates that they have no intention of having a hearing, but perhaps Secretary Hardin can change this!"

Hiring of C. H. Stoddard as Consultant Suggested

Trying still another tack, Martin Hanson suggested to Regional Forester George James that the Forest Service hire a well-known professional conservationist and Wisconsin resident, Charles H. Stoddard, on a part-time basis to help the agency with its Sylvania planning. Pleading a "bleak" financial situation and a lack of budget flexibility, the Regional Forester's response to Hanson on May 27, 1969, was less than encouraging.[5]

---

[5]Stoddard, a former Director of the federal Bureau of Land Management, made his position on the Sylvania management plan a matter of record on July 1, 1969, when he sent the following letter to Chief Cliff: "As you so well know, the unusual Sylvania property acquired by the Forest Service in 1966 was the result of the efforts of many active citizens and key legislators. This relict virgin forest of the Lake States stands today only because of the foresighted vision of its original owners who sought to preserve its unique qualities against the onslaught of

Dr. Gandt Tours Sylvania with Dr. Selke

The Forest Service had not given up trying to convince Dr. Gandt that its plan for Sylvania was "a good

---

logging, recreational subdivision, roads and ruination so common over the rest of the Region.

"But unfortunately, in developing a plan for management of the area, the Regional Office and the Supervisor appear to misunderstand the original idea of preserving this magnificent tract for future generations to gain an appreciation of the original virgin forest which once covered the northern Lakes Region. Instead, the Forest Service plan of management falls into the same old multiple use trap, which would soon make the area little different from others around it. Plans and projects for logging, a road system, campgrounds and tourist facilities are partly underway. A timber sale has been announced, new roads are being built, an extensive building has begun.

"Apparently, the local Forest Service officials have prepared a developmental plan prematurely and without mature consideration of the high intrinsic qualities of Sylvania. The decision of this organization's membership clearly point to the need for reconsideration of present headlong construction programs. For example, timber sales have been advertised and a set of garish facilities constructed which we feel are simply an opening wedge to commercialized degradation of this exceptional natural area.

"Our reason for writing this letter to you is to urge your intervention at this incipient stage for reconsideration and review of these plans which your local officials have prepared. Revision would identify superb virgin tracts, local visitor facilities and roads outside Sylvania and discourage the kind of development which can only lead to degradation of the area. Public hearings should be held on any plans before further implementations [emphasis supplied].

"If this is not possible or within your province, then we shall urge upon our interested legislators that they seek the good offices of the Secretary of Agriculture to establish a new Selke-type committee such as became necessary in the Boundary Waters Canoe Area controversy [emphasis supplied]. You will note that many of the same issues were present in the BWCA as those we now face in Sylvania.

"To avoid this extreme action, we would urge you to intervene personally in an effort to obtain a revision

plan." Employing the "V.I.P." show-me tour technique, Forest Service officers escorted Dr. Gandt and an associate, Robert S. Estabrook, through the Sylvania Recreation Area on June 21, 1969. Accompanying the two citizen conservationists were the new Forest Supervisor, Ralph Kizer; Assistant Forest Supervisor Pat Sheehan; District Ranger Marsh Lefler; and Dr. George Selke, former Minnesota Conservation Commissioner and Chairman of the Secretary of Agriculture's Boundary Waters Canoe Area Review Committee.[6]

Correspondence leading up to this tour indicated the agency's desire to win over the Green Bay dentist to the agency's point of view. On April 30 George James suggested the trip to Dr. Gandt, noting:

> Somewhere along the line there have been deep misunderstandings developed regarding the role for the Sylvania tract. Much imagination, time and effort was put into this particular project by many, many people, involving many, many interests. I might say it was not an easy job considering some of the limitations which existed at that time.
>
> I am sure that if there is an opportunity for a constructive dialog between people much of the emotion and misunderstanding will be cleared up.

---

of the present plan so that the great natural qualities of Sylvania can be preserved from overuse of multiple use."

[6] Dr. Selke also headed the Secretary's Magruder Corridor Review Committee, which investigated the adequacy of Forest Service multiple-use planning for a 173,000-acre area of northcentral Idaho within the Bitterroot National Forest in 1966-67; Ralph Kizer served as staff assistant to Dr. Selke during this investigation and drafted the committee's report.

And on May 2, Supervisor Kizer, writing to Dr. Gandt, added:

> There seems to be a lot of misunderstanding about what is planned for Sylvania. We have tried very hard to generate thorough and correct public understanding, but still, through various means, our intentions are interpreted by others to mean something quite different than they actually are. I hope the Management Plan sent you by Mr. James will answer many of your questions. I am prepared to discuss it with you at any time. Marsh Lefler, the District Ranger at Watersmeet, Michigan, can also speak with authority about Sylvania and the plan. I think you will find that developments which are either in or planned are designed to protect the wild quality features for which Sylvania is noted; namely, the pure and serene lakes and the virgin forests that surround them.

That the Forest officers failed to convince Dr. Gandt that all was well with Sylvania can be seen in Gandt's post-trip (June 28, 1969) report to Secretary Hardin; note the reiteration of the request for a development moratorium and the appointment of a review committee:

> . . . My tour last week was stimulating, to the extent of shocking. Sylvania is in metamorphosis from pristine wilderness to another trampled tract of common forestland.
>
> Perhaps, in Washington, you are not aware of the small and delicate nature of this tract. The entire area can be crossed from east to west, and then from north to south by foot easily, in one day! And this is our single largest publicly owned tract east of the Mississippi which we have left to preserve in a wilderness quality.
>
> In spite of the susceptability of this tract to overuse, the Forest Service is alluring the public in hordes [sic] by providing a free-way type road (wide shoulders) cutting its way into the northern portion

of Sylvania, as though hiking and snowshoeing do not exist. This highway leads to boat launching ramps on Clark and Crooked lakes, the two largest lakes on the tract. These lakes, in turn, extend well into the interior of Sylvania even penetrating to its heart. The use of motors is permitted on Crooked Lake even though the official Forest Service Management Plan states on page 6: "Such use will not be encouraged . . ." Do you think building a launching ramp, providing a huge parking lot, and connecting this with a wide highway carries out the Management Plan? I do not! And it does not. How many other aspects of the Management Plan will be twisted to best serve exploitation of Sylvania? The Forest Service says these landings are necessary because of local commitments. If the Forest Service cannot persevere in the face of local pressures to protect that which belongs to all Americans, it should forfeit its guardianship. This is an example of a term I have heard in many circles lately: "Mob rule in America." Those who do not have the intellectual means of recognizing beauty (the local pressures-mostly economic) should not be allowed to destroy it.

This highway, now almost completed, will also lead to a parking lot so that boats can be brought into Long and Snap Jack Lakes. During the tour, we parked a quarter mile from the lake and walked, past a Pepsi can, a Fritos bag and a Dutch Master box, to Snap Jack. When I looked at this clear 20 or 30 acre lake, I could not imagine building a road for access! Even infrequent hikers could overuse such a lake.

However disappointed with the above, my heart really sank when I was escorted to the intensive use area on the north end of Clark Lake. On a fine overlook there is arising, in a style I call Contemporary Coney Island, a huge bathhouse, concession stand, and administration building. Down the hill from this building, visible through the White Birch, is a sand beach. On June 21, not a single person was swimming or using this beach simply because it would be unimaginable in such cold weather. There were a few canoes zig-zagging near the launching area, and another canoe chasing a Loon, but no bathers. Yet for half a dozen or less weekends of the year this part of Sylvania is being sacrificed (even the Forest Service admits this). The roots of the White Birch will not tolorate crowds of people, and will die. There are numerous adjacent areas in the Ottawa Forest to provide this type of

recreation, and it is particularly painful to know that my taxes are paying for this blunder. This is an Edsel, Mr. Secretary, and every cent further sunk into this area is wasted.

At this point I could no longer be shocked when I was told that at the gateway of this highway-motorboat-snowmobile system to the heart of Sylvania, on U.S.2, private interests are setting up a canoe and camping supply rental business to bring in some more highway trade. This business would have little patronage if customers had to walk into Sylvania. I am sure you can see that Sylvania is in jeopardy.

I have written you previously asking that you halt the Management Plan in effect in Sylvania. You are not obligated to do what I wish, but you have an obligation to give explanations and answer questions of the constituency which you serve. As far as I can determine, you have the ultimate responsibility in Sylvania, and I am asking you why you are allowing it to be destroyed? You were not in office during acquisition, so you have the necessary freedom to take the steps necessary to preserve this tract.

I had given you the courtesy of withholding further comment until I finished my tour. I gave your Forest Service an opportunity to be heard. You have, however, placed me in a similar bargaining position that the North Vietnamese have placed Ambassador Lodge in Paris, and that is, while we talk the destruction continues. Therefore, in a spirit of fairness, I am asking you to stop the present development of Sylvania until the Management Plan can be reviewed.

In order to review this plan impartially, I ask you to call on some of the distinguished talent from our Universities. There should be an ecologist on this Board, as well as representatives of several of the disciplines in biology. There could be a social anthropologist to help us understand the value of wilderness in our society. Perhaps a poet could be included.

Secondly, I am asking you to recommend to the President, that his budget includes an appropriation to purchase Sylvania, and that the original purchase sum, with interest, be repaid to the Land and Water Conservation Fund. This would remove a technical obstacle to the full wilderness preservation of Sylvania. I am sure that the intent of P.L. 88-578 was not to destroy a tiny wilderness area.

> If you call such a moratorium, I will cooperate to the best of my ability with your Department in formulating a new plan (I do have an alternate plan, and I know many other alternate plans may exist, none of which mean anything while the destruction continues).
>
> Since Sylvania does not have long to live, at the present pace of development, and in an attempt to equalize my bargaining position, I am going to carry on with my original plan of opposition, which I had suspended out of courtesy. Ambassador Lodge is not as fortunate as I! I have commissioned an artist to depict Smokey the Bear as a vandal, and I shall use this symbol in newspapers and magazines to draw attention to my campaign. I don't know why American youth should be spoon fed the altruistic symbol of the Forest Service which in truth is destroying part of our American Heritage.

For a time after this June 28 pronouncement, Dr. Gandt felt that the Washington office of the Forest Service and the Secretary's office had broken off communications with him. All he received from these offices until August 8, 1969, was an urgent "registered--return receipt" letter from the Director of the Cooperative Forest Fire Prevention Campaign, dated July 11, warning Dr. Gandt that:

> By agreement with the Attorney General's Office, we move fast to inform apparent violators about the provisions of the law [protecting Smokey Bear from unauthorized use] and seek their cooperation in abating any mis-use of Smokey Bear without the cost and embarrassment of criminal action. If we don't do any good, we report to the Department of Justice and they take over. . . .

A month after mailing his June 28 letter, not having received a response from the Secretary, Dr. Gandt wrote to Senators Nelson and Proxmire and to his Congressman, John W. Byrnes, asking them if they could intercede

at the Secretary's office on his behalf and make an appointment for him to see Secretary Hardin personally.

Finally, on August 8, 1969, a three-page letter responding to Dr. Gandt's June 28 message was mailed to Gandt by M. M. Nelson, Forest Service Deputy Chief. In something of a classic re-statement of the agency's Sylvania management theme, Deputy Chief Nelson tried once again to explain what was happening in the Sylvania Recreation Area, and why:

> Secretary of Agriculture Clifford M. Hardin has asked us to thank you for your June 28 letter. We appreciate hearing your views on the development and use of the Sylvania Recreation Area.
>
> First of all, let me say that we here in Washington are very much aware of the outstanding natural features of Sylvania, and share your concern in preserving these unique characteristics for future generations. I have personally visited Sylvania on several occasions, as have other members of my staff.
>
> We feel that the Sylvania Recreation Area Management plan, published in December of 1968, incorporates a number of safeguards designed for the protection of all resources within the area. This plan also provides for adequate development to allow for public enjoyment of Sylvania without jeopardizing its unique features. We recognize that it will probably be necessary in the future to limit the number of people who may use this area, particularly the interior.
>
> You will notice in reviewing the plan that most of the proposed developments are located on the perimeter of Sylvania. An exception to this is the few water access camping sites, which have been established on nine of the Sylvania lakes. These sites have been carefully selected and established away from the shoreline, resulting in a minimum of impact on the area. The conservative capacity of these sites has been carefully restricted and will be rigidly enforced.

To insure the maintenance of water quality within Sylvania, we have established a monitoring program, aimed at heading off potential pollution problems. Water samples will be taken and analyzed at periodic intervals. We have also established speical regulations designed to maintain the high quality fishing now enjoyed in most of the Sylvania lakes.

Many of the facilities and improvements such as buildings and roads, which were constructed by the former owners, are being removed and the sites restored to a natural condition. You probably saw examples of this during your recent visit to the area. Under the approved plan of management, the Sylvania visitor in a few years will discern less of affects of man on the landscape than was the case before title to the tract was invested in the United States.

Perhaps it would be helpful to provide you with some of the background leading to the development of the Sylvania Management Plan.

Sylvania was acquired in July 1966 after more than 3 years of negotiations with the former owners. The National Forest Reservation Commission, which reviews and approves the acquisition of all lands for National Forest purposes, would not agree to this purchase without the consent of the Gogebic County Board of Supervisors. Since the County was faced with a significant loss in annual tax revenue as the result of Federal ownership, the Board was reluctant to give this approval without some assurance that the loss in tax base would be replaced by revenue from other sources.

When approval for the acquisition was granted by the Board in June of 1966, it was with the understanding that Sylvania would be managed under the principles of multiple use and sustained yield. This was also the understanding of other groups, individuals, and units of Government which supported the acquisition of Sylvania. Honorable commitments were made which we intend to keep.

The management plan itself was developed after more than 2 years of intensive field surveys and consultation with leaders in the field of conservation, education, industry, and government. In September 1968, the preliminary plan was reviewed by an ad hoc committee, assembled to make recommendations regarding management decisions for Sylvania. This committee

included representatives of the University of Michigan, Michigan State University, the Sierra Club, the National Campers and Hikers Association, the Michigan Department of Natural Resources, and others. The final plan included many of the recommendations of the ad hoc committee, as well as those of other interested groups and individuals.

In your letter, you have indicated an interest in having Sylvania administered as a wilderness area under the provisions of the Wilderness Act of 1964. This, of course, is impossible, not only because of the preacquisition commitments which preclude it, but also because of the overriding fact that much of the area with its nonconforming roads, buildings, and related facilities simply does not qualify for wilderness consideration under the criteria for wilderness established in the Act.[7]

The new county road, to which you make reference in your letter, will not only serve visitors to Sylvania but also to the many established resorts and private homes on the Thousand Island chain of lakes to the west. This road replaces old County Road No. 535, which was narrow and crooked. It should be noted that the new road has been relocated to the extreme northern perimeter of Sylvania, with portions of the old road slated for obliteration.

---

[7]Sec. 2 (c) of the Wilderness Act, P.L. 88-577: "A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

> The new boat launching area on Crooked Lake replaces a very substandard and unsafe facility which has been in existence for a number of years. Likewise, the boat launch area on Clark Lake provides access to this lake without making it necessary for the visitor to carry equipment across the picnic area to a cumbersome launching point on the swimming beach. Both of these facilities are intended to serve legitimate canoe and boat users on the Sylvania Lakes.
>
> The day use area on the north end of Clark Lake offers the only real opportunity for picnicking and swimming in Sylvania. This development, located on the northern perimeter of Sylvania, will result in minimal disturbance to those who seek the solitude and natural beauty of the interior.
>
> The camping supply outfitters, located on the north side of U.S. Route 2, will be established on private lands by a group of local businessmen. This particular enterprise will serve not only visitors to Sylvania, but also to the many other outdoor recreation areas in and around Watersmeet.
>
> It is our feeling that the approved plan of management for Sylvania makes it clear that most of the area will be so protected and managed that those visitors who want to do so will find opportunities for a truly primitive recreation experience in an undisturbed natural setting.

In similar letters sent to Senators Nelson and Proxmire and Congressman Byrnes on August 28, 1969, Dr. Gandt described M. M. Nelson's August 8 response as consisting of "irrelevant detail and unacceptable axiomatic generalities but . . . [making] no reference to my request for a moratorium." Further,

> In the above letter M. M. Nelson writes: "Honorable commitments were made which we intend to keep." On June 21, 1969, I had requested a copy of these ubiquitous commitments from Ralph Kizer, Ottawa Forest Supervisor, but I have not received a copy. No one in our group [emphasis supplied] has been able to obtain

a copy of these commitments. Yet these commitments are repeatedly referred to by the Forest Service as an obstacle in stopping the exploitation of Sylvania!

It seems unlikely to me that a Department of the U.S. Government would base important policy on unwritten secret agreements. Perhaps you would be able to obtain a copy of these commitments for me. In addition, your continued effort to obtain an answer from Secretary Hardin would be appreciated.

CHAPTER VIII

SYLVANIA: SOSAC IS ORGANIZED

President Nixon's Help Sought

With his August 28, 1969 letters to Senators Nelson and Proxmire and Congressman Byrnes, Dr. Gandt had begun to use a letterhead imprinted as follows: "SOSAC/ Save Our Sylvania ACTION Committee/961 West Mason Street, Green Bay, Wis. 54303/Phone (414) 432-7544." Officers listed on the letterhead were:

> Dr. Jerry Gandt, Green Bay, Wisconsin, Chairman; Robert Estabrook, Marquette, Michigan, Co-Chairman, Michigan Section; E. F. Cusick, Jr., Birmingham, Alabama, Co-Chairman, Eastern United States; Dr. Robert Matlack, Santa Cruz, California, Chairman, Western United States; Mrs. Lois Olson, Green Bay, Wisconsin, Executive Secretary; Miss Judy Polich, Madison, Wisconsin, Vice Chairman, Student Information.

A carbon copy of the August 28 letter to Congressman Byrnes was sent to "Attorney Richard Steinbrinck, SOSAC Legal Counselor, 220 N. Madison, Green Bay, Wis."

Organized by Dr. Gandt in July of 1969,[1] SOSAC's first official public act was to send a telegram to

---

[1] Gandt v. Hardin (W.D. Mich. 1969) (Civil Docket No. 1334) Transcript of Proceedings, Dec. 9-10, 1969, p. 10.

President Richard M. Nixon. SOSAC urged the President to take action to halt further development of the Sylvania Recreation Area. The telegram was sent, and a statement describing the telegram was released to the press, on August 17, 1969. The text of the telegram to the President follows:

> I am sending this urgent telegram to you in regard to your concept of the silent majority.
>
> Today I re-inspected the Sylvania Wilderness Tract of the Ottowa [sic] National Forest in Michigan, and the destruction of this area by the Forest Service is in full progress.
>
> Since February, before the destruction was underway, I have attempted to establish a communication with Secretary of Agriculture Clifford H. Hardin, in regard to Sylvania, without success.
>
> I have asked only that a moritorium be called on the Management Plan of Sylvania until it could be reviewed by a board of distinguished men drawn from our Universities. I am not advocating any plan of my own to Secretary Hardin, I am only asking for a reasonable review. I asked Secretary Hardin to establish a review board perhaps consisting of an ecologist, a social anthropologist, representatives of certain disciplines in biology, and a poet. For this board I am suggesting distinguished, knowledgeable, and sensitive people of the caliber of: Rene Dubos of Rockefeller University, Lional Walford of Fish and Wildlife Service, Garrett Hardin of American Museum of Natural History, and Paul Sears of Yale.
>
> I have received no answer to these requests. I have written Representative John Byrnes, Senator William Proxmire, and Senator Gaylord Nelson who have assured me I would receive an answer yet Secretary Hardin remains as silent as Sylvania was before the Bulldozers arrived.
>
> If a citizen of our country cannot establish a dialogue with his government officials, then I am

> concerned that your "silent majority" will soon erode into a "silent minority." I ask your urgent support to arrive at a reasonable solution to the problem of Sylvania.

The press release, issued by Owen Phelps, "Director, SOSAC Public Information, 314 S. 6th Street, West DePere, Wisconsin," described the contents of the telegram and then continued:

> "I have never been involved in any action of this kind before," Dr. Gandt has said, referring to his committee's efforts to save Sylvania. "But after repeatedly being ignored by the Department of Agriculture, I feel we must act."
>
> A spokesman for SOSAC also indicated that the response to the committee's campaign is "overwhelming." "We have received more letters than we are really prepared to handle and without exception they are sympathetic to our cause. We expect there will soon be a deluge of mail from upset, concerned citizens."

SOSAC's telegram and follow-up letters to President Nixon were answered by none other than Forest Service Deputy Chief M. M. Nelson. His brief September 11, 1969 acknowledgment said, in effect, that SOSAC's complaints to the President had been sent back down the line to the Regional Forester and the Forest Supervisor:

> President Nixon has asked us to respond to your letters of August 26 and August 29 which followup your telegram of August 17.
>
> Since we sent our letter of September 4, we learned that you wrote Regional Forester James at Milwaukee reporting on two trips you made into Sylvania. Mr. James tells us that he will contact you after he receives a response to your report from Ralph Kizer, Supervisor of the Ottawa National Forest. We also learned that Mr. Kizer visited you in Green Bay September 8.

> We hope you find Mr. James and Mr. Kizer to be helpful to you in interpreting how and why Sylvania came into the Ottawa National Forest and the role to which it is committed.

SOSAC had tried to get the attention of the top man in the Executive Branch and had failed. As far as citizen input regarding Sylvania was concerned, all roads led to the desk of M. M. Nelson. To Jerry Gandt, "administrative remedies" in this case must have seemed non-existent.

SOSAC Charges "Negligent Enforcement"

While waiting hopefully for President Nixon's response to their telegram, the SOSAC'ers were not inactive; on August 17 and again on August 23 teams of SOSAC members toured Sylvania to record, verbally and photographically, what they considered to be infractions of, and inappropriate implementations of, the management plan. Dr. Gandt, on August 29, 1969, wrote to Regional Forester James with this detailed account of their discoveries:

> On August 17 Mr. Owen Phelps, Save Our Sylvania Action Committee (SOSAC) director of Public Information, Mr. Dave Melin, and Mr. James Panucci, all from the Green Bay area, and myself re-inspected Muskrat [campground] and here is a report on its present condition: The boat landing is outstanding when viewed from the lake because the Forest Service has installed a dock consisting of a huge virgin pine with small cedar logs wired to it. Each scar where the branches were cut stick out like ulcers. Page 25 of the "Management Plan" signed by you states: "Boat Landings: natural usually but rocks or small logs may be placed parallel with the shore where needed to prevent

erosion and for safety." On June 21 Dr. Selke, age 84 and infirm, was able to step ashore safely, and I hardly call a log over two feet in diameter and 50 or 60 feet long a small log. At the shoreline we found a coat hanger hanging in a tree, two trees with initials boldly carved, a beer can, and a recently felled dead tree located about 50 feet from shore (On page 6 of the Management Plan, signed by you it states: "(only) dead and down material located at least 200 feet from the shoreline may be cut'). In the preliminary discussion at Watersmeet June 21 I pointed out that such rules are unenforceable but the Foresters insisted that they would be enforced. On June 21, standing on the banks of Loon Lake, I specifically asked Marsh Leflin [sic] if he had sufficient authority to enforce the rules at Sylvania or would he be required to notify other law enforcement officials. Mr. Leflin replied that he has full authority to enforce the rules.

On August 17 our party also found that at one of the campsites in Muskrat the campers had used the tent pad outline forms for firewood, and we noted the general destruction and erosion. And saddest of all, the eagle's nest is gone! Before we completed our inspection we also saw two parties using portaging wheels for their canoes. On June 21 I was assured by your Foresters that portaging wheels were absolutely forbidden because of the fragile Nature of the portaging trails.

On August 23 my wife and myself inspected Sylvania and photographed numerous examples of debris and overturned garbage. At Whitefish Lake we discovered two campers who had been there since the previous day with their tent pitched on a point approximately 100 yards north of the west portage. This is not a designated campsite. The tent was 18 feet from the water's edge, the bank was broken form their activity, cans and debris were scattered around the camp, blankets were hanging at the water's edge, and the entire camp was visible form the lake. We brought the rules of Sylvania to their attention and these two men merely laughed. I reported this violation to the Information A-frame at about 12:30 p.m.

The same day at Helen Lake, on the now worn access trail, we noticed a tall white birch was stripped of its bark. Reminiscent of midtown New York on the hottest day of the year, the smell of hot oil from the new access road drifted over the area.

Our committee has no intention of allowing the Forest Service to continue its destruction of Sylvania. Since the Secretary of Agriculture Clifford Hardin has not responded to our call for a moratorium, we have appealed to President Nixon. While we are waiting for the President's decision we expect the meager safeguards of the present Management Plan to be vigorously enforced.

We charge that the Forest Service is negligent in its enforcement and in its adherence to the present Management Plan. We are requesting you, as Regional Forester, to inform us of what you will do to insure enforcement of the Management Plan and what steps you will take to repair the damage resulting from Forest Service violations of this plan.[2]

---

[2]One month later, on Sept. 29, Regional Forester James responded to Dr. Gandt's observations and questions with this letter: ". . . The Muskrat water access campsite has been closed to camping since July 1969 to avoid disturbance of the nearby bald eagle nest. This nest, which is difficult to see from the water, is still in place and is active.

"After inspecting the boat landing at the Muskrat site, Supervisor Kizer concluded that his crews were overly ambitious in placing a log of such size at the area. However, this was the result of a sincere effort to prevent erosion rather than a violation of the development guidelines. We believe that subsequent weathering will make the landing less obtrusive.

"We do not intend to condone littering, vandalism, and the use of undesignated sites for camping in the Sylvania Area. Follow-up action was taken on the camping violation which you reported on August 23 and the camp was removed to a designated site that evening. We do appreciate your report. It is only through the interest and cooperation of dedicated users that we will ever be able to effectively enforce regulations at the area. Despite all precautions we have taken, at least eight cases of camping at undesignated sites have occurred during the past two years.

"Unfortunately, many users of our forest areas do not share the sense of responsibility that you feel for the out-of-doors. Violations continue to occur in spite of sincere attempts to prevent them. We are pleased with the performance of our crews on the ground. Even so, we

Marsh Lake Timber Sale Advertised

The next development to meet with SOSAC's disfavor--the first of two specific actions by the Forest Service which lead to the lawsuit[3]--was the advertising of the first timber sale in Sylvania. Dr. Prentice of Ashland, Wisconsin, writing to Paul Romig of the Wisconsin Natural Resources Council, on June 6, 1969, saw the "Marsh Lake Timber Sale" in this light:

---

will review all of the aspects of the job which must be done and intensify our efforts at enforcing regulations. However, we are certain that you appreciate that our people use the same mode of transportation as the visitors to the area. This involves considerable expenditures of time and effort in covering the entire 23,000 acres in Sylvania. It is obvious that violations will continue to occur from time to time. To staff and patrol the area to the intensity required to prevent any infractions of the rules would result in degradation of the very experience the users are seeking. We feel that this cannot be permitted to occur. With the completion of the new entrance building and road, we are hopeful that more valuable and far-reaching contacts may be made with visitors who are entering the area.

"We agree that recent construction activities in Sylvania have resulted in some disagreeable sights, odors, and sounds. However, there is no practical way to avoid these temporary nuisances since the use season and construction season are concurrent in this latitude. Fortunately, these will not be of a continuing nature.

"Once again, we want you to know that we appreciate your interest in, and your comments on, management of the Sylvania Area. It is apparent that if we had more interested and enlightened visitors to the area, management would be much easier. . . ."

[3]The second action was the letting of a construction contract for the "Road to Whitefish Lake."

> . . . And now the Forest Service has advertised a timber sale of 500,000 board feet in the southeast corner of the tract. This is in an area where they would ultimately like to put a road to Big Bateau Lake, in spite of their denial of this in their development plan, thus giving them road access to a lake on which, by a legal quirk, motor boats are allowed. Thus more multiple use in a virgin area surrounded by four million acres of multiple use!
>
> It becomes increasingly clear that in the management of this lone wilderness gem in the region, the Forest Service never had any intention other than to make it bear the brunt of their multiple use policy. The preparation and publishing of a management plan, the calling of a citizens advisory committee meeting, the many public relations gambits were all an elaborate (and expensive) facade behind which the Forest Service pursued their willful way to the desecration of the only available real wilderness in Wisconsin and upper Michigan.
>
> It is distressing not only to see the loss of the wilderness quality of the Sylvania Tract, but to see the total disregard for anything but the mindless pursuit of a patently bad management plan on the part of the Forest Service!!

The Forest Service, in a "fact sheet" dated July 1, 1969, countered by explaining that the Marsh Lake sale would "facilitate the maintenance of the large tree environment":

> Control will be exercised to minimize the impact on the environment. Special logging restrictions include lopping slash, seeding temporary roads. No permanent roads will be constructed.
>
> This timber sale will be administered in accordance with the approved objectives of the management plan for Sylvania which are to maintain the scenic environment. Timber management will facilitate the maintenance of the large tree environment by a vigorous forest of all age classes.
>
> The acquisition of the Sylvania Tract and the development of a management plan for this area involved

the cooperation and support of many Federal, State, County and private organizations. The U.S. Forest Service was asked by members of the Michigan Congressional Delegation to study possible acquisition of the Tract. The Michigan Conservation Commission resolved that acquisition of Sylvania by the Forest Service would best serve the public interest. Governor Romney also supported this proposition. Further encouragement for public acquisition came in formal resolutions from the Watersmeet Township Planning Commission, the Watersmeet Township Board, the Gogebic County Board of Supervisors. Local approval was conditioned, however, on equitable provisions to offset the immediate reduction in local taxes because of the property being taken off the tax roles by Government ownership.

Several groups studied Sylvania for appraisal purposes. Dr. Hugh Davis of the Forest Service, stationed at Ann Arbor, headed up early research studies of the Tract's potential. The University of Michigan's, School of Natural Resources, appointed one of their staff, Dr. Kenneth Davis, to edit a popular brochure on Sylvania which gained wide support for acquisition. On June 15, 1966, the Gogebic County Board of Supervisors voted unanimously for Forest Service acquisition of Sylvania, despite lack of formal provisions for deficit financing in lieu of tax loss. The Forest Service assured the Gogebic County Board that provisions would be made in the planning for Sylvania's development, to encourage the types of private enterprise which, while not infringing on the pristine qualities of the area, would be profitable, tax paying industries. The Forest Service agreed to build a major Visitor Information Center at Watersmeet.

The Sylvania Management Plan was developed in consultation with groups and individuals who had a knowledge of, and a keen interest in, Sylvania. When a preliminary draft of the Management Plan was developed, it was discussed openly and critically at an Ad Hoc Meeting called for that purpose. Attending this meeting were individuals representing many diverse groups. Their views were solicited and given careful consideration in the final Management Plan that now serves as a basis of operation for administering the Sylvania Recreation Area.

While the timber sale "fact sheet" was in fact principally a defense of the Sylvania management plan, a

letter sent by Forest Service Chief Ed Cliff to Senator Gaylord Nelson on June 19, 1969 at Senator Nelson's request--and forwarded by the Senator to SOSAC--did contain in detail the agency's rationale for the Marsh Lake Timber Sale:

> . . . A timber sale is planned and has been advertised for 760 cords of pulpwood and 162 thousand board feet of sawtimber on 127 acres in the southeast corner of the Sylvania tract. Bids are to be opened today, June 19. The proposed sale is in accordance with the Management Plan for the area, a copy of which you received in March 1969. As we have pointed out before, it is in accord also with commitments made concerning use, development, and management of the tract between the Forest Service and Township and County officials and State and National legislators for the State of Michigan prior to Forest Service acquisition of the tract.
>
> Most important, the sale involves timber to be cut for salvage and sanitation purposes--to improve the vigor and appearance of the timber stand, to salvage overmature and defective trees, and to remove trees that because of their size and condition constitute a potential hazard to the users of the area, all of which will enhance the aesthetic quality of the timber stand and the area. This is a heavy stand of timber with a basal area of 127 square feet per acre. Only 30 square feet of the basal area will be removed, leaving 97 square feet per acre mostly in large sawtimber.
>
> Another benefit from the sale will be to the deer herd there. Tops will be lopped providing a supplemental source of browse during the critical winter season.
>
> No permanent roads are to be constructed to harvest the timber in the sale. Access to the timber will be from a permanent road outside the tract along an old woods road which will be improved for temporary use in removing the timber. Only winter travel will be permitted--the timber will be cut, skidded, and hauled during the winter when snow is on the ground. Skidding will be short logs only. Thus, disturbance of the site will be held to a minimum. . . .

Regional Forester George James informed some key Michigan conservationists of the impending Sylvania timber sale prior to general public announcement of the sale. Those with whom he visited personally to explain this implementation of the timber management phase of the Sylvania management plan included Miss Genevieve Gillette of Ann Arbor, President of the Michigan Parks Association, and Dr. Ross Tocher, Professor of Outdoor Recreation, School of Natural Resources, University of Michigan, Ann Arbor. Both Miss Gillette and Dr. Tocher indicated at this time their approval of wintertime over-the-snow selective logging on the periphery of Sylvania, as proposed in the Marsh Lake timber sale.[4]

The Kimberly Clark Corporation of Marenisco, Michigan was the successful bidder on the Marsh Lake sale. The logging, under the terms of Timber Sale Contract No. 07-966, dated October 9, 1969, was scheduled to be done over two winters: between December 1, 1969 and March 15, 1970 and between December 1, 1970 and March 31, 1971.

Position Papers Issued by Both Sides

The SOSAC-Forest Service conflict, as of the first week of September, 1969, had reached the stage where both

---

[4]Miss Genevieve Gillette, private interview, Ann Arbor, Mich., Oct. 19, 1970.

parties were resorting to position papers to attempt to clarify the issues for confused observers. On September 6, SOSAC issued a so-called "White Paper on Sylvania" containing the following charges:

> In 1968, M. W. Kageorge, then the Ottowa [sic] Forest Supervisor, and George S. James, Regional Forest Supervisor [sic], co-signed the present management plan. According to this plan, the Forest Service anticipates, and is providing facilities for, 800,000 visitors annually[5] to this 29 mile square area, which is only two-thirds the size of the city of Green Bay, and can be walked, both its length and its breadth, easily in one day. Following this plan, the Forest Service is constructing wide roads to the two largest lakes on the tract, Clark and Crooked, and whose southern tips lie right in the very center of Sylvania. A visitor will then be able to launch his motor yacht and within minutes power and stink his way to the heart of this virgin forest. If it is winter, a snowmobile can as readily and as noisily penitrate [sic] the interior of Sylvania. In the face of this, the Forest Service maintains that access is being provided only to the periphery of Sylvania, when in fact The Forest Service has established motorized access, taking only minutes, to the heart. Sitting on both sides of the fence, the Forest Service states on page 6 of their management plan: "Motor-driven craft may be operated . . . on the following lake(s) . . . Crooked . . . Such use will not be encouraged . . .", but they have built a concrete ramp and a huge parking lot on Crooked Lake.
>
> On the north end of Clark Lake, a building has been erected, which, according to a SOSAC architectural consultant who is preparing a formal statement, is unesthetic in wilderness. It contains glassed offices, aluminum concession windows flanked by bathroom-like fixtures, notched beams resembling suburbon pop art, a bathhouse, usable less than 8 weeks per year, and related facilities. This is the intensive use area of

---

[5]Figure apparently based on 1964 study, not 1968 management plan which does not stipulate an annual visitation goal.

> Sylvania, which is far from the periphery as stated by the Forest Service, since this area serves Long, Helen, Snapjack and Clark Lakes. Another huge parking lot and boat ramp on Clark will boats of all types without motors, even sailboats to easily penitrate [sic] the interior. Taxpayers are supplying $785,000.00 for this area.
>
> $100,000.00 has been allocated for development of wilderness campsites throughout Sylvania. . . . Logging operations are scheduled for the future.
>
> On May 21, 1967, the Milwaukee Journal quoted co-signer Kageorge as follows: "What we are trying to do is determine exactly what we have within the tract. It is a big job, but it has to be done if we are to obtain our ultimate goal: To make the tract available as a recreation area to a maximum number of people WHILE RETAINING ITS BASIC POSTURE AS A VIRGIN WILDERNESS". SOSAC believes that the American people have been betrayed by the Forest Service. The Management Plan finally signed by Kageorge neither preserves Sylvania's basic posture, nor is it enforceable. It is an utter failure!

Distributed with the "white paper" was a statement entitled "Present Action of SOSAC" which included these stipulations:

> . . . SOSAC has suggested no specific management plan of its own, maintaining that discussions of alternate plans are useless while the destruction continues.
>
> In the meantime, SOSAC is researching this problem on several fronts:
>
> 1) Legal - Through our legal consultants, <u>we are attempting to establish a sound basis for court action</u> [emphasis supplied].
>
> 2) Economics - Through our finacial co-chairman we are researching the true economic value of unspoiled wilderness to the people of Gogebic County, Mich. We believe their leaders were short-sighted in advocating that this area be turned into ordinary trampled woodland.

3) Conservation - We are alerting organized Conservation groups concerning the rapid deterioration of Sylvania. We are particularly concerned with its Eagle population.

4) Ecology - We are establishing a basis to measure the ecologic stability of this tract. We will document and hold the Forest Service responsible for ecological changes.

5) Defensive - As long as the present management plan is in force, we will insist, in court if necessary [emphasis supplied], on its strict compliance by the Forest Service to its meager safeguards.

)Public Information - M. M. Nelson, Deputy Chief of the Forest Service, stated in a letter to SOSAC that the present management plan cannot be changed because of "preacgquisition commitments". Other officers of the Forest Service have brought up these "commitments" However, to this date, no member of our committee has been allowed to see a copy of these commitments. SOSAC does not believe that important policies should be determined by secret agreements made orally by U.S. government Departments. SOSAC will continue to attempt to find out what these commitments are, by use of the Freedom of Information Act, if necessary.

SOSAC has proposed no alternate management plans to this date. We are ready to offer alternatives, however, at the proper time. We believe our plan would: 1) Retain the wilderness quality of Sylvania, 2) Allow public access and 3) Economically help the surrounding area more than the present plan.

On September 8, Ottawa Forest Supervisor Ralph D. Kizer gave the Forest Service's rebuttal to SOSAC's allegations by means of a speech to the Vilas County (Wisconsin) Chamber of Commerce at Phelps, Wisconsin. This speech, entitled "Sylvania the Way It Is," was reprinted and widely distributed. In his remarks, Supervisor Kizer explained that Sylvania was not a pristine wilderness,

that the Forest Service had thoroughly revised its early plan to intensively develop the area and now planned only peripheral developments, and that the agency was obligated to live up to certain development commitments it had made to the local people. Referring to SOSAC, Kizer then stated (emphasis in the original):

> During recent months, some individuals and groups have expressed concern that Sylvania is being overdeveloped. This action, they say, will surely lead to the ultimate destruction of the things that make Sylvania unique.
>
> We don't think these people want Sylvania "locked up" so nobody can enter. But they do think that the Forest Service should do little or nothing to encourage visitors to the area--or to take care of them--or to regulate their activities--after they are there. The contention is that those seeking the solitude and uniqueness of Sylvania can and will use the area and take care of it without the developments proposed by the Forest Service. In their view, such things as campgrounds, boat ramps, toilets, and swimming beaches are not necessary or desirable--not even on the periphery of the area. Likewise, they feel that the harvest of any timber is both unwarranted and destructive.
>
> We are in complete agreement with the thinking that those values which make Sylvania unique should be preserved. We do feel, however, that public use of Sylvania's resources is compatible with the preservation of its unusual values, provided adequate precautions are taken. . . .

After describing in some detail the administrative zoning and other procedures being implemented in Sylvania to protect the area's natural values, Kizer concluded:

> What more can we do to protect Sylvania? I am personally committed--as are my bosses and my subordinates--to the proposition that Sylvania and Sylvania's

> visitors will be managed in such a way that the extremely high quality of the areas's resources will not deteriorate. The Forest Service from the outset has always said this--we are still saying it--and we will continue to say it. The Sylvania Recreation Area Management Plan is based on this precept. We hope as many people as may want to will come to Sylvania. If the time comes that more people want in than the area can stand, we'll just have to turn them away.

While Supervisor Kizer's September 8 prepared remarks were relatively conciliatory in tone--in fact, SOSAC was not mentioned by name--the agency's information officers at its National Forest and Regional Office headquarters were more specific in their follow-up press releases. A four-page release distributed by the Ironwood, Michigan forest headquarters dated September 6 but "for release September 9" went right to the heart of the issue:

> "Sylvania is not being destroyed through overdevelopment, "contends Ralph Kizer, Forest Supervisor of Upper Michigan's Ottawa National Forest.
>
> Speaking at a meeting of the Vilas County (Wisconsin) Chamber of Commerce on Monday evening, Kizer described the Forest Service management plan for Sylvania as one which "allows for public use of Sylvania's resources while at the same time preserving its unique characteristics."
>
> Kizer pointed out that in recent months, a small number of individuals and groups have expressed dissatisfaction with Forest Service goals for Sylvania. One such group from the Green Bay area, known as the "Save Our Sylvania Action Committee," (SOSAC), has undertaken a nationwide campaign to halt further developments in Sylvania pending a review of the Forest Service management plan by a panel of interested citizens.
>
> Although it is not the stated purpose of SOSAC that Sylvania be "locked up", the group would like to see little or nothing done to encourage visitors to the area.

> They would like to see Sylvania made a part of the Wilderness Preservation System, which would in effect rule out the development of any permanent types of facilities such as camping sites, boat ramps, picnic areas or toilets.
>
> Kizer contends that placing Sylvania in this category would be contrary to the stated intentions of the Forest Service when Sylvania was acquired in 1966. At that time, the numerous individuals, organizations, and units of Government which supported Forest Service acquisition of Sylvania did so with the understanding that Sylvania's resource would be available for public use and enjoyment. . . .
>
> SOSAC has been critical of Forest Service development plans for Sylvania, contending that the area would be turned into a contemporary Coney Island. They fear that the proposed developments would attract a large number of visitors to the area, resulting in the ultimate destruction of Sylvania's unique features.
>
> "We share the sincere concern of SOSAC in preserving the values which make Sylvania unique," Kizer stated. "However, we do not agree with the contention that Sylvania is being over-developed." . . .

Backing up its field office and its Forest Supervisor, the Milwaukee Regional Office distributed to the press this rather testy statement for "immediate release" on November 3:

> "We don't intend to renege on agreements made with Michigan officials leading to the purchase of Sylvania in spite of vociferous efforts to the contrary" - according to George S. James, Regional Forester for the Forest Service in Milwaukee.
>
> SOSAC - a Green Bay based preservation group is marshalling pressure to abandon the development plan made for the tract. James said "this plan is a culmination of discussions and commitments, research and detailed studies of water quality, soils, flora and fauna with many Michigan and Wisconsin people, educational institutions and government at local, State and National levels."

James pointed out that "until Gogebic County of Michigan gave its approval, the tract could not and would not have been purchased and included in the Ottawa National Forest. This was an original requirement by Federal law. Gogebic County wanted full development for summer and winter public recreation, including water activities, logging, hunting and fishing. Forest Service people, and certain members of the Michigan Congressional delegation agreed that the tract would be developed for use and enjoyment by the American Public." James emphasized that "these agreements were honorable and made between honorable people and we in the Forest Service don't intend to renege on them."

According to the Forest Service spokesman, "the Sylvania management plan calls for less development in the interior than that which was discussed initially with Gogebic County officials. Ultimately, agreement was reached for a minimum of construction in the interior concentrating the major effort on the periphery and in adjacent National Forest areas in Michigan."

James says, "with the occasional furor associated with Sylvania it would be well to recall for the information of everyone the facts considered in order for this beautiful and inspiring 18,000-acre area of lakes and forests to be available for public use and enjoyment."

Rising to the defense of the Forest Service, editors of several newspapers in the region[6] suggested to their readers that, for example, "Sylvania is not a wilderness area, as the committee [SOSAC] apparently thinks it is"[7] and that "[S]everely limited pro-conservation energy can be better expended than in trying to secure a

---

[6]After having been contacted by telephone from Ironwood by Supervisor Kizer's staff. Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1971.

[7]Editorial, Mining Journal, Marquette, Mich., Aug. 13, 1969.

more 'purist' conservation of Sylvania than the forest service feels it can honorably adopt."[8]

SOSAC, of course, was not the only citizen conservation group in the region concerned with what was going on at Sylvania. During September and October of 1969, SOSAC won resolutions of support for its no-development position from both the Brown County (Wisconsin) Chapter of the Izaak Walton League of America[9] and from the Wisconsin Resource Conservation Council, to whom a SOSAC representative, at the Council's September 13 fall conference in Manitowoc, had made this statement (excerpted):

> The conservation gap . . . is the reason that the Forest Service is unable to retain "the basic posture of virgin wilderness", as promised on May 21, 1967 by Michael Kageorge, co-signer of the present management plan. Thus a myoptic [sic] management plan was assembled from ancient patches of multiple use concepts threaded together with mechanized access. Out of this has arisen the Forest Service periphery myth. . . . [A] typical letter from the Forest Service rebutting SOSAC charges . . . states that access is being developed only to the periphery of Sylvania. This map shows how motorized access crisscrosses Sylvania. . . . One of the roads on this map is on the official development plan, but is missing from the map the Forest Service gives to the public.

---

[8]Editorial, Chicago Tribune, Sept. 15, 1969. See also, "Forester Says Sylvania Tract Not Being Over-Developed," Duluth News-Tribune, Duluth, Minn., Sept. 9, 1969, and "Sylvania Recreation" (editorial), Escanaba Daily Press, Escanaba, Mich., Sept. 15, 1969.

[9]Dr. Gandt is a member of the board of directors of this IWLA chapter.

> Our second obstacle, the preacquisition commitment, is a secret agreement which the Department of Agriculture refuses to reveal to SOSAC. The Forest Service says it was a commitment made to preserve Sylvania, that is, a commitment to destroy Sylvania was made to preserve it! When government policy is decided in secret, we have a right to ask why. Did this commitment involve any exchange of tangible assets? Did it involve promotion within the Forest Service?
>
> SOSAC is challenging organized conservation to search out and to report to the public exactly what the price was for this commitment which is resulting in a priceless loss of a wilderness.

Michigan Conservation Groups Disagree with SOSAC

Some branches of "organized conservation"--principally those in the State of Michigan--did not agree with SOSAC's position or at least with its method of doing business. The Mackinac (Michigan) Chapter of the national Sierra Club and the Michigan affiliate of the National Wildlife Federation, for example, adopted different official policies or strategies on the Sylvania issue--different from each other's as well as from SOSAC's.

Early in 1969, the conservation committee chairman of the Sierra Club's Mackinac Chapter had directed this letter of inquiry to Regional Forester George James (excerpted):

> . . . It is my understanding that you have recently published the approved plan for management of the Sylvania Tract on the Ottawa National Forest. For the use of our Conservation Committee, I would appreciate receiving five copies of this document.

Do you intend to hold public hearings [emphasis supplied] to receive citizen reaction to your [1968 management] plan? We wish to be kept informed of any such development.

. . . our Conservation Committee wishes to undertake a detailed review of the plan and of Sylvania, and we hope to do this in the near future in cooperation with your office and with the staff of the Ottawa National Forest, as well as other interested citizens.

In particular, we want to evaluate Sylvania and the new plan from a regional perspective to determine, in our judgement, the desirable degree of development which should take place within the Tract itself. My own observations suggest that a considerable supply of developed recreation opportunities and potential opportunities present exists adjacent and convenient to Sylvania. As a matter of general principle, in view of the unique characteristics which justified the public ownership of Sylvania, I believe that major facility development should be located outside Sylvania in subsidiary service nodes or zones.

The unique values of Sylvania--viewed from the perspective of the entire Upper Lakes States region--suggest that careful consideration is needed to perpetuate the wildness of a substantial portion of the Tract. I am sure that this consideration has been fundamental in your planning, and look forward to reviewing the final plan in this regard.

It is my belief that in enacting the Wilderness Act in 1964 the Congress expressed its clear directive that suitable areas be brought into this one National Wilderness Preservation System for national protection and recognition. This intent surely includes wilderness resources not specifically listed for review in that Act.

The unique and wild values of portions of the Sylvania Tract may thus be fully suitable for and deserving of this high Congressional recognition and protective status. This is a central consideration which we wish to apply in our review of the present situation of Sylvania and your plan for its management. And, in fact, it is our feeling that the Forest Service itself might well initiate and undertake such a review --similar to those now in progress as directed in the Wilderness Act.

> Pending such a study of wilderness potential within Sylvania it is our feeling that activities which would jeopardize such designation should be held in abeyance. This would include timber harvest of any kind and any recreational development not consonant with the standards laid down in the Wilderness Act.
>
> We recognize that some developments are in existence and in progress, and we feel this is fully justified in the existing use areas along present highway routes and access points. Penetration of such developments into presently primitive areas, however, in advance of a thorough public review of wilderness potential would be highly objectionable. I solicit your comments in particular on this point. . . .[10]

Presumably, the Regional Office response paralleled that directed to Drs. Prentice and Gandt. On September 4, 1969, the conservation chairman of the John Muir Chapter of the Sierra Club wrote to the chairman of the Mackinac Chapter of the Club, asking, in effect, "What do we do now?":

> . . . Unfortunately, nothing seems to have worked thus far and the Forest Service is going ahead with their desecration of this beautiful area. The roadway which they are cutting through the trees appears capable of carrying six lanes of traffic.
>
> Our Executive Committee is considering what drastic courses may be open to us but, before proceeding, asked that I contact you to determine whether there has been any change in the policy of your chapter on this subject. Are we to understand Doug [Scott's] plea for active opposition, <u>even to the point of litigation</u> [emphasis supplied] as an indication that your

---

[10] Draft letter to Regional Forester James from Douglas Scott, undated.

people no longer feel compelled to treat lightly for fear of offending your congressional representatives?[11]

The immediate response to this query was made by telephone, but the Mackinac Chapter's conservation committee discussed the issue at its September 11, 1969 meeting, with these recorded results:

> Sylvania Tract. We are concerned about the timber sale in the southeast corner of the Tract, with cutting to begin December 1. We need to obtain a copy of the timber plan for Sylvania and meet with the Forest Service about their plans. Until we have had a chance to review all the background (to avoid antagonizing Congressman Ruppe or Senator Hart) we cannot formulate a specific policy. Through the Midwest Regional Committee we have asked the John Muir Chapter to work with us and check before taking unilateral action in the name of the Club. It has been agreed that development of a unified policy on Sylvania, in conjunction with the John Muir and North Star Chapters, will be on the agenda for the next Midwest Regional Conservation Committee meeting, November 8 and 9, in Milwaukee.

A "Policy on Sylvania Recreation Area" adopted by the Sierra Club's Mackinac Chapter conservation committee on November 4, 1969 stated in part:

> . . . Many features of the Forest Service's "Sylvania Recreation Area Management Plan" are good, and the Forest Service is, in general, to be commended for attempting to maintain the unique qualities of the Sylvania Tract. In particular, we support the planning for no roads in the interior of the tract, limited campsite facilities, and prohibition of motors on many of the lakes.

---

[11]Personal letter to Virginia L. Prentice, Chairman, Mackinac Chapter, Sierra Club, Ann Arbor, Mich. from Donald J. Beyer, Conservation Chairman, John Muir Chapter, Sierra Club, Madison, Wis., Sept. 4, 1969.

We are concerned, however, about a number of aspects of the plan, including, among others, the following:

1) The road presently being built inside the west boundary should not be constructed. Access to Whitefish Lake should be restricted to the means indicated on Map A of the Management Plan.

2) The use of snowmobiles in the interior of Sylvania should be prohibited to protect the wilderness character, just as motors have been prohibited on the lakes.[12] The use of motors on at least the southern half of Crooked Lake should be prohibited as soon as possible, and preferably over the whole lake.

3) Deer Island should be classified in the Botanical Zone, not the Pioneer Zone as at present.[13] In case of fire, Deer Island will be a refuge for the unique flora of the area. The camping on Deer Island which has occured should not be permitted to continue. (This is an example of the difficulty of maintaining strict controls over area use in the face of development designed to attract many visitors.)

The Sierra Club Mackinac Chapter does not demand that the entire Sylvania Tract be classified as Wilderness. However, planning for Sylvania should include a survey of areas such as those designated as Botanical and Pioneer Zones for possible designation under the Wilderness Act.

At the November 8 meeting in Milwaukee of the Sierra Club's Midwest Regional Conservation Committee, a detailed exposition of the entire Sylvania controversy

---

[12] Snowmobiles were banned in the Sylvania Recreation Area after March 1, 1970 (for the balance of that winter season) in order to protect nesting eagles and weakened deer, Supervisor Kizer announced on Feb. 14, 1970.

[13] The primitive campsite facilities on Deer Island Lake were removed in 1970 and the entire lake was placed in the Botanical Zone, according to District Ranger Marsh Lefler, personal interview, Watersmeet, Mich., July 23, 1970.

(excerpted below) was presented by North Star Chapter delegate Richard J. Thorpe of Minneapolis, based on recent field experience in Sylvania:

> . . . There is no question that the Forest Service professional foresters have made a sincere effort to prepare a plan which would develop Sylvania by making it available to large numbers of people without overuse of this unique fragment of wild country.
>
> However, there are aspects of the plan and ensuing facility construction which bear review and reconsideration before further impact could become irreversible. It is recognized that certain developmental commitments have been made by the Forest Service with local interests seeking economic improvement of the surrounding area and that, therefore, any plan involves a compromise between preservation and development. It should also be pointed out, however, that Sylvania's acquisition by the Forest Service was made possible only by the active support of the conservation and preservation-minded groups. The funds used to acquire Sylvania were Land and Water Conservation Funds--not regular multiple use appropriations.
>
> . . . The present Recreation Improvement Plan already underway appears to be designed to provide facilities for projected visitor demand rather than to manipulate visitor flow. According to the Forest Service it represents the carrying out of a commitment. Considerable criticism has already been leveled over the reconstruction of a highly scenic country road up to engineering "standards" (non-scenic), the building of large campgrounds, boat launching ramps and overnight campsites on the lakes. It is feared that heavy use will be encouraged in the developed areas with attendant damage, litter and eventually a demand for more facilities. This basic problem in the present management plan can be handled only by revisions which change its "mass use" purpose to one which makes Sylvania's wilderness attractions available to people without destroying it. Reliable area sources report that other National Forest Campgrounds in Ottawa National Forest are not used to capacity.
>
> Since considerable construction of recreational facilities has already begun with attendant disturbance there are limitations on action which may be

> taken from this point on. The problem they present is concentration of heavy use at the edge of very limited and somewhat fragile resource. The Forest Service is already experiencing severe overuse of the Boundary Waters Canoe Area in the Superior National Forest where a much more extensive network of lakes is present. . . .
>
> . . . An independent review panel made up of ecologists, representative of responsible conservation organizations, local civic leaders and recreational specialists [should be appointed to] take testimony from all concerned citizens at a series of hearings held in various locations within Michigan and neighboring states. With advisory assistance, this review panel would reappraise the situation and develop recommendations.
>
> Such a careful analysis would be meaningful only if a moratorium on all developments within Sylvania would be enacted. Attempts to obtain such a moratorium on a voluntary basis have been pursued without success. It now appears that a legal action seeking a court injunction will be initiated [emphasis supplied] by a group of citizens from various midwest states. . . .

The essence of Thorpe's recommendations: "[S]top the development and get an independent review of the problem." This concept was embodied in the "recommended policy" adopted by the Sierra Club's Midwest Regional Conservation Committee at Milwaukee, Wisconsin on November 8, 1969:

> The Sierra Club supports the concept of limited development for recreational purposes of the Sylvania Recreation Area, Ottawa National Forest, in Michigan's Upper Peninsula. Because of its previous history, Sylvania represents one of the last remnants of virgin wilderness in the Midwest, and this wilderness character must be taken into consideration in any development of the tract. It should also be pointed out that Sylvania's acquisition by the Forest Service was made possible only by the active support of the conservation and preservation-minded groups. The funds used

to acquire Sylvania were Land and Water Conservation Funds - not regular multiple use appropriations. This is not just a local issue, but has importance on a regional and national basis; Sylvania is located within weekend driving distance of approximately 25% of the nation's population.

Many features of the Forest Service's "Management Plan" for Sylvania are good. It appears from the Plan that the management policies of the Forest Service are aimed at providing a wilderness-type experience. However, the present extent and rate of development are inconsistent with the stated policy. For example, the road to Indian Lake, which was scheduled to start Fiscal Year 1971, was actually begun 20 October 1969. Furthermore, this road is not even indicated on Map A of the Plan, which shows the "Travel Influence Zones". In addition, a number of specific aspects of the plan itself are inconsistent with the overall goals of the Management Plan, for example:

1) The road presently being built to Indian Lake will destroy the character of the area, is unnecessary, and should not be constructed. Access to Whitefish Lake should be restricted to canoe access as shown on Map A of the Plan.

2) The use of snowmobiles in the interior of Sylvania should be prohibited to protect the wilderness character, just as motors have been prohibited on the lakes. The use of motors on Crooked Lake should be prohibited as soon as possible.

3) The concept of different zones should be reexamined. The zoning implies that different care and attention will be given to certain areas. The small size of Sylvania (approximately 30 sq. miles) requires that all areas receive equal attention to maintaining their quality.

All these factors indicate that the present Management Plan and its administration need review.

The Sierra Club strongly urges an immediate moratorium on present development of Sylvania Recreation Area before irreparable harm is done. We request the appointment of an independent review panel made up of ecologists, representatives of conservation organizations, local civic leaders, and recreation specialists to recommend revisions in the management plan and to provide a continuing review of Sylvania's development. This panel should seek the advice of experts and

> concerned citizens, initially through a series of hearings held in various locations in Michigan and neighboring states so that all pertinent opinions can be heard.

While the Executive Committee of the Mackinac Chapter of the Sierra Club, at its November 11, 1969 meeting, voted 6 to 1 to support the above resolution, a minority position paper was filed with the committee noting that:

> If examination of historic events indicates, as it so appears, that the Ad Hoc Citizens Advisory Committee for Sylvania did not have adequate opportunity to examine the preliminary management plan in its entirety, nor have the time to review it in order to act intelligently, then due consideration should be given to re-convening that committee.

The minority report urged that reactivation of the Ad Hoc Citizens Advisory Committee and its designation as a permanent management review committee be sought, rather than a series of hearings by an independent review panel.

While the Sierra Club's chapters in the region agreed on a policy not far removed from that of SOSAC's, but on a somewhat different approach to achieve their goal, the National Wildlife Federation's Michigan affiliate, Michigan United Conservation Clubs (MUCC), stood firmly by the side of the Forest Service throughout this controversy.

A September 22, 1969 internal memorandum from Dr. Paul A. Herbert[14] to MUCC Executive Director James L. Rouman set the tone of MUCC's response to appeals for assistance from both sides in the controversy (emphasis in the original):

> 1. Note that a "Save our Sylvania Action Committee" wants to preserve the Sylvania area and not use it for the more important forms of recreation and for multiple use.
>
> 2. We have in the western part of the U. P. the Porcupines and now I understand the McCormick Tract has been given as a gift to the Federal government with the stipulation that it be maintained as a wilderness area. These are more than ample to meet the needs of the wilderness users.
>
> 3. I am positive in my own mind that the interests of an extremely small segment of the people of the area, region, and the United States would benefit from the proposed use by the "Save Our Sylvania Action Committee."
>
> 4. Hence, to practice conservation, "the greatest good for the greatest number in the long run," the MUCC Board should by resolution, or otherwise inform the U. S. Forest Service and the Secretary of Agriculture of its support for the Service's proposed management plan for the Sylvania area.[15]

---

[14]Director of Conservation Emeritus and former Professor of Forestry, Michigan State University; also past president of both MUCC and the National Wildlife Federation.

[15]On April 12, 1970, the Michigan United Conservation Clubs Board of Directors, meeting at Grand Rapids, approved such a policy by concurring in the following resolution, adopted on March 12, 1970, in Ann Arbor, by the Michigan Natural Resources Commission:

WHEREAS, criticism of the development of the Sylvania Recreation Area, in the Upper Peninsula of Michigan

The Wisconsin Wildlife Federation joined the Michigan United Conservation Clubs in endorsing without qualification the Forest Service's Sylvania Recreation Area management program.[16]

---

by the U.S. Forest Service, has actually attained a state of near vilification and maligning of this respected service; and

WHEREAS, this criticism is based on lack of consideration of the basic plans for Sylvania that were determined at the time of the acquisition of this tract; and

WHEREAS, certain representations were made by the Forest Service to the people and political subdivisions that were immediately affected by this acquisition, thereby eliciting the approval and support of the people for the acquisition; and

WHEREAS, the plans for the development of Sylvania were most carefully conceived to fulfill these representations and to provide all possible interests and utilization within the limitation of the area; and

WHEREAS, these plans were carefully studied and approved by many of the qualified people in parks and allied administration and other professional people in the Michigan Department of Natural Resources; and

WHEREAS, in the development and execution of these plans the U.S. Forest Service has scrupulously respected the concepts embodied in these plans:

THEREFORE BE IT RESOLVED that the Commission of Natural Resources of the State of Michigan deplores the unwarranted charges made against the Forest Service and hereby expresses its confidence in the management of the Sylvania Recreation Area by the Service and further commends the Service for its excellent administration of the area.

On April 30, 1970, MUCC Executive Director Rouman sent copies of the above resolution to the entire Michigan Congressional delegation together with a letter "requesting that they disregard attempts of SOSAC to disrupt plans of the U.S. Forest Service for the development of Sylvania." Personal letter to Senator Philip A. Hart from James L. Rouman, April 30, 1970.

SOSAC's "Walk to Whitefish"

Dr. Gandt's next gambit to win publicity and support for SOSAC's campaign against development within the

---

[16]Personal letter, to James L. Rouman from William L. Reavley, Field Services Director, National Wildlife Federation, Washington, D.C., Nov. 4, 1969: "We are receiving some inquiries concerning the management of the Sylvania tract in the U.P., and of course we are being bombarded by the viewpoints closely aligned with the Sierra Club and other organizations. Our Wisconsin affiliate has gone on record in favor of the Forest Service's viewpoint of multiple use. . . ." See also, issues of News and Views, monthly newsletter of the Wisconsin Wildlife Federation, for October 1969 ("The new [Sylvania] plans are even better than the old ones and [the WWF Resources Committee] supports them wholly."), November 1969 (which includes WWF's May 3, 1969 resolution in support of the Forest Service management plan), and February 1970 (which includes a special section with map entitled "The Truth About Sylvania!"). Les Woerpel, Chairman, Natural Resources Committee, Wisconsin Wildlife Federation, in a three-page letter sent to Senators William Proxmire and Gaylord Nelson (as well as many carbon copy recipients) on Feb. 4, 1970, accused SOSAC of "nit-picking the Forest Service to death." Said Woerpel: "We look on SOSAC as interfering in the development of Sylvania according to the plans approved by the people of the area, of Wisconsin, and of the country through Congressional action to purchase under these restrictions, as interfering with the credibility of the Forest Service, and of using the Congress as a bludgeon against the Forest Service." On April 18, 1970, the Wisconsin Wildlife Federation, assembled in convention at Stevens Point, resolved:

". . . that we deplore the unwarranted charges made against the Forest Service, and hereby express our confidence in the management of the Sylvania Recreation Area by the Service and further, commend the Service for its excellent administration of the area.

"BE IT FURTHER RESOLVED, that since the apparent aim of the organizations which are interfering with the Forest Service's plan of administration for the Sylvania area is to compell the reversion of the area to a closed

Sylvania area was a kind of protest march or demonstration called "A Walk to Whitefish [Lake]." Michigan Governor William G. Milliken, Mrs. Lyndon B. Johnson, Secretary of Agriculture Clifford Hardin, Forest Service Chief Ed Cliff, and Forest Supervisor R. D. Kizer were invited, but declined to participate.[17] Some 200 others did make the

---

Wilderness Area, the Wisconsin Wildlife Federation will oppose this aim with all of the facilities at its disposal."

SOSAC's "Director of Scientific Information," Dr. Robert B. Ditton, Professor of Leisure Sciences at the University of Wisconsin at Green Bay, suggested to the author that "most other conservation groups are put off by SOSAC either because SOSAC's scientific explanations are over their heads or because they think taking the United States Forest Service to court is 'impolite'." Personal interview, Green Bay, Wis., July 21, 1970.

[17]Governor Milliken's Sept. 30 letter of regrets stated: ". . . I would like to wish you success with your planned 'walk.' It is important that we protect and preserve what few wild regions we have left in our country. . . ." In response to Dr. Gandt's Sept. 17 invitation to Secretary Hardin (". . . I am sure that a personal inspection would convince you that the quality of Sylvania is deteriorating. . . . [W]e think the Department of Agriculture should be responsive to the growing demand for a moratorium in Sylvania."), the SOSAC leader was informed by Assistant Secretary T. K. Cowden on Sept. 30 that ". . . [W]e share your concern . . . appreciate having your views . . . [and believe that] the [Sylvania] plan will accomplish most of the objectives you seek." In his Sept. 29 invitation to Chief Cliff, Dr. Gandt stated: "I can assure you that your personal inspection will convince you that the reports you have received from the Eastern Regional office are inaccurate and misleading in regards [sic] to the preservation of the wilderness quality in this tract." Mr. Cliff and M. M. Nelson responded, on Oct. 8 and Oct. 16, respectively, that they had schedule conflicts and couldn't participate in the walk. Supervisor Kizer, on Oct. 16, indicated that he had scheduled

trek, however.[18] SOSAC's October 25, 1969 press release provides a description of the event from its point of view:

> Watersmeet, Mich. - Sylvania, a 19,000 acre tract of wilderness in Upper Michigan, played host to over

---

a trip into the newly acquired McCormick property on Oct. 25. Dr. Gandt's Sept. 16 invitation to Mrs. Johnson, which apparently went unanswered, deserves reproduction here in its entirety as a summary of SOSAC's view of the Sylvania situation:

"In July 1966, the American people purchased a beautiful dream and a virgin wilderness called Sylvania, whose care they entrusted to the Forest Service. And as you traveled the length and breadth of [our] country in your fight for beauty when President Johnson held office, you came to our small wild cluttered forest and dedicated a plaque on the northern shore of Clark Lake commemorating this purchase.

"Because you were here, those of us who love Sylvania are especially concerned that you are kept informed of its rapidly deteriorating condition. No longer would you wind your way down a crooked dark road to your dedication site, now it is accessable by a bright wide highway cut through the forest. Above the plaque, on a hill, stands a bathhouse and concession stand, below it a boat ramp and parking lot, around it litter. Today gasoline powered boats, cars, and snowmobiles join the trampled scene which the Forest Service is developing for 800,000 annual visitors.

"Won't you come back to Sylvania to join us in our walk of October 25, and help us once more restore the dream that was Sylvania?"

[18]Many of them got lost in the woods for several hours, having refused the services of Forest Service guides. On the morning of the day of the walk, an ecology class from the University of Wisconsin at Green Bay led by Professor Tom Mowbray met with Deputy Forest Supervisor Pat Sheehan and other forest officers at Sylvania. While the students reportedly felt the Forest Service representatives were unresponsive and that their statements were inconsistent, the forest officers felt unable to complete their statements because of heckling and interruptions from the students. The students later participated in the "Walk to Whitefish." Richard Guth, telephone interview, Dec. 23, 1970.

200 people protesting its development by the Department of Agriculture and the Forest Service.

The occasion, "A Walk to Whitefish", was sponsored by the Save Our Sylvania Action Committee (SOSAC) to halt construction of a road through the wilderness to Whitefish Lake, one of the largest lakes in Sylvania not yet served by wide access roads.

SOSAC has encouraged further study of Forest Service development plans which are designed to convert the tract, one of only a few wilderness spots remaining East of the Mississippi, to a general recreation and logging area.

Among activities at the "walk" was the planting of a tree as part of a "Rededication of Sylvania". A rededication plaque was erected which read in part: "With the planting of this tree, we rededicate Sylvania to all Americans who love our land. Let this tree be the first suture in closing the wound torn into Sylvania by those who are exploiting it, either for monetary gain or profitless doctrinarianism"

Dr. Jerry Gandt, Chairman of SOSAC, said: "In September when this walk was announced, I had requested the Forest Service not to begin cutting this virgin timber until it could be seen by those participating. Ignoring public concern, orders to proceed cutting were given by the Forest Service on October 6, and cutting began on October 20, five days before the walk" As a result much of the walk took place among stumps and felled trees. Comparing this to a previous era of American history, Dr. Gandt declared: "This is plainly chain-saw diplomacy."

James Panucci, member of SOSAC, said: "the organization is interested in having experts from outside the government given the task of evaluating present development plans.

We think", Panucci continued, "that the possibility of short-term economic gains for the Watersmeet area weighed too heavily in the drafting of present development plans. The present plans reflect the normal, but tragic outcome when short-term economic growth runs head-on into the need to maintain the quality of our environment.

Inevitably we sacrifice the quality of our environment, and that trend must be reversed".

The Watersmeet Chamber of Commerce organized a "counter-walk", but only 5 people appeared, none of whom bothered stepping into the forest.

SOSAC achieved its objective of the "walk" to the extent that it won some favorable press and radio coverage; papers throughout the region picked up its theme, and network radio personality Arthur Godfrey congratulated SOSAC for its efforts on a nationwide broadcast.[19]

---

[19] An example of press coverage supporting SOSAC's position was this Nov. 4, 1969 editorial in the Menominee, Mich. Herald-Leader:

"The U. S. Forest Service is doing a disservice to the people by the way it is developing the Sylvania tract in Gogebic County.

"Sylvania's 19,000 acres, located on the Michigan-Wisconsin border, is one of the last true wilderness areas east of the Mississippi River. Instead of allowing Sylvania to remain a wilderness to be enjoyed by this and future generations, the Forest Service is cutting trees, building roads and putting up tourist accomodations.

"It is a shame to see such a beautiful area scarred by man.

"A valiant effort is being made by the Save Our Sylvania Action Committee (SOSAC) to stop the Forest Service. A March to the Whitefish--the last remaining wilderness lake in Sylvania--was held a week ago and it drew 200 people. The Forest Service has ignored requests from SOSAC to stop the construction of a road to Whitefish Lake. In fact, the Forest Service denied to SOSAC officials that a contract for construction of the road had been signed even after it was done.

"It is the contention of the Forest Service and also some businessmen in the Watersmeet-Sylvania area that the wilderness tract must be developed so it can be used by all people. SOSAC believes that as much of the area as possible should be left in its natural state.

"The ridiculous part of the whole thing is that in the Ottawa National Forest which covers the entire western

A Failure to Communicate

Two weeks before the "Walk to Whitefish," Dr. Gandt had been the guest of the Forest Service on a three-day trip (October 10-12) into the Boundary Waters Canoe Area, part of the Superior National Forest in northern Minnesota and a unit of the National Wilderness Preservation System. He was accompanied on this visit by both Ottawa National Forest Supervisor Kizer and Superior National Forest Supervisor Craig Rupp. Regional Forester James set the stage for this trip in his September 29 letter to Dr. Gandt:

> We are happy that you plan to visit the Boundary Waters Canoe Area. . . . The visit should be most profitable to all of us. We look forward to sharing your thoughts on the problems of management in this outstanding area.

Unfortunately, the most tangible thing to come out of the BWCA tour in October was what appears to have been

---

portion of the Upper Peninsula, there are hundreds and hundreds of campsites and lakes which are accessible by car. We don't really need to ruin the scenic, wild beauty of Sylvania.

"In opposing the action of the federal government, the Wisconsin Izzak Walton League said in a resolution last week: '. . . since it is the people and not the United States Forest Service who owns this land, the United States Forest Service is urged to heed the wishes of the people to save Sylvania from the commercialization which generally follows the building of roads, cutting of trees and building of tourist accomodations.'

"The federal government would do well to consider the sad long-range effect of their program for the ruination of Sylvania's wilderness."

a bona fide misunderstanding between Messrs. Gandt and Kizer regarding the agency's plans for construction within the Sylvania area of a new, 2.2-mile segment of forest highway, to be located close to Sylvania's western boundary, between Long Lake and the entrance to the half-mile portage into Whitefish Lake. Dr. Gandt returned from the BWCA trip with the mistaken impression that no contracts for right-of-way clearing or construction of this road had been let or would be in the near future. What happened apparently was this: Supervisor Kizer was asked by Dr. Gandt, while they were airborne in a noisy, three-place Forest Service plane, "When are you going to build the road to Whitefish Lake?" Kizer's response was, "I don't know; we don't have any money for it." Dr. Gandt had in mind the 2.2-mile forest highway segment which "had been in the works for a year";[20] Supervisor Kizer had in mind the quarter-mile spur off this road into the Whitefish Lake access parking area, a project now abandoned.[21] Dr. Gandt, shocked when he arrived at Sylvania for the "Walk to Whitefish" to see stumps and bulldozers, at work, cried "foul."

---

[20]Road Construction Contract No. 01-2203, Whitefish Lake Road No. 355, dated Sept. 17, 1969.

[21]Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1971.

On October 16, 1969, the following letter was mailed by Owen Phelps, associate editor of a Denmark, Wisconsin newspaper and SOSAC's Director of Public Information, to Regional Forester James:[22]

> On October 12, Dr. Jerry Gandt, Chairman of SOSAC asked Ralph Kizer, Ottawa Forest Supervisor, when the road from County 535 to Whitefish Lake would be constructed, and Mr. Kizer informed him that no date has been set, and no contracts have been let, and there were no plans to let any contracts in the near future.
>
> Today, Quincy Dadisman in the Milwaukee Sentinel states: "Two weeks ago, the forest service let an $81,900 for building 2.2 miles of road along the western periphery of Sylvania. A spur from that road will lead to a dead end parking area from which a quarter mile trail will lead to a boat launching site on Whitefish Lake."
>
> SOSAC would like an immediate statement from your office as to who is correct--the Milwaukee Sentinel or the Ottowa Forest Supervisor. If, indeed, this contract has been let, SOSAC will issue a statement deploring this "chain-saw-diplomacy", and SOSAC will publicly question the authenticity of all Forest Service Statements.
>
> If, on the other hand, this contract has not been let, please inform Mr. Dadisman at the Milwaukee Sentinel, so that a correction can be made.

Phelps' letter was followed by a similar letter to the Regional Forester from D. F. Quinn of Escanaba, Michigan, an insurance salesman and a leader of SOSAC's Michigan contingent; the letter is dated October 23:

---

[22]Copies of this letter were sent to "Quincy Dadisman, Secretary of Agriculture, Legislative Representatives, Sierra Club, Izaak Walton League, Audubon Society, SOSAC Attorneys." [Emphasis supplied]

> It has come to my attention that there has been a contract let for the road construction leading to Indian Lake in the Sylvania. This road, as you know, will penetrate the heretofore isolated area of the western periphery of the Sylvania and will make Whitefish Lake accessible to its ultimate destruction quicker than if no road or spur was provided.
>
> It has also come to my attention that there is some discrepancy between Milwaukee and Ironwood as to the fact that such a contract has or has not been let. Apparently the Forest Supervisor is unaware that such an act has been performed; in fact it is my understanding that the existence of such a contract has been denied by the Forest Supervisor and knowledge of any future move in this direction was also denied.
>
> I would sincerely appreciate hearing from you as to the exact status of this road and if the rumors are false and I would also appreciate your thoughts as to when such a road is contemplated in the future.

Decision to Sue Made as Last Resort

Eight months of intensive effort to find an "administrative remedy" for Dr. Gandt's complaint had yielded, as he saw it, no results. New buildings and recreational facilities were being constructed in Sylvania; big trees were being felled there for a new, high-standard highway and to reduce the falling-tree hazard around campsites; the Marsh Lake timber cutting was about to begin. Last-resort measures were called for; only a court order could "save" Sylvania now, he believed. And on this belief SOSAC acted. The following two letters to Dr. Gandt from the Milwaukee Regional Office--the first dated November 12, 1969; the second November 13, 1969--tell part of the story:

Information Officer Donald S. Girton first wrote as follows:

> Regional Forester James and I were happy to meet with you briefly at the recent Sierra Club Meeting in Madison.[23] Likewise, we are pleased that you will be able to meet with us here in Milwaukee on Monday morning, November 17, to discuss Sylvania. We will plan on taking whatever time is necessary to sufficiently discuss the issues. . . .
>
> We look forward to meeting with you on November 17. If we can provide you with any additional information do not hesitate to call on us.

Deputy Regional Forester Jay H. Cravens found it necessary to follow Girton's letter with another, the next day:

> The purpose of this letter is to confirm our telephone conversation of this afternoon regarding our November 17 meeting.
>
> We have just been advised that litigation involving the Sylvania Tract is now pending in the Federal Court at Grand Rapids, Michigan. The case is in the hands of the Department of Justice. Under these

---

[23] Regarding this meeting, Dr. Gandt found it advisable to send the following note to U.S. Senator Philip A. Hart of Michigan on Nov. 10: "George S. James, Regional Forester of the U.S. Forest Service, at the Fall meeting of the Wisconsin Sierra Club on November 9, 1969, read a statement which he attributed to you which stated that you opposed a movement underfoot to lock up Sylvania. Furthermore, Mr. James implied that you were referring to the Save Our Sylvania Action Committee (SOSAC). I wish to assure you that this implication is incorrect, and that the motives of SOSAC are to make this tract available to the American public, to which it belongs. I suggest that you investigate the true motives behind Mr. James' attack on our committee: namely his failure to come up with and to execute a plan which will not destroy the quality of the area."

circumstances our hands are tied procedurally and we are unable to hold the meeting as scheduled.

Thank you for your letter of November 12 to Mr. Donald S. Girton. We are very sorry that the Court action pre-empted our plans to meet with you.

When the proceedings are clarified we want very much to meet with you and discuss items of mutual interest to SOSAC and the Forest Service.

And so the die was cast: SOSAC and the Forest Service would "see each other in court." Fresh from his courtroom effort on behalf of the Forest Service in Denver,[24] U.S. Department of Justice Attorney Nelson H. Grubbe flew into Milwaukee to organize the government's defense. In contrast to his experienced approach to the situation, the SOSAC nucleus in Green Bay found itself struggling to meet an imminent court hearing deadline without any previous experience to help it take the next step in a manner most likely to obtain success. This expertise gap--plus the obvious disparity in financial resources--placed SOSAC at a disadvantage from the start.

---

[24] See Parker v. U.S., 307 F. Supp. 685 (D. Colo. 1970) (No. C-1368, Feb. 27, 1970). The case involved conservationist opposition to a Forest Service timber sale near the boundary of the Gore Range-Eagle Nest Primitive Area in the East Meadow Creek watershed of the White River National Forest, in an area which could be included in the proposed Eagle Nest Wilderness by the Congress.

CHAPTER IX

SYLVANIA: SOSAC'S COMPLAINT DISMISSED BY FEDERAL JUDGE

The complaint of SOSAC and its allies,[1] seeking a temporary restraining order and a temporary injunction "to enjoin the cutting of timber, trees, or shrubs and the clearing of trees, shrubs or bushes, the making of roads for any motorized vehicles and further to enjoin any other

---

[1]"Dr. Jerry Gandt, 961 West Mason Street, Green Bay, Wisconsin; SOSAC, Inc., 961 West Mason Street, Green Bay, Wisconsin; Dr. B. C. Prentice, 704 7th Avenue West, Ashland, Wisconsin; Michigan Audubon Society, 7000 N. Westnedge, Kalamazoo, Michigan; Robert Francis Briskie, 1009 Vaughn Avenue, Ashland, Wisconsin; Mary Alice Briskie, 1009 Vaughn Avenue, Ashland, Wisconsin; Donald L. Hurt, 1117 Downer Drive, Green Bay, Wisconsin; Jack C. London, 436 Comstock Boulevard N.E., Grand Rapids, Michigan; Wisconsin Resource Conservation Council, Box 707, Mellen, Wisconsin; Wisconsin Ecological Society, Inc., P.O. Box 514, Green Bay, Wisconsin; Donald G. Schimpff, P.O. Box 35, Powers Lake, Wisconsin; Wm. H. Magie, 3515 E. 4th Street, Duluth, Minnesota; Dr. Thomas B. Mowbray, 1003 Cornelious Drive, Green Bay, Wisconsin; Dr. Ronald Starkey, 1405 Emilie Street, Green Bay, Wisconsin; Dr. Paul E. Seger, 2201 Hillside Lane, Green Bay, Wisconsin; Dr. Michael D. Morgan, 2249 Hillside Lane, Green Bay, Wisconsin; Richard J. Thorpe, 3460 Wescott Hills Drive, St. Paul, Minnesota; Dennis L. Bryan, 3779 Cornelius Court, Green Bay, Wisconsin; Dr. Deam W. O'Brien, 1434 Marhill Road, Green Bay, Wisconsin; Robert W. Moody, 608 N. Barstow, Waukesha, Wisconsin; Dr. Robert Ditton, 1567 Deckner, Green Bay, Wisconsin; and Donald F. Quinn, P.O. Box 587, Escanaba, Michigan:" Plaintiffs, Gandt v. Hardin (W. D. Mich. 1969) (Civil Docket No. 1334) Complaint, p. 1.

similar activity which would be destructive of the wilderness character of the area popularly known as Sylvania. . ."[2] was filed by their attorneys. Fred A. Reiter and Bernard U. Roels of DePere, Wisconsin, with the United States District Court at Kalamazoo, Michigan on November 10, 1969.[3] Defendants cited in the complaint were:

> Clifford Hardin, individually and as Secretary of Agriculture of the United States; Edward P. Cliff, individually and as Chief, United States Forest Service; Ralph Kizer, individually and as Supervisor of Ottawa National Forest; Marsh Lefler, individually and as District Supervisor of Watersweet, Michigan, District of Ottawa National Forest.

The action was brought under Section 10 of the Administrative Procedure Act U.S.C., Section 701 ff, (1966), the Declaratory Judgment Act, 28 U.S.C., Section 2201, 2202, and Sections 1331, 1346 and 1361 of the Judicial Code, Title 28, U.S.C.[4]

In its complaint, the conservationist-plaintiff group described Sylvania as a wilderness area in the terms used to define "wilderness" in the federal Wilderness Act, asserted that Sylvania was "purchased primarily because of its unique and rare character as a wilderness area,"[5] and

---

[2] Ibid., pp. 1-2.

[3] Gandt v. Hardin, (W.D. Mich. 1969) (Civil Docket No. 1334) Transcript of Proceedings, Dec. 9-10, 1969, p. 252.

[4] Complaint, p. 1.

[5] Ibid., p. 6.

alleged that

> the Defendents herein named are participating in the cutting and felling of trees and timber and in the clearing of timber trees, shrubs and brush and in the installation of a road for motorized vehicles within the area hereinbefore described as "Sylvania" [and] [t]hat such activities on behalf of the Defendants, their agents, officers and employees are contrary to the intent of congress as expressed in the 1964 Wilderness Act, 16 U.S.C., Section 1131 ff and further are contrary to the intent of the U.S. Forest Service in originally purchasing the area hereinbefore described as "Sylvania" in that such activities violate the original intent in purchasing this area which was to keep it in its wilderness condition.[6]

Having reviewed the legislative and land-acquisition history of Sylvania, we can easily imagine what the reactions of George James, John Wernham, and local officials such as Watersmeet Township Supervisor Frank Basso were to the above assertion. The complaint also alleges that

> Upon information and belief, the recreational and wilderness qualities of the area hereinbefore described as "Sylvania" has not been considered by the Defendants, and that they have thereby acted without authority, unreasonably and in an arbitrary manner in violation of the multiple use-sustained yield act, 16 U.S.C., Section 528 ff., the 1964 Wilderness Act, 16 U.S.C., Section 1131 ff., and of Section 221.1 of Title 36, Chapter 11 of the Code of Federal Regulations, issued pursuant to 16 U.S.C., 551, 572, in that they have not made a reasonable or sufficient study of the recreational and wilderness qualities of the said Sylvania area and of the adverse effects of the present cutting down and felling of trees and clearing of trees, shrubs, brush and undergrowth, and of the present laying out of a road for motorized vehicles and of the sale of timber and cutting of timber pursuant to the aforesaid

---

[6] *Ibid.*, p. 6.

> Kimberly-Clark contract, upon said recreational and wilderness qualities, upon the environment, including the water resources and wild-life, of the "Sylvania." Upon information and belief, Defendants, in addition, have failed to adequately investigate alternative areas for the felling, clearance and sale of timber and have failed to adequately investigate alternative areas for the laying out and installation of roads for motorized vehicles and have failed to adequately investigate and consider alternative areas for the kind, intensity, and extent of recreational use which Defendants have proposed in their document entitled "Sylvania Recreational Area Management Plan" hereinbefore referred to and specifically submitted by Forest Supervisor, M. W. Kageorge and Regional Forester, George James. Further, upon information and belief, that Defendants have failed to make sufficient and adequate studies and long range plans of the public needs for the various legitimate uses of the Ottawa National Forest and the Sylvania area . . .[7]

"Unless this court enjoins any further cutting or felling of trees or timber and enjoins any further clearing out of trees, timber, shrubs, brush and under-growth and enjoins any further installation of the road hereinbefore mentioned" states the complaint,

> a) The wilderness character of the area "Sylvania" affected by the above described acts of the Defendants and an indeterminate area of the surrounding land will be needlessly, certainly, substantially, materially, irreparably damaged, and the right of the Plaintiffs herein and of the public to have such areas preserved as wilderness in accordance with Congressional intent will be needlessly, substantially and irreparably compromised or destroyed;
>
> b) The recreational use in and about the area hereinbefore described and subject to the acts of Defendants hereinbefore described will be needlessly, certainly, substantially, materially, and irreparably damaged;

---

[7] Ibid., pp. 6-7.

> c) Waters including ponds and lakes in the area, which already have been reduced in their purity due to the acts of Defendants alleged aforesaid, will be further polluted and adulterated needlessly, substantially, certainly, materially and irreparably damaged thereby;
>
> d) There will be created a grave danger to the environment, including wild-life and especially to the Eagle Sanctuary which is found here, and the fish, in and around the "Sylvania" area; and
>
> e) The study and implementation of long range plans for the judicious use of the various resources, including wilderness, [of] the "Sylvania" area, and the judicious weighing of the relative importance of all of the resource value thereof will be needlessly, certainly, substantially, materially, and irreparably prejudiced.[8]

In closing the complaint stipulated, as all such complaints must, that the plaintiffs (1) had exhausted all administrative remedies available to them and (2) had no adequate remedy at law.[9] Filed with the complaint was an affidavit taken under oath on November 5, 1969 in support of the motion for a temporary restraining order and a temporary injunction. This supportive statement was made by SOSAC's attorney, Fred Reiter. The plaintiff's complaint, together with a summons requiring an answer to the complaint within 60 days, was served on the federal defendants on November 12, 1969. The time allowed for the filing of an answer to the complaint was reduced to 20 days in a second summons.

---

[8] Ibid., p. 8.

[9] In other words, they were not in a position to ask for money damages.

Following submission to the court of their 11-page Complaint which initiated the litigation, the plaintiffs filed with the court a 12-page Brief in Support of Plaintiff's Complaint and Relief Requested Therein, a 29-page Brief in Support of Plaintiffs' Motion for Injunction (filed with the court on December 2), a three-page First Amendment to Complaint, and a four-page Supplemental Brief in Support of Motion for Preliminary Injunction and for Injunction (filed with the court on the day of the hearing, December 9). In these documents, SOSAC's attorneys made these arguments on the plaintiffs' behalf:

The Plaintiffs' Allegations

1. The litigants are proper parties to bring an action (they have standing to sue; there is a violation of the public interest; they have standing to represent that public interest). Leading cases cited included Flast V. Cohen, 392 U.S. 83 (1968), Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2nd Cir. 1965), cert. denied, 384 U.S. 941, and Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966).

2. The machinery exists which enables the litigants to seek judicial review (the Administrative Procedure Act, 5 U.S.C. 701 ff). Leading cases cited: Estrada v. Brown, 342 F.2d 205 (5th Cir., 1965), Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920 (2nd Cir., 1968), and Road Review League, Town of Bedford v. Boyd, 270 F. Supp. 650 (S.D.N.Y., 1967).

3. The defendants had engaged in unlawful acts (they did not follow the mandatory--not discretionary--provisions of the Multiple Use-Sustained Yield Act, 16 U.S.C. Secs. 528 et seq. which require, inter alia, that "[i]n the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas," nor did they give adequate consideration in the Sylvania management plan to the protection of the bald eagle, as plaintiffs' allege is required under the Endangered Species Act, 16 U.S.C. Section 668aa, ff.

4. The defendants were about to deprive Congress and the President of the United States of their opportunity to consider the area for specific designation as a wilderness area (under the terms of the Wilderness Act, 16 U.S.C. Section 1131), also described as usurping the Congressional prerogative in this regard.

The forest officers involved in the implementation of the Sylvania management plan, said Messers. Reiter, Roels, and Barron, were acting beyond their authority (ultra vires), abusing their administrative discretion, denying to the interested public due process (by not acting in "cooperation" with outside groups nor holding "full and proper" public hearings), acting adversely to the public interest (because of their desire to fulfill certain "commitments" to a "small band of local people"), failing to

perform required "conditions precedent" (making adequate resource base studies and judiciously weighing alternative management schemes, as required by the Multiple Use Act), and, in short, "totally destroying the wilderness character of Sylvania . . ." rather than, as the Multiple Use Act requires, implementing a plan which "best meets the needs of the American people." Anything less than immediate injunctive relief, stipulated the plaintiffs' briefs, would be "a mockery of justice."[10]

The plaintiffs' briefs included some questionable assertions (references to plans for roads reaching "deep into the heart" of Sylvania, facilities for 800,000 visitors annually [from the 1964 study, not the 1968 management plan], and the construction of "very sizable and permanent" logging roads [wrong, at least in the case of the Marsh Lake sale]). They made several points well worthy of the court's attention, however: Was the national interest sacrified to meet local commitments? Wasn't Sylvania a "de facto" wilderness area (see pages 10 and 11 of "A Brief in Support of Plaintiff's Complaint etc.")? Couldn't the Multiple Use Act's provision that "[t]he establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of this Act" be applied in this case? Did the Defendants accord the

---

[10] Brief in Support of Plaintiff's Complaint, p. 12.

Plaintiffs a reasonable opportunity to be heard with respect to the proposed development of Sylvania? The potential "waste" of Sylvania's wilderness resource was alluded to in the plaintiffs' briefs, which also noted explicitly that, with respect to on-going road construction within Sylvania, there already was an "existing road which circles the perimeter of the [Sylvania] area" and that new roads within the area probably would be used to facilitate logging as well as for recreational driving purposes. Perhaps potentially most difficult for the Forest Service to deal with (because it actually was short of both detailed base-line data on some resources and alternative-use studies)[11] was the allegation that, with respect to the 1968 management plan, it had "not made a reasonable or sufficient study of the recreational and wilderness qualities of the . . . area and of the adverse effects of the present cutting down and felling of trees . . . upon said recreational and wilderness qualities, upon the environment, including the water resources and wild-life, of the 'Sylvania'" in accordance with the terms of the Multiple Use Act.

---

[11] E.g., presently available soils data for Sylvania are too broad-brush to be of much help in making specific land-use decisions, according to Forest Supervisor Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1971. Kizer has sought unsuccessfully to have a full-time soils scientist assigned to the Ottawa Forest to remedy this deficiency.

The Defendants' Answer

Federal Attorney Nelson Grubbe filed the defendants' answer to the SOSAC group's charges in a "Memorandum of Points and Authorities in Opposition to Preliminary Injunction." In this terse, nine-page document, Attorney Grubbe attempted to dispose of the conservationists' allegations with these contentions:

1. The plaintiffs have only a general interest (not a property or economic interest) in the management of the national forests. Their interest is no different from the interest of the general public. Their interest in the conservation and preservation of the natural resources located in the national forests is not "legally protected." The plaintiffs have no standing. Cases cited: Perkins v. Lukins Steel Co., 310 U.S. 113 (1939), Jenkins v. McKeithen, 395 U.S. 411 (1969).

2. This is a suit against the United States which has not been authorized by Congress (the "sovereign immunity" hurdle). Cases cited: Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949), Dugan v. Rank, 372 U.S. 609 (1963), and Malone v. Bowdoin, 369 U.S. 643 (1962).

3. On the administrative discretion issue, the courts have often denied the plaintiffs relief when asked to substitute the court's judgment for that of the land administrator. Cases cited: Panama Canal Co. v. Grace Line Inc., 356 U.S. 309 (1958), Knight Newspapers, Inc. v. U.S., 395 F.2d 353 (C.A. 6, 1969).

4. "The plaintiffs cannot establish that there is a likelihood that they will prevail on the merits."

5. "The Wilderness Act has no application to the facts of this case."

6. The plaintiffs suffer no damage by reason of the acts of the Federal defendants.

Attorney Grubbe's conclusion was as follows:

> The plaintiffs are not the class of litigants that the courts will recognize. The acts complained of have been authorized by law. The land administrators have been granted broad discretion to manage the national forest within the policies established by Congress. The court should not second-guess these experts. The complaint should be dismissed. The federal defendants will offer evidence to show that the management plan for the Sylvania area was made in full compliance with the applicable statutes. Evidence will also be available concerning the reasonableness of the management plan. There has been no damage to the plaintiffs and there is no threat to the plaintiffs legal rights. The injunction should not issue.

The November 24 "Order To Show Cause"

Perhaps in response to the plaintiffs' original complaint which "includes . . . an implicit request for a perpetual injunction," United States District Judge W. Wallace Kent signed an order on November 24, 1969 in Kalamazoo, Michigan in the presence of attorneys for both sides, stipulating that " . . . the Plaintiffs' Motion for a Preliminary Injunction shall be set down for a hearing <u>on the merits and final disposition</u> on the 9th day of December, 1969 at 1:30 in the afternoon in the courtroom of the United States District Court for the Western District of

Michigan, Northern Division, Marquette, Michigan . . ." Attorney Barron, the plaintiffs' Kalamazoo representative and the author of the order to show cause,[12] apparently never informed his colleagues in Wisconsin that the case was to be argued on December ninth and tenth on the merits, nor did Judge Kent send Attorney Reiter a copy of the order. Reiter and his co-counsel at the hearing, H. Anthony Ruckel of Denver, Colorado, were nonplussed when advised of this fact in mid-hearing. They were prepared at that time only to argue the question of standing and were not ready to argue the merits of the case.

Preparation for the Hearing

Confusion over the purpose of the December 9-10 hearing in Marquette was only one of the problems facing the attorneys representing SOSAC and its allies.[13] They had only a few days to prepare their case; they were unfamiliar with the Sylvania area; and initially they had no one to call on for truly "expert" testimony on such vital issues as the flaws in the Sylvania management plan, the absence of "due consideration" of the impact of the

---

[12] Gandt v. Hardin (W.D. Mich.) (Civil Docket No. 1334) Transcript of Proceedings, Dec. 9-10, 1969, p. 270.

[13] "The co-plaintiffs joined out of curiosity." Dr. Robert Ditton, Assistant Professor of Leisure Sciences, University of Wisconsin at Green Bay, personal interview, Green Bay, Wis., July 21, 1970.

plan on all resources, and the possibility that implementation of the plan might result in irreparable injury to certain of those resources. The main testimony developed by SOSAC's lawyers actually was put together in Marquette the night before the hearing.[14]

It was not until the October 25 "Walk to Whitefish" that Dr. Gandt "decided to go to court to try to stop further development. Realizing he needed expert advice, he turned to specialists . . ."[15] Up to this point, SOSAC had "existed primarily as a group reported in the press;" only a handful of individuals, it "tried to exert pressure through press releases."[16] The members of SOSAC "didn't want to go to litigation, because of [the cost and the

---

[14]According to Dr. Paul Sager, limnologist, and Dr. Ron Starkey, chemist, University of Wisconsin at Green Bay faculty members, personal interview, Green Bay, Wis., July 21, 1970. Pre-trial discovery would have permitted the plaintiffs' attorneys to pinpoint specifically (1) who made the decisions regarding what developments would be included in the management plan, and (2) what scientific studies were used as the bases for these decisions. Attention then could have been focused, at the hearing, on any shortcomings in the back-up data that came to light during the pre-hearing depositions.

[15]"Wilderness Watching With Dr. Gandt," Green Bay Post Crescent Sunday Magazine, Dec. 13, 1970, p. 7.

[16]Owen Phelps, Denmark, Wis. newspaper editor, personal interview, Green Bay, Wis., July 21, 1970. SOSAC failed to achieve the social change it sought through the medium of publicity.

effort involved] but [they came to believe that] it was the only recourse left."[17] At that time (October 25, 1968), they had neither a lawyer nor any scientists among their members.[18]

As to how SOSAC obtained its legal counsel, Dr. Gandt simply called the local law firm he had done business with on other matters--Smith, Smith and Roels of DePere, Wisconsin--and asked for help. A junior member of the firm with an interest in the cause but with no previous experience in the field of environmental law, Fred A. Reiter, was given the case to handle as best he could.[19] He assisted SOSAC in becoming incorporated (only a few days before the hearing,)[20] then sought experienced co-counsel. Arrangements were made for an attorney in Kalamazoo, Michigan, Michael O'H. Barron, to represent the plaintiffs at the seat of the U.S. District Court for the Western District of Michigan. Then the possibility of "importing" an attorney who had prosecuted at least one similar case elsewhere was explored.

Attorney H. Anthony Ruckel of Denver, Colorado recently had served as one of the co-counsels for the

---

[17] Ibid.

[18] Ibid.

[19] "I got involved immediately prior to litigation. I grabbed my books and thought, 'Guess we'll have to go to federal court . . . '": Fred Reiter, personal interview, Green Bay, Wis., July 28, 1970.

[20] Dr. Robert Ditton, personal interview, Green Bay, Wis., July 21, 1970.

conservationist plaintiffs in the Parker v. U.S. timber-sale-in-potential-wilderness-area case before the U.S. District Court for the District of Colorado. An avid conservationist and a Sierra Club member, he had drafted the Parker plaintiffs' 30-page "Memorandum Brief in Opposition to Defendants' Motions to Dismiss," dated June 12, 1969. This brief, concerned primarily with the question of "standing," was made available to SOSAC's attorneys. Because of the similarity of the circumstances in the two cases and the shortness of time, 25 pages of this Parker brief were incorporated ver batim into the 29-page "Brief in Support of Plaintiffs' Motion for Injunction" submitted on behalf of "Dr. Jerry Gandt et al." on December 2, 1969, over the signature of Michael Barron. Thus, SOSAC's attorneys became aware of Mr. Ruckel's work.

Fred Reiter, with only a few days to prepare for the hearing, put pressure on Dr. Gandt for experienced assistance, feeling that the "litigants didn't understand how tough it is to win a lawsuit": "Jerry [Gandt], you promised me you'd get Ruckel!"[21] The national board of directors of the Sierra Club responded to Gandt's plea for legal aid with a supportive resolution and with funds to permit Tony Ruckel to fly to Green Bay just before the hearing to help organize the plaintiffs' hearing testimony.

---

[21]Fred Reiter, personal interview, Green Bay, Wis., July 28, 1970.

As to how SOSAC obtained its scientific "expert witnesses," Dr. Gandt simply made telephone calls to ecologists on the faculty of the nearby campus of the University of Wisconsin at Green Bay and asked for their cooperation. As plant ecologist Thomas B. Mowbray, a witness at the court hearing, put it, "[m]y involvement began when Jerry Gandt called me out of total frustration; he wanted to talk to an ecologist."[22] Leisure sciences specialist Robert B. Ditton, similarly contacted, agreed to help but was "not highly motivated then."[23] He also found himself serving as a witness for the plaintiffs. Former U.S. Bureau of Land Management Director Charles H. Stoddard of Minong, Wisconsin, long a critic of the Forest Service plan for Sylvania, agreed to serve as a witness for the plaintiffs, as did Sergej Postupalsky of Royal Oak, Michigan, Chairman of the Michigan Bald Eagle and Osprey Project sponsored by the Detroit Audubon Society.

This was the extent of the plaintiffs' preparation: Dr. Jerry Gandt, a dentist, having made some 20 trips into Sylvania since the spring of 1967, was armed with his color slides of the road construction and other recent developments there and his opinion of them. Former Federal bureau director Stoddard, on the basis of four trips into

---

[22]Tom Mowbray, personal interview, Green Bay, Wis., July 21, 1970.

[23]Bob Ditton, personal interview, Green Bay, Wis., July 21, 1970.

Sylvania, could compare the Sylvania plan to the master planning efforts made by Interior Department agencies. Tom Mowbray, Bob Ditton, and Sergej Postupalsky, with a total of four days' experience in Sylvania between them, could attempt to verbalize the concerns of an ecologist, a recreation planner, and an ornithologist with respect to the shortcomings of the Sylvania management plan.

What the plaintiffs did not have were the time and, more importantly, the money to conduct the kind of exhaustive pre-trial discovery proceedings that would have been needed to obtain the evidence as to whether or not lawful procedures, i.e., "due consideration" of all resources, had been followed by the Forest Service.[24]

Meanwhile, the federal defendants' case was being prepared through the combined efforts of the U.S. Department of Justice, the Office of General Counsel of the U.S. Department of Agriculture, and the Forest Service. Ottawa National Forest Supervisor Ralph Kizer, Ottawa National Forest Recreation Staff Officer Richard Guth, others on the professional staff at Ironwood, Michigan, and

---

[24]Cf., the extent of the discovery accomplished by the Parker v. U.S. (307 F. Supp. 685 [1969]) plaintiffs: "Good discovery defines the issues. We obtained a court order and subpoenaed the Forest Service's entire file on the [East Meadow Creek timber sale] subject. Fifteen housewives volunteered to index the Forest Service material. We took depositions from Forest Service and other witnesses for seven days prior to the court hearing.": Tony Ruckel, personal interview, Denver, Colo., Aug. 20, 1970.

their secretaries devoted three weeks to assembling data on the case for U.S. Attorney Nelson Grubbe. Kizer and Guth worked until midnight many nights to compile the appropriate information.[25] Federal attorneys Grubbe and John Milanowski, from Grand Rapids, Michigan, were determined to be prepared for any eventuality at the December hearing. The hearing itself turned out to be something of an anticlimax.

The December 9-10 Hearing in Marquette

At 1:30 p.m. on Tuesday, December 9, 1969, less than a month after the complaint in the case of Dr. Jerry Gandt, et al., v. Clifford Hardin, et al. had been filed in Kalamazoo, Mr. Fred A. Reiter of DePere, Wisconsin and Mr. H. Anthony Ruckel of Denver, Colorado, for the plaintiffs, and Mr. John Milanowski of Grand Rapids, Michigan and Mr. Nelson H. Grubbe of Washington D.C., for the defendants, found themselves in open court before the Honorable W. Wallace Kent, Chief Judge, U.S. District Court, Western District of Michigan, in the courtroom for the District's Northern Division at Marquette. Judge Kent had made it known that he had only two days (actually one-and-a-half days) in which to hear the case. This proved to be more than enough time for the plaintiffs to present all the evidence they had on the merits of their case.

---

[25] Ralph Kizer, personal interview, East Lansing, Michigan, Dec. 2, 1970.

That confusion reigned with respect to the purposes of the hearing, at least insofar as the plaintiffs' lawyers were concerned, is evident from these quotations from the 283-page "Transcript of Proceedings":[26]

> MR. REITER: If it please the Court, in this hearing for declaratory judgment and for a preliminary injunction, the plaintiffs are alleging that the Forest Service Plan for the area . . . is arbitrary, capricious and illegal . . . .
>
> . . . [T]his is a proper case for the entry of summary judgment and the granting of not only temporary, but --
>
> THE COURT: Summary judgment? Is there a motion for summary judgment? . . .
>
> MR. REITER: I think summary assistance is our position, your Honor . . . .[27]

Judge Kent did not correct the plaintiffs' attorney following the erroneous opening statement (above) on Tuesday afternoon. However, clarification did come during a discussion between opposing counsel and the judge early in the proceedings on Wednesday morning:

> THE COURT: . . . I don't see how you can take one study, a piece of what is used, and attack that and form a foundation for attacking the entire Plan, and that's what you're doing here . . . .
>
> MR. RUCKEL: Well, then, we will have to rely, your Honor, upon the Government through their witnesses supplying the documents that we need to see --

---

[26] Available through Ruth G. Price, Official Court Reporter, United States District Court, Kalamazoo, Mich. 49005.

[27] Proceedings, pp. 4-6.

THE COURT: Then you will be in a bad way at the conclusion of your proofs.

MR. RUCKEL: Well, that is true, your Honor, but we are here, I believe, your Honor, on a preliminary injunction proceeding.

THE COURT: You are here on a hearing on the merits, and your counsel was advised of that, Mr. Ruckel.

MR. RUCKEL: I was under the impression from my counsel we were here on a preliminary injunction.

THE COURT: Mr. Barron and Mr. Milanowski were advised in my office . . . that this hearing would include not only the preliminary injunction but also the merits. Whether or not they advised you of that, I have no way of knowing.

MR RUCKEL: I see. Well, I was not advised of that, your Honor, and I had no knowledge of that, and my co-counsel, Mr. Reiter, just informed me he had no knowledge of this.

THE COURT: You have a recollection of it, Mr. Milanowski?

MR. MILANOWSKI: That is correct, your Honor.

THE COURT: All right. Mr. Milanowski as the United States Attorney, Mr. Barron as the local counsel for the plaintiff, and I think Mr. Curtis [Regional Attorney, U.S. Department of Agriculture Office of General Counsel], were all in my office in Kalamazoo, at which time I told them that this hearing would be on the preliminary injunction.

MR. RUCKEL: Well, can we have a short recess, then, to reconsider our position? I think this is a rather drastic situation we are placed in. Both Mr. Reiter and I were under the impression this was a preliminary injunction proceeding.

THE COURT: I think you can proceed with your proofs, Mr. Ruckel, because we don't have time to take any such recess at this time.[28]

---

[28] Proceedings, pp. 124-126.

The 283 pages of hearing testimony can be summarized as follows:

Leadoff witness Jerome O. Gandt (pages 9-82) quickly established the fact that he was familiar with the Sylvania area. He showed a large number of color slides and submitted into evidence several black and white photographs of "changes that are physically taking place in this tract." He was unable to comment for the record, however, on the question of whether or not these allegedly adverse changes were the result of the implementation of the Sylvania management plan, because he had not been "qualified" as an expert witness in this area. He was shown to have no "special [vested economic] interest" in Sylvania, to be familiar with the old buildings and roads in Sylvania, and to be aware of the environmental safeguards (sewage treatment, zoning, etc.) in the management plan. He expressed opposition to the Marsh Lake timber sale and to proposed developments "inviting overuse," including the Indian Lake and Clark Lake drive-in campgrounds, the spur road to within a quarter-mile of Whitefish Lake, and the new road from Long Lake toward Indian Lake (the "Whitefish Lake road"), to which he indicated he had previously registered his objection with the Forest Service. He said he knew that resource studies had been done, but expressed fear that the studies made

regarding the impact of envisioned recreational use of Sylvania were inadequate.

The plaintiffs got nowhere with their "no public hearing" complaint:

> [DR. GANDT:] . . . [W]hat impresses me with the history of this Plan is that it has never been submitted for public hearing . . . .
>
> THE COURT: . . . Do you claim that a public hearing is required by statute, Mr. Reiter?
>
> MR. REITER: No, your honor.
>
> THE COURT: All right, [Dr. Gandt]. Go ahead with what you know about [the Plan].[29]

This evidence pertaining to the "laches" issue--the timeliness of the lawsuit--went into the record:

> [MR. GRUBBE:] Did you ask the Forest Service for any information as to what they had done preceding this Plan in the way of studies?
>
> [DR. GANDT:] Oh, yes . . . [S]ince I wrote this letter in February, 1969 . . . I have received [Dr. Voss' plant survey, the University of Michigan's Sylvania prospectus, a Gogebic County Board resolution,] and I have a letter of explanation regarding how this Plan was formed; but I have seen very little research or study in any of the things that were sent to me by the Forest Service . . . .[30]
>
> [THE COURT:] Dr. Gandt, this Sylvania Recreation Area Management Plan marked Plaintiffs' Exhibit 1, where did you obtain this?
>
> [DR. GANDT:] That particular copy I received from the Regional Forester, George S. James . . . .

---

[29] Ibid., p. 57.

[30] Proceedings, pp. 58-59.

> [THE COURT:] When did you obtain this?
>
> [DR. GANDT:] Approximately March 1969.[31]
>
> [THE COURT:] Has the activity described in the Sylvania area varied substantially from what is set forth in this Plan?
>
> [DR. GANDT:] I believe it has.
>
> [THE COURT:] In what manner?
>
> [DR. GANDT:] Because the Plan has many . . . safeguards which I don't believe are being implemented . . . [P]ortaging wheels . . . are used on the trails and result in . . . erosion. And I believe that the silting of bogs throughout the road being put in is not in the spirit of this plan . . . .[32]

The second witness, and the only witness for the defendants, was the Honorable Philip E. Ruppe, Member of the U.S. House of Representatives from the 11th District of Michigan, the district that embraces the Upper Peninsula of Michigan and several counties in the Lower Peninsula.

Congressman Ruppe, who had visited Sylvania and read the management plan, agreed that there would be some local economic benefit to be derived from a wilderness preservation approach to the management of Sylvania, and that nonresidents of Michigan, as well as residents of Michigan's Upper Peninsula, had an interest, or a stake, in what happened to Sylvania. His testimony (pages 83-113) dealt

---

[31] Probably April 30, 1969; see p. 139 *supra*.

[32] *Proceedings*, pp. 75-77.

primarily, however, with the depressed economic condition of the local area, the early promises that had been made to intensively develop Sylvania to the economic advantage of the surrounding communities, and the disappointment of the local people with the reduced scale of development provided for in the 1968 management plan. Said the Congressman:

> I do not believe [Congress] would have authorized it or appropriated the money on any other basis [than the 1964 study's package of proposed developments], in view of the fact that the Gogebic County leadership, the board of supervisors, acquiesced in the purchase of the property, knowing there would be a substantial or heavy tax loss . . . of over $40,000 to the Government . . . .
>
> I think it is incumbent upon the Federal Government, and particularly the Forest Service, to carry through with the Plan that they have, or through with the intent as originally outlined to these people . . . .

At the conclusion of Congressman Ruppe's testimony, the hearing was recessed until Wednesday morning, December 10, at which time Professor Thomas B. Mowbray of the University of Wisconsin at Green Bay took the witness stand.

A plant ecologist, Mowbray criticized particular details of the Sylvania management plan, describing the term "vegetative cover manipulation" as "jargon" for logging practices, calling the proposed selective logging of big trees to maintain a big tree environment "trickery," and asking how the Forest Service intended to achieve the management plan's stated goal of maintaining the existing variety of tree species in the absence of any quantitative

compositional study of the tree and other plant species there. Mowbray characterized the plant ecology of Sylvania as "somewhat unique":

> . . . I think that Sylvania represents one of the few remaining virgin stands of hemlock-northern hardwoods forest . . . . [S]hortly to the west of Sylvania hemlock drops out as a major dominant species, it doesn't get into Minnesota, and within Minnesota yellow birch, which is also dominant in the [Sylvania] tract, becomes less significant. So I think it might be considered one of the most westernmost extensions of the hemlock-northern hardwoods forest.
>
> [MR. RUCKEL:] As a plant ecologist who would be charged with helping to make some sort of management plan for this area, having in mind recreation, what type of studies would you inaugurate for such a plan?
>
> [DR. MOWBRAY:] Well, I think the first thing that I would recommend would be to carry out a complete quantitative vegetative study of Sylvania . . . because without this firm basis we cannot show what changes have been made in the composition . . . . [B]eyond this there should be several studies done to try to show the interrelationship between excessive recreational use and changes in the composition. Once you have this . . . you can make several related studies trying to show the impact of all aspects of recreation on the entire system . . . .[33]

Professor Mowbray's testimony was truncated by U.S. Attorney Grubbe's objection, sustained, to the effect that:

> this line of testimony . . . relates to the area in which the Congress has given the Forest Service complete discretion to exercise their expertise in the field of forest management and land management. This goes far beyond the scope of review provided by Congress on matters relating to administrative activity such as this Plan . . . . Both the designation of the area and the standards that are applied are matters on which experts, as we see here, can differ,

---

[33] Proceedings, pp. 129-130.

> and they are matters of fine technical decisions in which the Court should not engage in weighing of these matters.[34]

The fourth hearing witness--the third for the plaintiffs--was Professor Robert B. Ditton, also a member of the faculty of the University of Wisconsin at Green Bay. Dr. Ditton described his field of expertise, "leisure sciences," as "recogniz[ing] the relationship between people's attitudes, people's perception, and their leisure behavior." Describing Sylvania from his perspective, he stated:

> . . . [T]he area is best suited to a wilderness use, that of canoeing, hiking, non-intensive uses. And I say this from an understanding that people . . . are attracted to the area for the certain environmental qualities there, and these environmental qualities are reflected in their behavior . . . [F]rom a trend study done by the Bureau of Outdoor Recreation, we are finding that between the present time and 1980 wilderness uses, along with general water uses, are projected to increase--the demand is projected to increase drastically, and we are finding that the amount of effective supply, or the amount of areas where this participation can be expressed, where the wilderness experience can be had, is dwindling. So I feel that this area would be an attraction to this user group, an attraction which could not be minimized because of the number of areas that are presently available and the increasing demand for this type of recreation . . . .[35]

Dr. Ditton did not fare well at the hands of the Court, either:

> THE COURT: . . . [Y]ou don't have any base for forming an opinion . . . as to whether the change in

---

[34] Ibid., p. 120.

[35] Ibid., pp. 146-148.

> character [of Sylvania, through development] would cut down on the number of people who would be there because you don't know how many were attracted by any particular facet of it. . . . I might say, Mr. Ruckel, that broad statements without foundation mean absolutely nothing to this Court. We are in the habit of relying on evidence and not opinions based on a lack of knowledge.[36]

Next to take the stand for the plaintiffs was Charles H. Stoddard of Minong, Wisconsin (pages 151-208 in the Proceedings). Director of both the U.S. Department of the Interior's planning staff and its Bureau of Land Management under Secretary Stewart Udall, Mr. Stoddard had written his master's thesis on the management of old-growth northern hardwoods, had been employed for five years by the research branch of the Forest Service, and had written a book entitled, Essentials of Forestry Practice. He testified that, in his capacity as Secretary Udall's staff director, he had reviewed large numbers of management plans to determine the qualifications of areas for inclusion in the national park system and other systems and had seen management plans that were "much more detailed" than the Sylvania plan.[37] He stated before the Court that he found "serious gaps and deficiencies" in the Sylvania management plan:

---

[36] Ibid., p. 150. Both Mowbray's specific comments on "fine technical decisions" and Ditton's "broad statements" were unacceptable to the Court. The burden of proof on the plaintiffs became well-nigh insurmountable.

[37] Ibid., p. 182.

. . . The unique aspect of [Sylvania] is that we do have a fragment, we have a rare remnant of what the whole region looked liked, at least the northern hardwood-hemlock portion of the region looked like, prior to white man's entry into the region. For this reason it is quite a magnet. It holds great potential in drawing visitors of the kind who go to Williamsburg or to some old cultural--Independence Hall--this is part of our frontier heritage, and for this reason I think that we have the problem of making it available for many people to see without ruining the thing they come to see . . . .[38]

. . . [Sylvania] is in the northern hemlock-hardwood area. Up in northern Minnesota [the Boundary Waters Canoe Area] it is pine and spruce and balsam fir and white birch, here it is hemlock, yellow birch, sugar maple, basswood, red oak; a different situation . . . .[39]

. . . [T]his Plan . . . may result in such heavy overdevelopment that the area will no longer have its magnetic attraction to people in the future. In other words, there is a short-run economic development that may take place here, but the long-run opportunities may be lost because of overuse, and our contention is that if the users were spread around farther away from the area, and scenic roads were built, limited access, and the sort of pioneering wilderness concept feel was maintained, it could maintain a long-term attraction to many people from all over the country . . . .[40]

. . . There is no mention in the Plan itself of scenic roads, which are one of the basic concepts of recreational development. The roads that are underway now have hundred-foot rights-of-way which have eliminated very largely the closed scenic value of Sylvania . . . .[41]

---

[38] Ibid., pp. 167.

[39] Ibid., p. 192.

[40] Ibid., p. 188.

[41] Ibid., p. 157.

. . . There are other matters, plans for large trailer camps, boat launching ramps, there is a beach development already underway, and there are other plans which tend to concentrate intensive traditional uses in the area which has been established as a relatively fragile ecological area. In other words, the kinds of uses that are planned would have to be attended with litter problems, overuse problems, waste problems, all which can affect the quality of the area, as well as overuse which could result in siltation of the waters, and one of the objectives is to maintain water quality . . . .[42]

. . . The problem that develops when you encourage overnight camping by putting in developed facilities is that when you reach capacity the pressure develops for more overnight camp sites--and this is a result of my own experience in the Bureau of Land Management--that it is extremely difficult to resist building three more camp sites, and then three more camp sites, because you have the Congressman and the pressures of the local constituency who are interested in more development, and with this entering wedge that is already begun, the chances of maintaining the wilderness environment are extremely tenuous . . . .[43]

. . . There are four management zones indicated in the Plan. They are not clearly defined on the ground. They are not shown as fixed boundaries. There is no assurance in the Plan that they will be maintained over time or maintained under pressure of use, that the general forestry area which provides for logging will not be expanded. The commitment to maintaining the wilderness character of the area is not particularly precise within the Management Plan itself . . . .[44]

. . . I would like to see the road standards changed and made more precise, the zoning system made more precise and delineated, that there is a need for moving some of the intensive recreational developments which will tend to force uses in this area, that there

---

[42] Ibid., p. 163.

[43] Proceedings, p. 175.

[44] Ibid., p. 164.

> is a need for spelling out specifically in the forestry program silvicultural techniques that will be used in the general forestry area, so that if we assume that there will be logging in this area, that the logging will be of the highest caliber and quality that is possible to practice . . . .[45]
>
> . . . [T]here is a need for an analysis and a reappraisal of this Plan . . . .[46]

While accepting Stoddard's testimony as that of an expert witness qualified to comment on the adequacy of recreation area management plans, Judge Kent repeatedly observed during the proceedings that administrative discretion was necessarily involved in the development of such plans:

> . . . [T]he preparation of a plan of this nature is a matter of judgment and discretion in the people preparing the plan, on which there can be differences of opinion[.][47]
>
> . . . [I]t is basically a matter of judgment where you might have one judgment of it and the Forestry Service [sic] people another[.] . . . [W]hen we get it all boiled down, the whole thing is a matter of judgment for the people preparing the plan[.][48]

At page 203 in the Proceedings, Judge Kent asked Mr. Stoddard:

> It is a matter of judgment, isn't it, as to whether yours should prevail or somebody else's?

---

[45] Ibid., p. 164.

[46] Ibid., p. 203.

[47] Ibid., p. 186.

[48] Ibid., p. 194.

> [MR. STODDARD:] To broaden the criteria, to look at some alternatives, rather than saying this is the final Bible and the public shall take this and, you know, by the all-powerful bureaucracy.
>
> [THE COURT:] Of which you were formerly a part?
>
> [MR. STODDARD:] I was, and I know how it works.

During Stoddard's cross-examination, following a series of questions directed by Judge Kent to the witness exploring the possible application of the Wilderness Act of 1964 to the Sylvania area, counsel for the plaintiffs withdrew their allegations under the Wilderness Act:

> MR. RUCKEL: Your Honor, if I may briefly be heard and relieve your Honor's mind, it has been our intention to withdraw the allegations under the Wilderness Act at the conclusion of my presentation, but in view of the fact--
>
> THE COURT: That is an interesting sort of an observation. If it had been done first we could have quit worrying about the Wilderness Act, couldn't we?
>
> MR. RUCKEL: Yes, your Honor, and I apologize for not opening this morning and informing you of such.[49]

Prior to this development, Judge Kent had leaned heavily on the fact that Congressman Ruppe appeared to be opposed to a wilderness designation for Sylvania, stating that the Congressman's attitude made chances of such a designation "almost nonexistent":

> THE COURT: . . . [T]o make it a wilderness area within the meaning of the Wilderness Act would require it, to put it bluntly, would require concurrence

---

[49] Ibid., p. 180.

of the congressman from that area, wouldn't it, if you are going to get it through?

[MR. STODDARD:] That would be the politics.

THE COURT: As a practical matter, that is what happens?

[MR. STODDARD:] That's right.

THE COURT: So if the congressman from the area is not in accord with its becoming a wilderness area without development for use by the public except on a very limited basis, the chances of putting it through the Congress are almost nonexistent, aren't they?

[MR. STODDARD:] This is correct.[50]

Following Stoddard's lengthy testimony, counsel for the plaintiffs called Sergej Postupalsky to the stand. The purpose of calling this witness (see pages 209-223 of the Proceedings) was to establish the fact that the bald eagles nesting in the Sylvania area were among the last of their species left in the "lower 48" states and that, therefore, these eagles should be given more protection in the Sylvania management plan.[51]

---

[50] Proceedings, pp. 178-179.

[51] "Sergej Postupalsky of the University of Wisconsin Department of Wildlife Ecology reports only nine of a low of 22 pairs of Lower Peninsula bald eagles were successful in raising a total of 11 eaglets last year, the same as 1969. In the Upper Peninsula he says 62 pairs were located, including three non-nesting pairs, and 28 pairs raised 42 eaglets . . . . He says the 84 pairs raised a total of 53 eaglets or 0.63 young per pair . . . [b]ut this does not herald a comeback for the birds, Postupalsky points out. To maintain a stable population, eagles must produce 0.9 to 1.1 young per pair per year.": "Motorist Kills Eagle," The State Journal, Lansing, Mich., April 24, 1971.

The plaintiffs' attorneys were unable to qualify this witness as an expert on the subject "[b]ecause," said the judge, "he stated that he was studying environmental effects on eagles [for a doctoral dissertation at the University of Wisconsin] and necessarily still being involved in the program, might well have a tendancy to change his opinions."[52] Neither were they able to use the Endangered Species Act to good effect, because, as implemented, its protective provisions applied only to the "southern" bald eagle--not to the "northern" bald eagle subspecies inhabiting Sylvania.[53]

The only witness left to be called to testify was George S. James of Milwaukee, Wisconsin, Regional Forester, Eastern Region, U.S. Forest Service. As a witness for the plaintiffs (pages 224-252), he was less than helpful:

> I can't recall the total number [of studies of a scientific nature done prior to the approval of the Plan] . . . . We have an organization that is involved with the Ottawa National Forest, we have a staff in Milwaukee. They were charged with the responsibility of designing the entire study program. They carried through, they reported, and it was built into the Plan . . . . A soil survey, a water quality survey, an extensive study of the timber resources, [and] a cooperative study of the fish

---

[52]Judge Kent, Ibid., pp. 279-280. In other words, he didn't have his Ph.D. degree yet, so he couldn't be an "expert." Counsel for the defendants objected to his testimony on the basis of his lack of familiarity with the Sylvania management plan.

[53]Federal Register, Vol. 34, No. 46, March 8, 1969, pp. 5034-35.

> environment [were conducted] . . . . I am not in a position to explain [the soil study] . . . . [N]ot all the reports of studies were examined by me . . . . [W]e have a Deputy Regional Forester who is responsible for coordinating the design and tying all of the . . . studies together into a composite plan . . . .

At this point Judge Kent observed, "I think you got the wrong witness."[54] Examination of James by counsel for the plaintiffs was completed shortly thereafter.

Under cross-examination by Nelson Grubbe, the regional forester offered this version of the early involvement of the Forest Service in the Sylvania project:

> This [1964] plan resulted from a resolution of the board of supervisors of Gogebic County in 1963 to the members of the Michigan Congressional delegation asking the Forest Service to study and report on the opportunities for the Federal Government to purchase Sylvania. A member of the delegation in turn asked the Chief of the Forest Service, who passed the request down to the . . . Supervisor to start the study, and it was completed in the fall or winter of 1964. It is rather a full, intensive multiple-use development program as suggested at that time to build up the economic base of the western end of the Upper Peninsula of Michigan through increasing recreation use in the timber management activity [sic]. At this time we lack[ed] detailed information because we did not have permission to stay on the tract too long to get the kind of detailed factual information that was necessary for a more accurate report.[55]

Reference was made during this cross-examination to a memorandum dated August 4, 1966, placed in evidence as Exhibit B-2, which was described as setting forth "the

---

[54] Proceedings, p. 229. Obviously, the Deputy Regional Forester should have been called on to testify instead.

[55] Ibid., pp. 235-236.

management development of the Management Plan for the Sylvania area" and as listing "all the activities and jobs which must be done," including "the protective features for the concept of people." This memo was further described as including a list of the various specific studies performed in this connection. Also placed in evidence were a three-page-long list of the names of Forest Service personnel who had contributed in one way or another to the Sylvania management plan and a list of the names of the participants in the September 1968 ad hoc advisory meeting. Concerning the ad hoc advisory group, Judge Kent asked, "Did you appoint those, Mr. James?"

> [MR. JAMES:] Yes, sir.
>
> [THE COURT:] And these people did carry out the purpose for which you just described the ad hoc committee?
>
> [MR. JAMES:] Those who are on this list reported.
>
> [THE COURT:] You did receive advice and suggestions from them?
>
> [MR. JAMES:] At that meeting, yes.

When additional lists of persons outside the agency "who actually had input into the development of this Plan" were submitted, the judge asked, "And they did make suggestions to you?"

> [MR. JAMES:] That is correct.
>
> [THE COURT:] And did you consider them?

[MR. JAMES:] They were considered.[56]

As a finishing touch, Mr. Grubbe elicited from Mr. James affirmative responses to these helpful questions:

> [MR. GRUBBE:] Mr. James, did you in the development of this Sylvania Plan give careful consideration to all the relative values of the natural resources on and near the Sylvania area?
>
> [MR. JAMES:] We did . . . .
>
> [MR. GRUBBE:] And did you make an attempt to get a harmonious relationship between the relative resources involved so that it would be a harmonious use of the relative values of the natural resources with the particular use suggested in the Plan?
>
> [MR. JAMES:] We did.
>
> [MR. GRUBBE:] And in your opinion does the Management Plan best meet the needs of the American people?
>
> [MR. JAMES:] It does.[57]

Plaintiffs' counsel, on redirect, had little of consequence left to ask the regional forester, but Judge Kent did:

> [THE COURT:] Is this Plan satisfactory to everybody who participated in furnishing information for the formulation of the Plan?
>
> [MR. JAMES:] It is satisfactory to most of them.
>
> [THE COURT:] It is not satisfactory to all of them?
>
> [MR. JAMES:] No, because in the ad hoc advisory meeting there were some people who were invited who had the privilege and the opportunity to react, and

---

[56] What other answer could have been expected?

[57] Cf. the judge's treatment of SOSAC's expert witnesses.

they made suggestions, some of which were accepted, others not accepted.

[THE COURT:] And when was this Plan . . . first published?

[MR. JAMES:] It was approved in December 1968, and by the time we had enough copies for mass distribution, it was well over into January or February of this year.

[THE COURT:] Do you have any idea when the plaintiff Dr. Gandt first obtained a copy?

[MR. JAMES:] Yes. We sent one to Dr. Gandt in April or May of this year . . . .[59]

[THE COURT:] So that since April or May he has had available to him the information contained in this Plan as to what roads would be cut and where they would be cut?

[MR. JAMES:] That's right . . . .

[THE COURT:] And was the development map which appears in this Plan given to Dr. Gandt in April or May?

[MR. JAMES:] That's right, sir . . . .

[THE COURT:] Mr. James, did Dr. Gandt discuss this Plan with you after he had a copy of it?

[MR. JAMES:] No . . . .

[THE COURT:] Do you know whether he did with any members of your staff?

[MR. JAMES:] Yes. We asked Mr. Kizer, Supervisor, to make contact with Dr. Gandt early in the year to explain the Plan.

[THE COURT:] This was early in 1969?

[MR. JAMES:] That's right.

[THE COURT:] And has Dr. Gandt ever made any effort to reach you or talk with you about this Plan?

---

[59] Actually, April 30, 1969.

> [MR. JAMES:] Very recently, yes . . . . Within the last month.
>
> [THE COURT:] Did he at any time between January or February, when this Plan was made available to him, and let's say the first of November, make any effort to talk to you?
>
> [MR. JAMES:] No, sir.

Following this exchange, the plaintiffs' case rested.[60] The counsel for the defendants moved for a motion to dismiss the complaint, submitting that the plaintiffs had "failed to prove that the Forest Service violated any law in the development of this recreation Plan [and] that they have not made out any case for equitable relief." Continued Mr. Grubbe:

> The Plan was in Dr. Gandt's hands early in 1969. He waited and watched the road being built . . . . His complaint at this time is very untimely . . . . [I]f he had any rights whatsoever from an equitable standpoint when he got this [plan] and a reasonable time thereafter, at least by mid-summer, I think if he is going to bring an equity proceeding that would have been the time to do it, not now when we have contracts outstanding . . . . [T]he request which the plaintiffs ask certainly would absolutely stop the Forest Service . . . would stop all meaningful management in this area . . . . This would be an injunction against which there is no statutory authority. It would be stopping the Government in its tracks in the same way the Court talked about in the Larson case . . . . [Dr. Gandt] must have some legally protected interest to have standing to sue [but] he admitted to us on cross that he had no different interest in Sylvania than anybody else's . . . .

---

[60]The judge could not be interrupted by counsel for the plaintiffs at this point, but Dr. Gandt's attempts to communicate with the Forest Service over an eight-month period were not very adequately described by this exchange.

All that was left to do at this point was for counsel for the plaintiffs to make his concluding remarks. Tony Ruckel first touched on the matter of the timeliness of the complaint:

> [I]t is extremely difficult for the citizen or the person affected to know when the irreversible . . . decision is made. It is usually the evidence on the ground rather that the evidence of events in an administrative hierarchy that triggers the response of the citizen and makes him question whether the laws of his government have been properly applied in the given situation . . . . [T]o hold . . . that the citizens have to hit that exact moment [just before an irreversible decision is made] is to hold that they would never be able to come into court . . . . [D]uring this ten-months time the plaintiffs consistently and continuously contacted various members of the Forest Service.
>
> THE COURT: That is not in the record . . . .
>
> MR. RUCKEL: Well, your Honor, I believe that Dr. Gandt referred several times to his efforts.
>
> THE COURT: Your argument is that the plaintiffs constantly talked with representatives of the Forest Service, and I am telling you it is not part of the record . . . . [I]s there anything to indicate that [Dr. Gandt] ever asked for a change in the Plan and that he was told that it would not, or might be, or might not be changed? I don't recall that in his testimony.
>
> MR. RUCKEL: No, your Honor, I don't recall that either.

Before winding up his remarks, Ruckel withdrew any claim under the Endangered Species Act, leaving only the Multiple-Use Act's provision requiring that "due consideration . . . be given to the relative values of the various resources in particular areas" as the basis of his clients'

complaint.[61] "Professionally there were omissions in this [plan] which should have been in there," he concluded.

A short recess was taken, after which the Court's opinion was given from the bench, to wit:

> It is hereby ordered, adjudged and decreed that plaintiffs' Motion for a Preliminary Injunction is hereby denied, and
>
> Plaintiffs having failed to produce sufficient evidence to sustain the allegations in their Complaint,
>
> It is hereby ordered, adjudged and decreed that the Complaint is dismissed and defendants shall have their costs of this action.
>
> W. Wallace Kent, Chief Judge, United States District Court.

The Opinion of the Court

Final disposition of the Gandt v. Hardin case was made on December 11, 1969 with the delivery by Judge Kent of his formal "Opinion of the Court." As SOSAC was to emphasize later, the plaintiffs did win their "standing" argument. This was due, in large measure, to the help they had been given by the Parker v. U.S. plaintiffs, attorney Tony Ruckel, and the Sierra Club. The plaintiffs lost their case, however, on the merits. They were unable to

---

[61] "My instructions were to cut the losses.": Tony Ruckel, personal interview, Denver, Colo., Aug. 20, 1970. Plaintiffs realized it would be better to drop the Wilderness Act and Endangered Species Act issues than to push them and get adverse decisions on them.

prove arbitrary and capricious action on the part of the Forest Service. Additionally, the plaintiffs were charged with laches (untimeliness in the filing of their complaint).[62] The complete text of the Opinion is included in Appendix B of this report. Highlights of the opinion are provided herewith:

> Basically, the claim of the plaintiffs is that the defendants have acted arbitrarily and capriciously by adopting a plan without full and proper consideration of all the factors required by the Multiple-Use Act . . . . [T]his suit in reality is against the government of the United States, in an effort to stop the government from implementing Management Plan Exhibit 1 . . . .
>
> . . . Congress [in the Multiple Use Act] intended to make certain actions on the part of the Secretary of Agriculture mandatory in determining proper management of national forests. And it should be noted that there is no express provision in the Act which precludes judicial review or which specifically commits agency action under the Act to complete agency discretion . . . The Congress was not enacting a permissive statute, but rather adopted a mandatory statutory list of factors to be considered in the development of the national forests. . . . [T]he Secretary's actions, when they seem to be in contravention of the Act, are subject to judicial review . . . . [B]ased upon the authorities which have been reviewed [Flast v. Cohen, 392 U.S. 83; Jenkings v. McKeithen, 395 U.S. 411; Utility Users League v. FPC, 394 F.2d 16; Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608; Road Review League, Town of Bedford v. Boyd, 270 F. Supp. 661], this Court has reached the conclusion that these parties plaintiff have standing in this court.
>
> . . . [On] the issue as to the timeliness of the filing of plaintiffs' action [citing Abbott Industries v. Gardner, 387 U.S. 136; Southern Pacific Co. v. Bogert, 250 U.S. 489; Penn Mutual Life Insurance Co. v. Austin, 168 U.S. 685; and an unnamed case at 189 F.Supp. 821] . . . the plaintiffs are in rather dire shape.

---

[62] See page 277 infra.

> . . . [T]he challenge of the plaintiffs is not to the defendants' failure to consider the factors; rather, the challenge is as to the decision reached by the defendants after considering the factors, and that, except as it may be arbitrary and capricious, is not for this Court to review. There is no evidence in this case that any action taken is arbitrary or capricious.
>
> That would be sufficient to decide the case, but in addition this Court is completely satisfied . . . that if there ever was anybody who was guilty of laches, it was the plaintiffs in this case, and particularly the Number One and apparently principal plaintiff, Dr. Jerry Gandt . . . . To permit the government to enter into these contracts . . . without in any way challenging, so far as this record shows, the actions, it appears to this Court to be laches . . . .
>
> . . . [B]asically, . . . the plaintiffs have not sustained the burden of proof . . . . [T]o permit the case to go on and substitute this Court's judgment for the judgment of the Forestry Service [sic] would be a clear case of arbitrary action and abuse of discretion on the part of the Court . . . . [T]he application for an injunction is denied and the complaint is dismissed . . . .

Jerry Gandt had had his day in court. The implications of this decision, particularly with regard to the status of the 1968 management plan for the Sylvania Recreation Area, are discussed in Chapter X.

CHAPTER X

SYLVANIA: EPILOGUE

The loose ends of the Gandt v. Hardin story can be tied off with summaries of (1) how the mass media covered the hearing, (2) what SOSAC has done since the hearing, (3) the policies of other groups regarding the Sylvania plan, (4) the past-hearing posture of the Forest Service with respect to the Sylvania management plan and its implementation, and (5) the broad legal implications of the Gandt v. Hardin decision.

District Court Decision Widely Publicized

The Milwaukee Journal, on December 10 and 11, provided its many readers with a straightforward account of the Gandt v. Hardin hearing ("Federal Judge W. Wallace Kent Wednesday refused to grant a temporary injunction . . . ."), while the Marquette, Michigan Mining Journal, on December 11, described the judicial resolution of the Sylvania conflict in colorful language:

> An attempt to thwart U.S. Forest Service plans for development of the Sylvania Recreation Tract was shot down . . . [i]n a sharply worded decision . . . . Judge Kent was biting critical of the plaintiffs' failure to begin legal action until Nov. 10 . . . .

The United Press International wire service report that "[a] conservation group headed by a Green Bay, Wis., dentist . . . lost its battle to keep . . . Sylvania . . . a virgin forest " also quoted Judge Kent's opinion that he personally would prefer to see outboard motors and snowmobiles kept out of Sylvania.[1]

A feature article, "Sylvania Battle Hailed" by Paul G. Hayes in the December 21, 1969 edition of the Milwaukee Journal, concluded:

> Citizen conservationists believe they won significant victories in their recent fight to block development of Upper Michigan's Sylvania wilderness--despite the judge's dismissal of their case.

The "victories" alluded to were the "standing to sue" and "legal basis for judicial review" issues. Support for Judge Kent's decision appeared in the editorial column of the Marquette Mining Journal on January 2, 1970. ("When it comes to utilization of the nation's land and forest resources, mixing business and pleasure makes sense.") and in an article prepared for publication in the Michigan United Conservation Clubs' tabloid magazine, Michigan Out-of-Doors, by Congressman Philip E. Ruppe.[2]

---

[1]See "Virgin Forest Fight Lost: Court Denies Sylvania Challengers," The State Journal, Lansing, Mich., Dec. 11, 1969.

[2]Mailed to MUCC by the Congressman's office on Dec. 31, 1969, the draft article emphasized the development "commitment" made to the people of Gogebic County, described the 1968 management plan as providing "an excellent balance

"SOSAC" Becomes "Wilderness Watch"

"In the wake of partially successful legal action against the U.S. Forest Service," stated the January 12, 1970 SOSAC press release, "the Save Our Sylvania Action Committee today announced a major reorganization of itself. Most important feature of reorganization was the formation of a special scientific information branch of the group, which will have equal status with the already existing executive branch." Dr. Robert B. Ditton later described this step as follows:

> Following the court action, I joined the group as Director of Scientific Information Staff and helped in a reorganization plan. The old Save Our Sylvania Action Committee, Inc. was officially laid to rest because of our broadening concern for Forest Service holdings in the Great Lakes region--our prime concern was still Sylvania, however. SOSAC, Inc. was officially incorporated under Wisconsin State Law. Our other chapters in Minnesota, Michigan and Illinois are ad hoc groups not incorporated under their particular state laws--they are tied to the main office here in Green Bay.

---

between the need to develop the tourist potential while at the same time protecting the natural scenic qualities of the area," and stated that Judge Kent's decision "affirmed the right of the Forest Service . . . to use the land as they saw fit . . . ." "The full development and public use of Sylvania has always had the support of the people of Northern Michigan, and now it has the support of law," the Congressman's draft article concluded. Cf., the Congressman's supportive statement with regard to the designation of the Seney, Huron Islands, and Michigan Islands National Wildlife Refuge Wilderness Areas in U.S., Congress, House, Committee on Interior and Insular Affairs, Designation of Wilderness Areas, Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, House of Representatives, 91st Cong., 1969 and 1970, pp. 221-228.

> Our new organization [was] settled upon in January, 1970 . . . . J. Gandt is executive director and as such directs the administrative branch which includes a political affairs branch, staff of writers, legal council, membership, find-raising, newsletter and information materials and public relations.
>
> As Director of Scientific Information Staff, I have several responsibilities: (1) build up as large a group of diversified environmental specialist from the natural, physical, and behavioral sciences; (2) make their expertise available by our chapters and main office in Green Bay; (3) secure pertinent information for the staff from government agencies; (4) compilate their findings and recommendations into reports, proposals and position papers and transmit to agencies (I have a staff member responsible for this function); (5) finding new resource mismanagement situations and making the initial contact so they know from the start what kind of a group we are. My job could be summed up with the word "whip" and is made fairly easy because of an excellent division of labor within the Scientific Information Staff.[3]

Documents published by SOSAC after the court hearing included a "Status Report on Sylvania"[4] and the group's

---

[3]Robert B. Ditton, personal letter to Marion M. May, East Lansing, Mich., Nov. 6, 1970. The Green Bay Press-Gazette's January 12, 1970 story, "Sylvania Unit Branches Out To New Conservation Area," noted that "seven members of the University of Wisconsin-Green Bay faculty were named to [SOSAC's] scientific information branch [and] several UW-GB men have beem appointed to the executive branch [of SOSAC]." See John Fisher, "Survival U is alive and burgeoning in Green Bay, Wisconsin," Harper's Magazine, Vol. 242, No. 1449, Feb. 1971, pp. 20-27; see also, "Save Our Sylvania Group Launches Sale of Buttons," Green Bay Press-Gazette, Feb. 22, 1970.

Ditton believes representatives of the forest products industry have approached administrators of the University of Wisconsin at Green Bay in an attempt to have him fired (personal interview, Green Bay, Wis., July 21, 1970.)

[4]"One result of our action is that conservation groups, such as SOSAC, can now take the Forest Service to court, when it becomes necessary in the best public interest. . . . Our fight has really just begun . . . ."

first membership promotion brochure.[5] SOSAC's scientific information staff directed letters to Edward P. Cliff, Chief of the Forest Service, asking for the agency's position of the National Timber Supply Bill,[6] and to Regional Forest George James, one letter requesting information on how the water quality of Sylvania's lakes was to be monitored,[7] another demanding an itemized description of the academic training and other professional qualifications of each of the "recreation planning specialists on regional or district staffs."[8]

---

[5]"Save Our Sylvania Action Committee invites you to join in the fight to save a unique wilderness area . . . . A choice must be made--between wilderness for America and the few who care or no wilderness at all." Dues were set at $5.00, $2.00 for students.

[6]Letter from Michael Morgan, Co-chairman, SOSAC Ecology Advisory Committee, Jan. 29, 1970.

[7]Letter from Paul E. Sager, limnologist, UW-GB, Jan. 29, 1970.

[8]Letter from Robert B. Ditton, Jan. 29, 1970. Ditton feels that his campaign to win Forest Service employment of recreational planners with something other than forestry backgrounds has had positive results: "A new set of personnel standards has been drafted by the U.S. Forest Service that opens its ranks to a much broader group of college-trained specialists. Opening this 'closed shop' was a SOSAC accomplishment." Personal interview, East Lansing, Mich., Oct. 21, 1970. Included in a Feb. 11, 1970 follow-up letter on this subject to Regional Personnel Officer Jack Heintzelman were Dr. Ditton's observations on the effect of the court decision: ". . .Gandt vs. Hardin . . . did not judicially determine the adequacy of the Sylvania Management Plan [despite what Federal Attorney E. J. Curtis may have told you]. . . . Our failure to prove arbitrary and capricious activity on the part of the Forest Service can hardly be construed by your agency as a decision that the plan is adequate or a good one . . . ."

A March 24, 1970 SOSAC press release announced the formation of a Michigan chapter of the Save Our Sylvania Action Committee headed by Donald Quinn of Escanaba.[9] SOSAC called on its supporters to "write your Congressman and Senators calling for a total moratorium on the development of Sylvania pending further investigation."[10]

---

[9]Robert Estabrook of Marquette and Bruce Bowersox of Vicksburg were listed as regional vice-chairmen for Michigan. The March 28 Ironwood Daily Globe carried the story. SOSAC's press release concluded by quoting Quinn as saying: "Like the original SOSAC group, our chapters will be action orientated [sic]. We will do whatever necessary within our means to insure the best recreational use of prime wilderness areas--even if it means we have to resort to court action."

[10]"What Can You Do To Save The Sylvania Wilderness Area . . . ," SOSAC letterhead, undated. One response to this plea, sent on University of Wisconsin-Green Bay letterhead by Dr. Thomas L. Goodale, Assistant Professor of Leisure Sciences, to Congressman John Byrnes of Wisconsin and dated April, 1970, stated in part: "Perhaps an infinitely wiser force than any of us made certain that when government burst its seams, necessitating broad grants of discretionary power to agencies, a more intelligent and sophisticated citizenry emerges to review those discretionary powers. Thus, we have a Forest Service and a SOSAC . . . ."

When Deputy Regional Forester Jay Cravens and Ottawa National Forest Supervisor Ralph Kizer visited the offices of Michigan and Wisconsin members of Congress in Washington early in 1970 to discuss the Sylvania situation, they found that all of the Senators and Congressmen visited had "thick Sylvania files." Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1970. For example, Senator Robert P. Griffin of Michigan received letters from both the Forest Service (Deputy Chief M. M. Nelson, March 18, 1970: "[Sylvania] is not wilderness and wilderness management and criteria are not applicable . . . .") and SOSAC (Robert Ditton, April, 1970: "Nelson is playing on words! . . . As a result of Nelson's implications, I can hardly see how the development of a wilderness system in this country will go beyond mere tokenism . . . .").

SOSAC's horizon of concern was broadened to include the 17,000-acre Cyrus H. McCormick Experimental Forest located in the north central part of Michigan's Upper Peninsula, 40 miles west of Marquette.[11] Learning from its Sylvania experience, the Regional Office made a ver batim transcript of the entire proceedings of its "ad hoc committee meeting held at Marquette, Michigan [on December 5 and 6, 1969] to discuss various research and management alternatives" for the McCormick Tract. Don Quinn of Escanaba, a SOSAC leader, was one of the 21 participants in this session.[12]

---

[11]Bequeathed to the U.S. Government by Mr. McCormick, it became, upon his death, Forest Service property and part of the Ottawa National Forest in November 1969. It was accepted by the Government under the authorization of the Clark-McNary Act of 1924 and the 1923 Enabling Act for the State of Michigan.

[12]See McCormick Ad Hoc Committee Meeting, December 5-6, 1969, Marquette, Michigan, an 84-page transcript prepared by the Forest Service Regional Office, Milwaukee, Wis. In particular, see p. 15 for discussion of the Forest Service's "research natural areas" program by F. Bryan Clark of the North Central Forest Experiment Station, St. Paul, Minn.

SOSAC's letters to George James of Jan. 10, 1970 ("SOSAC, Inc. has set up a watchdog committee on the McCormick Forest . . . .") and Jan. 23, 1970 ("We . . . are curious as to the reason for the dissolution of the McCormick Ad Hoc Committee . . . . [W]e have no intention of being guilty of laches in regard to McCormick.") demonstrated the group's interest in this area. The Regional Forester's response to the Jan. 23 letter: "There was no intention that this committee should serve as an advisory committee . . . . The use of [program review] committees is standard procedure for Forest Service Research." Personal letter, from Philip L. Archibald, Assistant Regional Forester, Milwaukee, Wis., to Dr. Ronald Starkey, Green Bay, Wis., Jan. 28, 1970.

OSOAC took issue with the Forest Service's practice of marking and cutting down "hazard trees" in the vicinity of Sylvania's water access campsites.[13] Difficulties continued between the two groups during negotiations regarding the scheduling of a meeting at which SOSAC representatives could present in full their ideas regarding the future of Sylvania.[14]

---

[13]Watersmeet District Ranger March Lefler's note to Dr. Gandt of Jan. 19, 1970 informing him that this procedure was about to get under way touched off an exchange of letters with SOSAC on this subject, e.g., "Your present thinking is little better than my basketball court experience. Therefore, NO MORE CUTTING OF 'HAZARD TREES'!!! [sic]" (personal letter from Ditton to James, Jan. 29, 1970) and "Cutting of this vegetation in the Water Influence Zone . . . opens up questions of malfeasance . . ." (personal letter from Gandt to James, Feb. 6, 1970). Lefler's Jan. 19 letter to Gandt included a copy of a report from the Conservation Court Digest on Middaugh v. U.S., 293 F. Supp. 977 (D. Wyo. 1968), "Action for wrongful death against the United States, the decedant having been killed by a falling lodgepole pine tree at a designated campsite in the Lewis and Clark Campground, Yellowstone National Park." The court granted damages to the extent of $43,750.00. SOSAC, in this connection, suggested that "giving proper notice" to visitors would relieve the Forest Service of responsibilities which could lead to tort actions (Owen Phelps, in Transcript of Meeting on Sylvania, SOSAC-U.S. Forest Service, Feb. 26, 1970, Forest Service, Milwaukee, Wis., p. 35). An analogous case is City of Cleveland v. Walker, 3 N.E.2d 990 (1936) in which a municipality maintaining a public park as nearly as possible in its natural state for welfare of public was held to be performing government function and not liable on ground of common-law negligence for death of children who fell through ice while playing on park pond; the hazard was adjudged to have been created by nature.

[14]The Forest Service's lack of enthusiasm for a full review of its management plan may have been based on advice from federal lawyers, who probably cautioned the Regional Office staff to avoid changing the management plan and thus opening it up to another judicial review (see res judicata discussion, pp. 261-268, infra.).

The agency's first offer provided for a three-hour session on February 26, with the Forest Service preparing the agenda.[15] After this plan was severely criticized by SOSAC,[16] the Regional Office set aside the entire day of February 26, 1970 for this discussion.

Seventeen private citizens, most of them from SOSAC but also including two Milwaukee newspapermen and Michigan Natural Resource Commissioner E. M. "Matt" Laitala, 12 Forest Service staff members including the Regional Forester, the Ottawa Forest Supervisor, and the Watersmeet District Ranger, and Attorney E. J. "Jack" Curtis of the USDA Office of General Counsel attended this meeting at the Forest Service Regional Office in Milwaukee.[17] A ver batim transcript of the proceedings was made for future reference.[18]

---

[15]Archibald to Gandt, Jan. 13, 1970.

[16]Dr. Gandt to James, Jan. 17, 1970: "SOSAC rejects any facade of a meeting which would not allow us . . . to bring out our important points . . . ." Dr. Ditton to James, Jan. 28, 1970: "Avoiding our group may mean that your day is a little easier . . . . Your earlier invitation of an all-day meeting . . . is turning into a farce . . . . Your agency's simplistic approach to resource management will never survive the ecological focus of the 70's . . . ."

[17]See Addresses of Attendees, U.S. Forest Service-SOSAC, Inc. Meeting February 26, 1970, Forest Service, Milwaukee, Wis., 2 pp.

[18]Transcript of Meeting on Sylvania, SOSAC-U.S. Forest Service, February 26, 1970, Forest Service, Milwaukee, Wis., 100 pp.

At the February 26 meeting, papers were read orally and submitted for the record by an impressive battery of SOSAC representatives. Ph.D.'s from the University of Wisconsin-Green Bay and other scientists offered comments and suggestions on many phases of the issue including water quality, vegetative manipulation, recreation planning, the bald eagle, snowmobiles, the Marsh Lake timber sale ("A Wilderness Degredation"), and "freedom of information." Professor Emil Haney, Jr., whose doctorate is in the field of resource economics, observed that "the piecemeal zoning such as that being applied in Sylvania today represents a very high time preference rate and a very short planning period." SOSAC called for the appointment of a multidisciplinary review board to evaluate the agency's plans for the Sylvania Recreation Area, and for a moratorium on development there pending the results of such a review.

U.S. Attorney Curtis contributed these observations on the impact of the December 11 Opinion of Judge Kent's:

> . . . [T]he inadequacy of the plan . . . was a matter that had been decided by a court . . . . I can't see [the Forest Service] continuing to spend the taxpayers' money to conduct extended research on matters that have been taken to court, have been tried, a conclusion has been reached [and it] was not appealed . . . . [T]here is no further recourse by SOSAC to the courts with relation to Sylvania, insofar as the adequacy of the management plan . . . . I have saved from that the way the management plan is carried out . . . .

The meeting ended with an off-the-cuff speech by Mr. Laitala, whose comments infuriated the SOSAC representatives:

> . . . This session today has reminded me somewhat of the sit-ins that we've had on the university campuses where intemperate and irresponsible charges have been made, and I haven't like it . . . . [T]his looks like harassment to me . . . . [Y]ou can't lock up Sylvania just for this elite gang that sits around here today . . . .

The Forest Service response to SOSAC's February 26 presentations was contained in a five-page letter from George James to Dr. Jerry Gandt dated April 24, 1970. This letter, multilithed and distributed with copies of the transcript of the meeting,[19] states in part:

> . . . We appreciate the effort which SOSAC members expended in preparing the papers presented at the meeting. This is a result of your deliberations and reflects the thinking of your organization. A review of the papers presented reveals a number of areas that require comment. We sincerely hope our comments will help establish mutual understanding and closer relationships between SOSAC and the Forest Service . . . .

---

[19]Copies of the transcript were sent to a mailing list of people who had been involved in the Sylvania issue. The covering letter stated in part: "Due to the volume of the transcript, we feel we cannot give it wide-spread distribution without charging a nominal fee to cover printing costs. Additional copies of this transcript are available at a cost of $.05 per page plus a $.50 handling charge. The cost of the complete transcript is $5.50." Personal letter, from Philip L. Archibald, Chief, Division of Information and Education, Forest Service, Milwaukee, Wis., to Gerald Goodman, Regional Vice-President, Michigan United Conservation Clubs, Iron River, Michigan, April 28, 1970.

> We are anxious to receive any new information which would be of value in planning, development and management of the area. However, we must be perfectly candid with you and state that it is not our intent to manage Sylvania as wilderness or to call a halt to developments currently under way.
>
> Mr. Ralph Kizer, Supervisor, Ottawa National Forest, is considering some modifications. For instance, he intends to locate the parking area immediately adjacent to the Whitefish Lake road, on the west side of the original Sylvania Tract. Access from this parking area to Whitefish Lake will be over a one-half mile trail. He is also studying the need for all 130 primitive camps. Some of those not developed may be eliminated from the plan. Mr. Kizer is continuing his efforts with the various Michigan governmental units to control use of motor boats on the lakes within the area.[20]
>
> . . . The question of wilderness seems to be the heart of the difference of opinion between SOSAC and the Forest Service. Sylvania should not be locked up as a museum piece,[21] but rather should be dedicated to serving the public through wise and careful use of its natural resources, and in accordance with commitments of record with the County Board of Supervisors and with the knowledge and support of certain Michigan Members of the Congress. To assure everyone that the area is best serving the public through careful development and management, and that all commitments are faithfully being carried out, Mr. Kizer is considering calling another Ad Hoc advisory meeting this summer . . . .[22]

Unsatisfied, Dr. Gandt, on June 8, 1970, wrote to Forest Service Chief Ed Cliff requesting a meeting with the Chief in Washington to discuss Sylvania. Deputy Chief

---

[20] See Michigan State Law 281.651c, Sec. 1c dealing with motorboat controls.

[21] See p. 73, <u>supra</u>.

[22] See p. 257 , <u>infra</u>.

M. M. Nelson responded (on June 18), stating (1) "there has been a court determination" regarding the management plan and (2) "[t]he transcript of your meeting in Milwaukee . . . has been studied [here and t]here seems little purpose in devoting your time and ours to another meeting about it."

SOSAC then attempted to exploit the publicity media of the traditional national conservation groups that SOSAC's representatives were critical of in any other context.[23] An article by Tom Goodale entitled "Who Killed Sylvania?" was submitted for publication in the Sierra Club Bulletin on May 14, 1970.[24] Articles by Robert Ditton were submitted to The Wilderness Society's The Living Wilderness Magazine ("Sylvania: The Dying Wilderness") and to the American Forestry Association's American Forests magazine ("Recreation Pollution") in July of 1970. None of these articles critical of the Forest Service have appeared in print.[25]

---

[23]"Gadfly conservation groups dealing with all agencies are dead." Robert Ditton, speech before a Michigan State University park and recreation policy class, PRR 842, East Lansing, Mich., Oct. 21, 1970.

[24]By Dr. Gandt, through attorney Tony Ruckel, whom Gandt described as his "friend in the (Sierra Club) castle."

[25]Probably because (1) the Mackinac Chapter of the Sierra Club was consulted by the editor of the Bulletin regarding the wisdom of running Goodale's piece and (2) Douglas Scott, formerly conservation committee chairman of the Mackinac Chapter of the Sierra Club, joined the national staff of The Wilderness Society in 1970 and made his objections to Ditton's article known there.

Failing to penetrate other groups' media, SOSAC created its own, Up Front with SOSAC--An Environmental Protection Newsletter. In the first number of the single-legal-page, mimeographed newsletter, dated October 1970, Dr. Gandt observed:

> Sylvania is our primary concern, but we have taken the initiative in the following; Eagles and other endangered species; the Ellis Loop Highway proposed for the Cibola National Forest (N.M.); Project Sanguine (Wis.); the McCormick Tract (Mich.); the Apostle Islands National Park (Wis.); Boundary Waters Canoe Area (Minn.); Lusk Creek Impoundment in Shawnee National Forest (Ill.); the Oklawaha River Project (Fla); Voyageurs National Park (Minn.); Isle Royal National Park (Minn.); Sleeping Bear Dunes National Park (Mich.); the White Cloud Mountains National Forest (Idaho); and even locally in the Green Bay area, the suitability of selecting solid waste disposal areas.

This broadened concern[26]--not reflected in the SOSAC name--resulted in the December 1, 1970 announcement that

> SOSAC, Inc. has been renamed [Wilderness Watch, Inc.] to reflect its growing involvement in the fight to maintain the environmental quality of the public domain. Wilderness Watch, Inc. is a unique coalition of laymen and scientists, giving it the capability of dealing with contemporary environmental problems.

Reactions of Other Groups

SOSAC's "harassment" of the Forest Service resulted in representatives of township, county, and state governing

---

[26]The "gadfly" approach? See footnote 23 previous page.

bodies rushing to the federal agency's defense.[27] Frank Basso, Watersmeet Township Supervisor, sent a two-page letter to Dr. Gandt on February 24, 1970 asking SOSAC to document its accusations regarding the Forest Service's "malfeasance." On February 26, 1970 the Vilas County (Wisconsin) News-Review observed editorially that the management of Sylvania appeared to be "heading toward a balance" and that the agency's plan seemed "about as fair as possible."

The Commission on Natural Resources of the State of Michigan, meeting in Ann Arbor on March 12, 1970,[28] unanimously adopted a resolution "deplor[ing] the unwarranted charges made against the Forest Service, and . . . express[ing] its confidence in the management of the Sylvania Recreation Area by the [Forest] Service . . . ." Even the Gogebic County Board of Supervisors was moved, on March 23, 1970, to inform Senators Hart, Griffin, Nelson and Proxmire and Representative Ruppe that they "hereby support the present management and development program. . .

---

[27]"SOSAC has just iced the local government behind the National Forest plan of development." Richard Guth, personal interview, East Lansing, Mich., Oct. 6, 1970.

[28]On the campus of the University of Michigan, in connection with the students' Environmental Teach-in.

the U.S. Forest Service is . . . using for the development of the Sylvania Tract.[29]

The Wisconsin and Michigan affiliates of the National Wildlife Federation sent expressions of strong disagreement with SOSAC to their entire Congressional delegations. Les Woerpel of Stevens Point, Wisconsin, chairman of the Wisconsin Wildlife Federation's natural resources committee, suggested in his February 4, 1970 message on behalf of that Federation to the Wisconsin Congressional delegation that "[SOSAC is] nit-picking the Forest Service to death," adding, "[T]he Forest Service is trying to do a good job. . . ."[30]

---

[29]This letter also stated: "We advise Dr. Gandt to clean up his own backyard, such as the Fox River, before he starts to tell other people how to manage their backyards."

[30]On May 11, 1970 Woerpel sent James L. Rouman, late executive director of the Michigan United Conservation Clubs in Lansing, a photocopy of SOSAC's May 3, 1970 Milwaukee Journal advertisement resembling a death notice and stating: "In sympathy with you, Milwaukee in the sad loss of your beautiful trees in the Root River Parkway. We share your sorrow in a similar tragedy--the loss of a virgin forest now being cut by the U.S. Forest Service . . . it's called Sylvania. . . ." Accompanying the ad in the materials from Woerpel were copies of a series of Journal articles describing how 25 acres of "one of the choicest [public] woods in Milwaukee County" had been logged as a result of a swindle. Woerpel's covering comment to Rouman was: "Another example of how SOSAC is misleading the public and playing on emotions for its support to get Sylvania closed as a Wilderness Area."

See also, "The Truth About Sylvania," Wisconsin Wildlife Federation News and Views, Feb. 1970; and the Ironwood (Mich.) Daily Globe column by Bill Carow on July 10, 1970: "Through all of the harassment [by SOSAC and others], Kizer and his men have carried on cheerfully, answering questions from senators and congressmen in correspondence, along with SOSAC letters. . . ."

Jim Rouman likewise placed the 350-club Michigan United Conservation Clubs organization squarely in support of the Forest Service with letters[31] to the entire Michigan Congressional delegation stating in part:

> Michigan United Conservation Clubs is very much disturbed by the activities of SOSAC . . . . [We] request that you disregard any attempts by a small group of individuals who are intent on blocking the most important recreational development in the western Upper Peninsula. We . . . are convinced that the Forest Service plans are in the best interest of all people concerned.

Gerald K. Goodman of Iron River, Michigan, a regional vice-president of MUCC, also sent protests regarding SOSAC's tactics to Michigan Senators and House members, describing SOSAC as a "handful of zealots."[32]

The Mackinac Chapter of the Sierra Club maintained a quiet, behind-the-scenes campaign to encourage the Forest Service to protect the wildness of Sylvania. The January 18, 1970 number of the chapter's newsletter, The Mackinac, contained a field report on developments and "non-conforming"

---

[31]Sent on April 30, 1970. Rouman also wrote, on April 29, 1970, to Daniel A. Poole, President of the Wildlife Management Institute, Washington, D.C., describing SOSAC as attempting to "shoot down" Forest Service plans for Sylvania and complaining that SOSAC's display at the North American Wildlife Conference in Chicago in March, 1970 sponsored by the Institute, "did not tell the whole story."

[32]In letters dated March 5 and March 27, 1970.

uses afoot in Sylvania[33] together with an editorial comment including a concerned, "It looks like our Sylvania policy needs rethinking." Relations between the chairman of the Mackinac Chapter, Miss Virginia Prentice of Ann Arbor, and the staff of the Ottawa National Forest remained cordial, however.[34]

---

[33]"Where is the wilderness? We skirt it, edge up to it, reach for it, and--hear the whine, see the snowmobile track, glimpse the bright flutter of surveyors' marks. . . ."

[34]For example, here is an exchange between Miss Prentice (June 26, 1970; the questions [Q]) and Dick Guth, acting forest supervisor (August 5, 1970; the answers [A]):

> Q. What was the outcome of the hearings on use of motorboats in Sylvania? Is there an official document I can request from the state that will contain the information?
>
> A. The Michigan Waterways Commission held a hearing in Watersmeet, July 30, concerning the use of motorboats in Sylvania. I just received a verbal report from Marsh Lefler concerning the hearing.
>
> He informed me it was well attended and all the Crooked Lake riparian owners were present. These owners were anxious to have some restrictions on the use of motors but did not want them banned. The Crooked Lake situation was deleted for further study and recommendation.
>
> The banning of motors on the Michigan waters of Big Bateau Lake was also deleted at this time. Virginia, we believe we can get this one back in the hopper soon. The principal Wisconsin riparian owners may, in the near future, sanction this ban. This should then satisfy the Watersmeet Township Board and they will then request action.
>
> The Town Board objected to the ban because they felt the Wisconsin owners should first have a chance to express themselves.

Forwarded to Miss Prentice were copies of correspondence between Kizer and Bob Ditton of SOSAC, in which Ditton alleged that the Mackinac Chapter of the Sierra Club

---

There were no objections to banning motors on the rest of the listed Sylvania lakes. This is significant. We seriously doubt if this would have happened two years ago. It is a good sign the local people are accepting our Sylvania management principals.

The next step is action by the Michigan Waterways Commission, followed by final adoption by the Watersmeet Town Board. We believe the State motor ban on most Sylvania waters will be effective some time in November.

We will keep you posted if some adverse situation crops up.

Q. Is the Snowmobile ban through the hunting season and during eagle nesting time official, and what can I quote as a reference, i.e., is there an official notice as there was for McCormick tract?

A. Quoting Ralph [Kizer] "I think, in 1970-1971, we should ban snowmobiles at all times from the end of deer hunting season to March 1. We will make a formal announcement in the Fall." Marsh Lefler, Bob Booker and myself have reviewed the snowmobile trails this Spring for any signs of littering or damage. There was virtually none of either. . . .

We will continue, however, to carefully evaluate snowmobiles and Sylvania again this year.

Q. What is the official title of the group that is to study Botanical zone boundaries, etc. this summer? And can you furnish the list of participants?

A. We really haven't named the Botanical Zone Study group. Dr. Ed Voss, the Herbarium, University of Michigan, Ann Arbor, Michigan, 48104, one of his assistants, along with Fred Metzger from the Lab at Marquette and Bob Booker spent two days in the area in July. We anticipate more inputs from Fred, Carl Tubbs, Dr. Bourdo from Michigan Tech. and Dr. Mowbray from SOSAC. There still is a lot of work necessary before we finalize the boundary. We don't want to miss any significant

"has demonstrated a much lesser interest in Sylvania in comparison to the activities and commitment of SOSAC, Inc.," to which Kizer had replied:

> I cannot agree with you that the Mackinac Chapter has any less interest in Sylvania than SOSAC, Inc. I will agree quickly that the modus operandi of the Sierra Club is quite different than SOSAC's.

> situations. Perhaps we will be satisfied with investigations and recommendations about a year from now. At least we hope so.
>
> Q. Dick Guth mentioned that an outfitter had located in Watersmeet--outside the Sylvania tract area--and that the Forest Service would not now consider providing for outfitter services in the area. Can these . . . relevant portions of the management plan be considered "DELETED?"
>
> A. As long as outfitter services are adequately provided by outside commercial outfitters, we believe the public needs are being met. We will not promote such concessionaire facilities utilizing National Forest lands in or adjacent to Sylvania. We will make every effort to avoid competition with outfitters operating from private lands on the outside.
>
> We already have, of course, the concession stand at the Clark Lake Day Use Area. One of the outside outfitters has expressed an interest in bidding on and operating this facility. Regardless of this, canoe rental and outfitting will be handled from the outside, not from the Clark Lake facility.
>
> A. I saw a copy of your letter to Gerry Gandt providing information about letting bids for construction of 50 camp sites at Clark Lake and a road on to Snapjack Lake (?) What about the $90,000 item for road and boat launch at Indian Lake campgrounds (p. 44)? Is that not to be completed in Fiscal Year 1971 (I hope!)? If you have a tabulation of the items completed on schedule, those underway, and those behind schedule, temporarily tabled, or essentially deleted, it would be a big help.

The main thrust of these letters between Ditton and Kizer[35] was that (1) SOSAC could not understand why the "Sylvania Ad Hoc Advisory Committee" hadn't been reconvened

---

A. The road construction contract for the campground, located 1/4 mile east of Clark Lake, has been let as well as the Snap Jack-Long Lake Road. As you probably recall, this later road will provide a drive-in launch on Long Lake (which is only 1/2 in Sylvania) and a carry-down access to Snap Jack Lake. Our present forecast is for no recreation construction funds in Fiscal Year 71. In fact, we do not anticipate enough to permit topographic surveys and preliminary plan preparation for this project (Indian Lake) until at least FY 72.

Virginia, the best way to handle your final request is by indicating our progress from the development schedule in the Plan. We have attached copies of these pages with some brief notes on their status. Should you need a fuller explanation on any items, please let us know. Our highest priorities for construction in Sylvania are to:

1. Complete the Clark Lake Day Use Area.
2. Complete the Whitefish Lake Road.
3. Complete the Clark and Crooked Lake Boat Launch sites.
4. Construct the entrance station.
5. Following road construction, complete the campground near Clark Lake.
6. Following road construction, complete the developments at Snap Jack and Long Lakes.

Virginia, we promise to keep you informed of any changes that may occur. . . .

Forest Supervisor Ralph Kizer noted in a November 30, 1970 letter to Miss Prentice that:

I know we can continue to work closely with you and the Sierra Club. We place a high value on Sierra Club opinion and advice. Your thoughts always seem to be the result of much deliberation and are always presented cordially. We appreciate this and will continue to react accordingly.

[35]Ditton's of Nov. 16, 1970, postmarked Nov. 26, 1970; Kizer's of Nov. 30, 1970.

as "Regional Forester George James promised" and (2) Kizer's explanation for this decision:

> My decision not to go ahead with the ad hoc review committee was made for several reasons. Mainly, since proposed developmental projects were subjected to considerable review before being started, we felt that additional study at a time when these same projects were in various stages of completion would not have much value. It would seem that the best time for another formal examination would be when developments are operational. In the meanwhile, we certainly have no objection to anyone observing and commenting on various projects under construction.

Virginia Prentice, having concluded with her associates that the proposed Sylvania Area campground development on now-undeveloped Indian Lake was ill-conceived, has begun a campaign within the Sierra Club to raise the money needed to buy the remaining privately owned land on this lake, thus permitting its total preservation.[36]

---

[36]"The Forest Service indicated . . . that if they could be assured that there would be no development on Indian Lake, they would reconsider the plans to put a 750-slot campsite in that area. I think we ought to try to acquire that land one way or another." Virginia Prentice, memorandum to Chuck Meyer, Mackinac Chapter delegate to the Midwest Regional Conservation Committee of the Sierra Club, Oct. 1, 1970. See also, Miss Prentice's memorandum, "Fund Raising Effort," to chapter leaders, Oct. 1, 1970. Supervisor Kizer is more interested in obtaining the authority to acquire now-private lands within the 93,000-acre "hole in the doughnut" in the middle of the Ottawa National Forest. The Forest's proclamation boundary now excludes the equivalent of four townships in Ontonagon County east of Lake Gogebic. Uncontrolled development of this area in the midst of the Forest concerns the supervisor. Ralph Kizer, personal interview, Lake City, Mich., Jan. 9, 1971.

The Mackinac Chapter's approach[37] was summed up by Virginia Prentice in her remarks to a Michigan State University park and recreation policy class on October 21, 1970:

> Rather than attack each violation of wilderness, we try to work with agency people, suggesting alternatives, seeking changes in emphasis and outlook. We realize the job won't be done overnight.[38]

Support for SOSAC's position on Sylvania came, on September 11, 1970, from the Wisconsin Resource Conservation Council[39] and, in October 1970, from the Northern Environmental Council.[40]

---

[37]SOSAC's tactics irritated members of the Sierra Club's Mackinac Chapter. The minutes of the January 5, 1971 meeting of the chapter's conservation committee included this item: "SOSAC (Save Our Sylvania Action Comm[ittee]) in the UP is reportedly giving all environmental groups in the UP a bad image by their less than tactful approach. The Cons[ervation] Comm[ittee] urged the UP Task Force to keep close tabs on SOSAC's activities and step in with a rebuttal or statement of our position whenever needed."

[38]Miss Prentice also said that the 1964 Sylvania study-proposal was the result of "professional mediocrity," that no one in the Forest Service seemed to be interested in the "whole plan," and that the "systems approach" should have been used in its creation, but was not.

[39]In the form of a resolution passed at its annual meeting at Delevan, Wis.

[40]In the form of a letter to Ralph Kizer from NEC Chairman Paul Lukens. The Northern Environmental Council was organized in Superior, Minn. in January 1970. Charles Stoddard was elected executive director. See "New Environmental Council Headed by Superior Man," Duluth News Tribune, Feb. 1, 1970.

Asked in late 1970 for his position of the Sylvania issue, U.S. Senator Gaylord Nelson of Wisconsin essentially echoed the recommendations of the wilderness conservation organizations:

> . . . In a lengthy letter this year to the Chief of the Forest Service in Washington, I pointed out the unique wilderness values of the area and urged their preservation by the following steps:
>
> 1. Prescribe limits on overnight use, and eventually, guidelines on the densities of use permissible during the day.
>
> 2. Spell out more precisely for the Botanical and Pioneer zones the wilderness protection principles for these areas in the development plan.
>
> 3. Extend and spell out these same principles for wilderness protection of all lakeshore in the Tract in one quarter mile bands extending back from the waterfront, and similarly, for all trails in the area.
>
> 4. Make it clear now that no additional roads, large campgrounds, primitive campsites, boat launching ramps and other development will be established beyond what is now included in the development plan.
>
> 5. Establish as a high priority the elimination of all motorboating in the Sylvania Recreation Area and limiting snowmobiling in areas where adverse effects on wildlife and winter solitude may be indicated.
>
> 6. Identify key "in-holdings" which should be acquired through fee simple or protected with conservation easements.
>
> 7. In multiple use areas, spell out the principles permitting only winter logging and very selective cutting, prohibiting permanent logging roads, and assuring adherence to other appropriate forest management principles.
>
> Further, the letter suggested that a review committee of scientists, citizens, and federal agency and local representatives to be established to undertake a thorough evaluation of plans for the Sylvania area. The results of such a study, particularly if it provided for the involvement of concerned citizens, could be a greater

public understanding of the problems involved, and the study findings could contribute important new knowledge for the benefit of future administrators.

The letter emphasized my concern that the protections which the Forest Service plans for the area be spelled out in regulations so future administrators and the public will understand the intent, and so there will not be continuing alterations in the plan as the pressures for use increase over the years.

It is clear, as the letter pointed out, that the best insurance that can be given for deriving local economic benefits from Sylvania twenty years from now as well as today is a long range plan strictly enforced.

In its reply, the Forest Service said these proposals would be taken into account in decisions on Sylvania. Further, the Forest Service gave assurances that no future revision in the Sylvania plan will be made without full public review.

It appears that the Forest Service is in general agreement with the statements I have made. However, the plan needs to be firmed up with regulations to assure the long-range protection of the Sylvania Area and I will continue discussions with the Forest Service on this matter.[41]

How The Forest Service Views Its Sylvania Plan

The Forest Service currently is under no legal constraint to subject a special area management plan such as that for the Sylvania Recreation Area to public hearings prior to its adoption.[42]

---

[41] Senator Gaylord Nelson, personal letter to John E. Carroll, East Lansing, Mich., Nov. 3, 1970.

[42] It does believe in ad hoc meetings called, controlled, and dissolved by the Forest Service. The following are excerpts from a letter to participants in the Dec. 5-6, 1969 ad hoc meeting concerning the McCormick Experimental Forest, sent on Feb. 17, 1970 by Regional

Nor is it obliged to establish permanent citizen advisory committees to provide it with feedback from outside user groups.[43] In this case, at least, the regional attorney

---

Forester James and North Central Forest Experiment Station Director David B. King: ". . . We feel ad hoc meetings are good; we should hold them as needed to solve major problem situations. They must be timely. Originally, we had an Advisory Council for Research and National Forest Programs in the Lake States. But now the Eastern Region, Forest Service, is too extensive for one advisory council. It is more practical and desirable to take the route of ad hoc committees for specific problem areas. In the recent past we have had good ad hoc meetings concerning Sylvania in Michigan, on the Monongahela Forest in West Virginia, the Hoosier Forest in Indiana, the Wayne in Ohio, and now back to Michigan and the McCormick tract. These meetings, such as the one held in Marquette, are a desirable function on the public stage. We intend to continue this practice whenever it is needed. We want to know and consider your sense of reaction. However, we should inform you that we cannot, and we hope you do not expect us to fully satisfy everyone. . . . You are all aware that the Forest Service functions in a social-political-economic complex. We are only part of the scene in each state. In one sense, through legislative history, we have a quasi-partnership with County Government and ultimate decisions should include local as well as national public welfare. . . ." (Letter to H. A. Tanner, Michigan State University, East Lansing, Mich.)

Cf., "Hickel Broadens Public Role In Master Planning For Parks," news release from the Office of the Secretary of the Interior, April 26, 1969. Excerpts: "'I believe that public participation in the planning process should be encouraged for all areas of the National Park System,' Hickel said. 'Public meetings will afford interested citizens a superior opportunity to make known their views on all proposals affecting a park area. . . .'" At the same time, Secretary Hickel revoked a policy statement adopted on Jan. 18, 1969 and published in the Federal Register on Jan 29, 1969 which required public hearings on the location and engineering design of any proposed new major National Park System road. See, U.S., Department of Transportation, Federal Highway Administration, Bureau of Public Roads, Policy and Procedure Memorandum 20-8, Public Hearings and Location Approval, dated Jan. 14, 1969 and "issued under authority of the Federal-aid Highway Act,

for the Department of Agriculture's Office of General Counsel saw no reason for continuing any additional baseline or user-impact-on-the-resource research in Sylvania once the court has concluded that the 1968 management plan was "adequate." A "Do Not Distrub" label seems to have been pasted on the 1968 plan following Judge Kent's December 11, 1969 opinion. The fear of new litigation has kept the Forest Service from even thinking about developing a new management plan:[44]

---

23 U.S.C. 101 et seq., 128, 315, sections 2(a), 2(b)(2), and 9(e)(1) of the Department of Transportation Act, 49 U.S.C. 1651(a) and (a)(2), 1657(e)(1); 49 CFR § 1.4(c); and 23 CFR § 1.32." See also, "Appeals in Public Land Cases," Bureau of Land Management, Department of the Interior, Federal Register, Vol. 35, No. 118, June 18, 1970, pp. 10009-10012. The official Forest Service appeals route is described in U.S. Department of Agriculture, Forest Servide, The Appeal Regulation (36 CFR 211.20-211.37), 1965, 20 pp.

[43]Virginia Prentice, speaking to a Michigan State University park policy class on Oct. 21, 1970, stated that the Sierra Club is having national legislation drafted which would require every National Forest to have a citizens' advisory council. See "Citizen Involvement in Environmental Decisionmaking," quoting Sidney Howe, president of the Conservation Foundation, and Stewart Brandborg, executive director of The Wilderness Society, in U.S., Congress, House, Committee on Government Operations, The Environmental Decade (Action Proposals for the 1970's), House Report No. 91-1082, 91st Cong., 2d Sess., 1970, pp. 16-17.

[44]Or calling another ad hoc committee meeting to consider changes in the plan. Richard Guth, personal interview, East Lansing, Mich., Oct. 6, 1970.

> There is a danger in updating [the Sylvania] plan. We have to be careful in reading "changing needs." We could find ourselves back in court if we change [the plan].[45]

SOSAC knows this, as well as the Forest Service. Even though, in Bob Ditton's language, "[t]he court only said SOSAC didn't have the guns to prove that it was a lousy plan,[46] the legal doctrine of res judicata--"you cannot retry the same issue; the matter has been decided"--comes into play here. SOSAC attorney Fred Reiter spelled it out to this investigator on July 28, 1970:[47]

> The only way we can go back [to court] is if they substantially alter their plan, or substantially depart from the plan in execution. If they follow the plan, there's nothing we can do.[48]

The forest officers charged with the implementation of the Sylvania management plan have, however, responded to

---

[45] Ralph Kizer, personal interview, East Lansing, Mich., Dec. 2, 1970.

[46] Personal interview, East Lansing, Mich., Oct. 21, 1970. The need to "have the guns," i.e., good evidence, was emphasized in the opinion in Ruediger v. Klink, 346 Mich. 357, by Mr. Justice Cardozo (at p. 371): "More and more, we lawyers are awaking to a perception of the truth that what divides and distracts us in the solution of a legal problem is not so much uncertainty about the law as uncertainty about the facts--the facts which generate the law. Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light."

[47] Personal interview, Green Bay, Wis.

[48] "[T]he principle [is] that a cause of action once finally determined between parties by a competent tribunal cannot afterwards be litigated between the parties or their privies in a new proceeding." See "Res judicata," Words and Phrases (St. Paul, Minn.: West Publishing Co., 1950), pp. 613-822.

encouragement from SOSAC and the Sierra Club--as well as to Judge Kent's admonitions without any force of law regarding motorboats and snowmobiles, and to their own experience--to the extent of making these "refinements" in the plan:

(1) In mid-February 1970 Supervisor Kizer announced the closure of Sylvania to snowmobiles after March 1 "to protect the bald eagles which begin nesting activities soon after March 1 and to prevent the harassment of undernourished deer."[49] In late November 1970 Kizer announced that Sylvania would be open to snowmobiles only from after the end of deer hunting season until the beginning of the eagle nesting season, thus limiting snowmobile use in Sylvania to the period December 6, 1970-March 1, 1971.[50] (2) The "Muskrat" water access campsite on Crooked Lake was closed to avoid disturbing the bald eagles at a nearby active nest.[51] (3) Painted

---

[49]"Sylvania Bans Snowmobiles To Protect Eagles," Green Bay Press-Gazette, Feb. 22, 1970.

[50]"Sylvania Not Open To Sleds," The State Journal, Lansing, Mich., Nov. 28, 1970, p. C-3. The Sierra Club's position is that snowmobiles should be completely prohibited in Sylvania and that "any area that is free of motors in the summer should be free of motors in the winter." Virginia Prentice, personal interview, East Lansing, Oct. 21, 1970. For a typical anti-snowmobile article see, Jack Olsen, "Time to Control Snowmobiles," Reader's Digest, Dec. 1970, pp. 174-177.

[51]Another federal agency, the Bureau of Sport Fisheries and Wildlife, also is working to preserve the bald eagle in northern Michigan. See, George Rintamaki, "Bald Eagle : Seney [Refuge] Assists Birds," The State Journal, Lansing, Mich., Mar. 21, 1970: "[The U.P. is] one of the last large wild districts left to the bird in the entire nation." Forest Service concern for endangered species is

metal garbage cans were removed from several water access campsites; instead, campers were given plastic garbage bags and asked to pack out what they packed in.[52] (4) The Forest Service is working with the State and with Watersmeet Township to achieve, over time, total elimination of motorboat use in Sylvania. (5) The forest supervisor "has pledged in writing not to offer any more timber sales [in Sylvania] unless he's satisfied that the Kimberly-Clark sale hasn't hurt the environment.[53] (6) The water access campsite facilities on Deer Island Lake, within the "Botanical Zone," have been removed, and there is to be no overnight use in this zone.[54] (7) Plans to construct a spur road to a parking lot within a quarter-mile of Whitefish Lake have been abandoned.[55] (8) The "design mistake" which resulted in

---

typified by these four-color booklets: Kirtland's Warbler Management Area, published by the Huron National Forest, Cadillac, Mich.; Protecting Endangered Wildlife and Endangered Wildflowers, both published by the Southern Region, Forest Service, Atlanta, Ga. 30309.

[52]"We took the Sierra Club's advice [on this and it has been a] big success." Richard Guth, personal interview, East Lansing, Mich., Oct. 6, 1970.

[53]Virginia Prentice, personal interview, East Lansing Mich., Oct. 21, 1970. The Marsh Lake sale is more than one-half mile from Marsh Lake; stumps from logging road-construction were removed to a "stump dump" outside Sylvania; the logging access road was heavily seeded with native grasses in the spring; landscape architects participated in the choice of trees to be cut; many large trees were left standing.

[54]Marsh Lefler, personal interview, Watersmeet, Mich., July 23, 1970.

[55]Ibid.

the siltation of bogs during the construction of County Route 535 northeast of Clark Lake "will not be repeated."[56] Those in charge of Sylvania are taking their role as stewards of the property seriously; Watersmeet District Ranger, proud of his role in the establishment of the area, states, for example, that he "wants [Sylvania] to be a model for the Nation, [an example] of what we [in the Forest Service] can do."[57]

The Ottawa Forest and the Eastern Region will find it difficult to keep their 1968 Sylvania management plan "frozen" for very long. These excerpts from a draft of the agency's own Recreation Planning Handbook[58] show why this might be so (emphasis supplied):

> 212 - Necessity for Plan or Alternatives
>
> . . . Factors resulting in public use of the National Forest System for outdoor recreation purposes are constantly changing. Recreation management and development planners must constantly monitor the total management situation and suggest plan modifications. . . .
>
> 500 - Plan Review and Monitoring
>
> A plan which is prepared with the objectiveness and thoroughness of professional quality is only as good as the monitoring and review that it periodically receives. Continual updating is necessary. . . . In all cases, management plans are subject to changes. . . .

---

[56] Ibid.

[57] Ibid.

[58] U.S., Department of Agriculture, Forest Service, Forest Service Handbook, FSH 2309.13, "Draft copy for review purposes, 10/28/69."

521 - Regional Recreation Management Plan

The Regional Recreation Management Plan should be thoroughly reviewed and completely rewritten at least every five (5) years. . . .

522 - National Forest Recreation Management Plan

The National Forest Recreation Management Plan should be thoroughly reviewed and rewritten at least every 5 years. . . .

540 - Plan Maintenance and Revision

Plan maintenance or revision is undertaken to update data and provide solution to problems which have been identified in the process of plan monitoring and review. . . .

Gandt v. Hardin: The Legal Implications

The United States Forest Service is being sued from hell to breakfast these days . . . . The suits are all coming from one direction, originating among citizen conservation organizations, distressed and disturbed over the management of the public forests in an age of environmental crisis. . . . Citizen activists can no longer be easily dismissed as well intentioned but misguided extremist minority groups. . . .[59]

While no attempt will be made here to provide an in-depth review of the entire environmental law field to give Gandt v. Hardin its proper status in that galaxy of citizen class actions to change agency policies alluded to by American Forests columnist Mike Frome, supra.,[60] a summary discussion of the legal implications of the Gandt case is in order.

---

[59]"Mike Frome" (column), American Forests, Oct., 1970, pp. 3, 70-71.

[60]For an overview of the field, see Robert R. Lohrmann, "The Environmental Lawsuit: Traditional Doctrines and

Gandt v. Hardin began and ended at the trial (federal district) court level. It was not appealed. Therefore, the court's findings in this case have a bearing on future similar cases only to the extent that other districts may cite this opinion--they don't need to follow it. Under the common law doctrine of stare decisis, only opinions handed down by the Supreme Court (or a Circuit Court of Appeals, when the Supreme Court has not ruled on the issue) set legal precedent which must be followed in similar circumstances by subordinate jurisdictions. The legal principles at issue in the Gandt V. Hardin case:

Standing to sue. Six years ago non-property-holding plaintiffs could not obtain standing to sue; they were not considered "aggrieved parties." The merits of their cases did not matter. (Whether or not a plaintiff has standing to sue is unrelated to the merits of his case.) Today, concerned citizens, without monetary loss that they can demonstrate, are finding the doors of the courthouse open to them. Judge Kent, in his December 1969 Gandt opinion, stated simply that " . . . this Court has reached the conclusion

---

Evolving Theories to Control Pollution," Wayne Law Review, Vol. 16., No. 3, Summer 1970, pp. 1085-1135. See also, Joseph L. Sax, Defending the Environment: A Strategy For Citizen Action (New York: Alfred A. Knopf, 1971); Oscar S. Gray, Cases and Materials on Environmental Law (Washington, D.C.: The Bureau of National Affairs, Inc., 1970); Environment Reporter (Washington, D.C.: The Bureau of National Affairs, Inc., 1970); and Frank P. Grad, Environmental Law Sources and Problems (New York: Matthew Bender, 1970).

that these parties plaintiff have standing in this court." Other judges had reached the same conclusion in similar cases, the tide having turned with the Scenic Hudson opinion in 1965.[61]

As Robert B. Hicks, Mineral King Project Manager, Walt Disney Productions, Burbank, California noted in a speech given January 15, 1970 before the Natural Resources Section of the California State Chamber of Commerce in Los Angeles,

> The trial courts have ruled that one need not have a direct contractual or other monetary interest in the decision-making result; the courts are apparently of the view now--at least the lower courts are--that if the plaintiffs belong to a class of people who have an interest in the matter--and for illustrative purposes, the Multiple-Use Sustained-Yield Act lists recreation as one of its five uses--you at least can come into court and challenge an action which is alleged to be harmful to those interests.

Nelson H. Grubbe, U.S. Department of Justice attorney, summarized the situation thus, before a conference of forestry school deans and Forest Service Eastern Region personnel at Milwaukee on February 10, 1970:

> A few years ago the public forest manager was relatively free from the harassment and delays of litigation. As attorneys for the government, we often raised as a defense the issue of who had standing to bring a case into court for a judicial review of the

---

[61] Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608 (2d Cir. 1965), cert. denied sub nom. Consolidated Edison Co. v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966). See the leading cases cited by Judge Kent, p. 235, supra.

> decisions of the forester. That shield has been pierced. The voice of conservation groups and interested citizens has been heard and been heeded by courts especially so in the past five years. . . .

Although perhaps buoyed by the October 16, 1970 majority conclusion of the United States Court of Appeals for the Ninth Circuit in Sierra Club v. Hickel[62] that

> . . . it did not believe that "such [Sierra] Club concern without a showing of more direct interest could constitute a standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all the citizens by two cabinet level officials of the Government acting under congressional and constitutional authority[,]

federal attorneys at this point in time appear to be simply "going through the motions" with their use of standing as a defense. Robert Rue of the U.S. Department of Agriculture's Office of General Counsel told this investigator on March 26, 1970, for example, that passage of the National Environmental Policy Act of 1969[63] "almost guarantees

---

[62]The Mineral King case, Civil No.51,464 (N.D. Cal. 1969) (standing granted and vacated, 433 F.2d 24 [9th Cir., 1970], cert. granted, 91 Sup. Ct, 870 [1971]). See, "Standing to Sue; Preliminary Injunction of Recreation Project in Mineral King Valley Not Warranted," Land and Natural Resources Division Journal, U.S. Department of Justice, Vol. 8, No. 12, Dec. 1970, pp. 393-5.

[63]Public Law 91-190, signed by the President on Jan. 1, 1970. See, in connection with the implementation of section 102 (2)(c) this Act [42 U.S.C. 4322 (2)(c)], "Council on Environmental Quality, Statements on Proposed Federal Actions Affecting the Environment, Guidelines," Federal Register, Vol. 36, No. 19, pp. 1398-1402.

standing" to conservation groups. And under consideration by the 91st and 92nd Congresses have been bills similar to the State of Michigan's Environmental Protection Act.[64] These bills would

> . . . provide a right of action for relief for protection of the environment from unreasonable infringement . . . and . . . establish the right of all citizens to the protection, preservation, and enhancement of the environment.[65]

Passage of such a national Environmental Protection Act would serve to open the doors of the courts to conservation groups once and for all. Judge Kent's Gandt decision, at the time he handed it down, was only the latest in a series of decisions recognizing that "the right of standing exists 'even if the sole purpose is to vindicate the public interest.'"[66]

---

[64]Act 127 of the Public Acts of 1970.

[65]From S. 3575, introduced in the 91st Congress by Senators McGovern and Hart. See, U.S., Congress, Senate, Committee on Commerce, Environmental Protection Act of 1970, Hearings before a subcommittee of the Committee on Commerce, Senate, 91st Cong., 2d Sess., 1970, 169 pp.

[66]Frederick S. Richards, "Walton v. St. Clair: The Standing Question," Natural Resources Lawyer, Vol. IV, No. 1, Jan. 1971, pp. 47-59, at p. 52. The quotation is from Judge Frank, Associated Industries v. Ickes, 134 F.2d 694, 705 (2nd Cir. 1943), described by Richards as "the first decision by any federal court recognizing the right of a member of a class labeled the consuming public or general public to initiate a public action for reasons other than purely economic one for a private individual." See also, Louis M. Kohlmeier, "High Court Gives Individuals and Concerns Standing to Sue Federal Administrators," The Wall Street Journal, March 4, 1970, p. 6; "Standing to Sue,"

Sovereign immunity. Robert Hicks' January 15, 1970 speech neatly summarized the status of this traditional government defense:

> The lower courts are now also of the view, judging from these environmental cases, that government agencies can no longer hide behind the "sovereign immunity" theory; the very essence of these cases tests whether or not the action complained of was within the prescribed duties and obligations of the agency. If it was, then it can be dismissed without reference to the sovereign principle; if it was not, the sovereign immunity argument cannot prevail.

Judicial review of administrative discretion. Judge Kent, in his Gandt opinion, stated succinctly that

> . . . there is no express provision in the [Multiple Use] Act which precludes judicial review or which specifically commits agency action under the Act to complete agency discretion. . . . [T]he Secretary's actions, when they seem to be in contravention of the Act, are subject to judicial review.

This portion of Judge Kent's decision also was in line with a series of earlier decisions,[67] the effect of which has been well described by James P. Rogers:

Land and Natural Resources Division Journal, U.S. Department of Justice, Vol. 8, No. 4, Apr. 1970, pp. 79-83; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Law and the Environment--Selected Materials of Tax Exempt Status and Public Interest Litigation, Committee Print, 91st Cong., 2d Sess., 1970, 43 pp.; "Environmental Litigation Involving Forest Service Lands," Natural Resources Law Newsletter, Natural Resources Law Section, American Bar Association, Vol. 4, No. 2, Jan. 1971, pp. 4-5; and Don S. Willner, "Who Has Standing in Oregon to Defend the Environment?", Environmental Law, Vol. 1, No. 1, Spring 1970, pp. 44-59.

[67]See the leading cases cited by the Gandt plaintiffs, p. 200, supra.

First, despite the substantial increase between the 1897-1905 period and today in the statutory objectives of forest management, and therefore the number of that management's beneficiaries, it does not appear likely that the courts will deny their portals to a class of persons who have had their "rights" invaded by executive or administrative decision in the natural resource field.

Second, Chicago Junction[68] and Lansden[69] both tell us that the "person aggrieved" language in the statute is not vital to judicial review of such decisions; even in Frost[70] the District Court did not rely on the "standing" issue to avoid decision, though it considered only the generality of the statute rather than the merits of the executive action.

Third, in these cases, where the plaintiff represents a class of citizens who are given an interest in the decision, i.e., outdoor recreationalists, potential bidders for timber, applicants for range permits, or fish and wildlife interests,[71] for example, the courts will not in most cases tell the Secretary or the Chief of the Forest Service what to decide. They will instead review the factors and considerations upon which he acted. If he used the wrong ones or false ones, refused to use those he should have used, or discriminated between members or the interested class, they will remand the case to him for a new decision in which he has used all of the proper criteria the Congress has specified in the statute and the Constitution requires. Thus, it seems, would the judiciary protect statutorily created general interests and enforce "due process" concepts, and yet avoid invasion of the executive department's functions.[72]

---

[68] Baltimore and O.R.R. v. United States, 264 U.S. 258 (1924).

[69] Lansden v. Hart, 180 F.2d 679 (7th Cir. 1950).

[70] Frost v. Garrison, 201 F.Supp. 389 (D. Wyo. 1962).

[71] Listed in the Multiple Use Sustained Yield Act § 1, Act of June 12, 1960, 74 Stat. 215, 16 U.S.C. §§ 528-531 (1964).

[72] "The Need for Meaningful Control in the Management of Federally Owned Timberlands," Land and Water Law Review, Vol. IV, No. 1, 1969, pp. 121-143.

U.S. Attorney Grubbe outlined the Justice Department's approach to the problem of being able to demonstrate that "due consideration" had been given all resources, in his February 10, 1970 remarks in Milwaukee:

> Assuming the court is convinced that the plaintiffs are proper parties and the doors of the courthouse open; what can be expected concerning review? What allegations will be made against the forester? Failure to give due consideration. Failure to meet the needs of the public. Failure to meet the objectives recited in the Environmental Policy Act [emphasis in the original]. All of which adds up to a conclusion that the land manager was arbitrary, capricious and acting beyond his statutory authority. How these charges will be met must be your concern as well as mine.
>
> First we must demonstrate that the decision was technically sound. Was there a scientific basis for it? Will it accomplish the intended result?
>
> Now comes testimony concerning the public need--the cultural and aesthetic justification. Courts may not be convinced that it's a good idea just because the Forest Service thinks so. We must show the public involvement if it played a role in the decision-making process. Maybe we could show how public opinion polls were utilized, if they were. Hopefully we'll have some praise from the news media. We'll probably have ample correspondence from industry or conservation groups. All of this material will be used to support an argument that the broad mandate of "do good" has been followed.

SOSAC attorney Fred Reiter contends[73] that the "due consideration" requirement of the Multiple Use Act implies that such procedural steps as public hearings and "listening to aggrieved persons" must be taken by forest administrators,

---

[73]Personal interview, Green Bay, Wis., July 28, 1970.

but t
gato
admi
ment
lish
Rue
a c

ula
tiv
th
th
ad
wi
ma
c
f
h
R
a

but U.S. Attorney Robert Rue pointed out to this investigator[74] that the Forest Service is exempt from the general administrative rule-making policies of the federal government and that it is not required to hold hearings or publish its rules and rule changes in the Federal Register. Rue also observed that the Forest Service has never lost a case on the basis of "abuse of discretion."[75]

While Section 2 of the Multiple Use Act does stipulate that "due consideration shall be given to the relative values of the various resources in particular areas," this mandatory provision only applies to the weighing of the various values present; discretion is left with the administrator to make the final decision as to which values will be favored. The question citizen conservation groups may direct their attention to, in pre-trial discovery proceedings if necessary, is: "Were sufficient studies performed to enable the administrator to properly evaluate his alternatives?" Such groups should be able to use the Forest Service Handbook's section on recreation planning as a guide to help them determine what questions to ask

---

[74]Personal interview, March 26, 1970, Washington, D. C.

[75]On this general subject see the "Scope of review and administrative discretions," section of opinion by Judge Tamm in the case of Medical Committee for Human Rights v. Securities and Exchange Commission, U.S. Court of Appeals for the District of Columbia Circuit, No. 23, 105, decided July 8, 1970, reprinted in the July 15, 1970 Congressional Record at p. H 6821.

Forest Service witnesses. The agency itself sets standards for its recreation planning. Plaintiffs' attorneys should be able to determine if, in the case at bar, these standards have been met. The evidence as to who weighed what alternatives and made the decisions should be available to the court.

Laches. Judge Kent leaned heavily on the doctrine of laches to support his dismissal of the Gandt plaintiffs' complaint. SOSAC's attorneys simply failed to place in the hearing record copies of the voluminous correspondence between the plaintiffs and the Forest Service which extended back to the time of the ad hoc committee meeting on Sylvania in September 1968 at Houghton, Michigan (see Dr. Culver Prentice's letter to Regional Forester James of September 30, 1968, at page 111, supra.) as well as to Dr. Gandt's February 27, 1969 letter to Secretary Hardin (at page 125, supra.) There also had been a number of face-to-face confrontations between the plaintiffs and the Forest Service between the time the 1968 management plan had been adopted and the time of the court hearing. These efforts to communicate never appeared in the hearing record. And so, while SOSAC attorney Reiter might claim that the application of laches to "amateurs" such as Jerry Gandt by the court was "incredible,"[76] and that the corollary of the Gandt opinion is,

---

[76]Personal interview, Green Bay, Wis., July 28, 1970.

"When in doubt, sue," the Proceedings of the hearing indicate that evidence to counteract the government's lack-of-timeliness argument simply wasn't introduced into the hearing record for Judge Kent to consider.[77]

Res judicata. The implications of this doctrine ("the matter has been decided") were discussed in the preceding section, "How The Forest Service Views Its Sylvania Plan" (pp. 261-268, supra.)

In Conclusion

The Gandt v. Hardin case constitutes an example of a new nationwide phenomenon, namely citizen group-instigated judicial review of Forest Service programs. Such litigation is expensive, time-consuming and potentially embarrassing personally to the forest officers involved.

---

[77]Additionally, "the [Sylvania development] project was well underway, and laches came down hard" (Tony Ruckel, personal interview, Denver, Colo., Aug. 20, 1970) But see, Pennsylvania Environmental Council, et al., v. Bartlett, et al., 315 F.Supp. 238 (1970) at p. 246: "Laches is determined in the light of all the existing circumstances and requires that the delay be unreasonable and cause prejudice to the adversary. Sobosle v. United States Steel Corp., 359 F.2d 7 (3rd Cir. 1966). The mere lapse of time is not sufficient to constitute laches. Ritter v. Rohm & Haas Co., 271 F.Supp. 313 (S.D.N.Y. 1967). In the circumstances of this case, I cannot find with absolute certainty that the plaintiffs knowingly slept on their rights. Granted that suit was not begun by plaintiffs until ninety days after the awarding of the construction contracts, but this is not the kind of deliberate delay with which we are normally confronted in laches situations. Here, the Pennsylvania Environmental Council, Inc. was not incorporated as a non-profit corporation until January 30, 1970, and had its first organizational meeting on March 14, 1970. The

Forest officers do not like this questioning of their administrative discretion, their professionalism, and their competence. But, as U.S. Attorney Nelson Grubbe put it in his February 10, 1970 remarks in Milwaukee,

> In tomorrow's cases we will be presenting evidence on the effect [of management and development programs] on the environment. . . . [This] will place a heavier burden upon the administrator to justify his decisions that may change the environment. The technique of obtaining public involvement and acceptance of forestry programs . . . [now] plays a major role in our work in public lands. . . . [emphasis supplied]

The Chief of the Forest Service, Edward P. Cliff, in a statement prepared initially for delivery to the appropriations subcommittees of the Congress in October 1970 and later sent to all of the agency's field personnel, also hit on the necessity for early public involvement in the Forest Service's decision-making process. The chief stated bluntly:

> We are already involved in a number of lawsuits reflecting public awareness of our activities. The public is increasingly unhappy with us.[78] This will continue until we get balance and quality into our program, as well as public involvement in our decisions [emphasis supplied].

---

present suit was instituted on March 31, 1970. Under these circumstances, there was no unreasonable delay on the part of the Pennsylvania Environmental Council, Inc., in bringing suit. . . ."

[78] E.g., U.S., Congress, Senate, Committee on Interior and Insular Affairs, A University View of the Forest Service, prepared by a Select Committee of the University of Montana, Senate Document No. 91-115, 91st Cong., 2d Sess., 1970, 33 pp.

If the result of cases such as Gandt v. Hardin has been to encourage the Forest Service to "get balance and quality into [its] program," they may be considered to have been worthwhile.

APPENDICES

APPENDIX A

FINANCIAL COMPENSATION TO LOCAL GOVERNMENTS FOR FEDERAL ACQUISITION OF SYLVANIA

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
633 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

2360

January 25, 1971

Honorable Philip A. Hart
United States Senate
Old Senate Office Building
Washington, D. C. 20510

Dear Senator Hart:

On December 14 you requested figures on payments that have been made to Gogebic County and Watersmeet Township which could be considered financial compensation in connection with the acquisition of Sylvania. We regret we could not reply sooner, but it required considerable research to compile information which would be of value to your constituent.

There are three categories we have considered as "contributions in kind." These are defined as expenditures which the county or township would be willing and able to make in the absence of federal outlays. We have included two road construction projects in this category. The third is dollars generated by Sylvania which consequently flow through the local economy. Sylvania visitors are the principal source of this income.

Areas we have not treated would include the renovation or establishment of business enterprises which have resulted from a public Sylvania. For example, an outfitter has established a business solely because of Sylvania. A sporting goods store, a gasoline station, and several resorts have added canoe rentals to their services. Increased business because of Sylvania has permitted some establishments to renovate their structures. The Forest Service has hired more people and locally contracted more services. All these and more are benefiting the local economy through improved personal income and increased property values.

It is difficult to present the complete picture concerning "contributions to local governments." There seems to be no limit to the depth one could go to make a full analysis.

Attached is a chart indicating some of the returns to Watersmeet Township and Gogebic County as a result of Sylvania acquisition. Some explanation concerning this chart follows:

Column 2. These amounts are direct payments which have been made to the Watersmeet School District as authorized by Public Law 874 of the 81st Congress as amended. This law provides for compensation to local school districts in federally impacted areas. Under definitions in the law, the Watersmeet School District became eligible for these payments as a result of the Federal Government acquiring Sylvania. Since schools are a major item in the distribution of any tax dollars, these payments are significant to this small school district.

Column 3. Under the Receipts to States Act of 1908, 25 percent of all receipts sent to the United States Treasury by the Ottawa National Forest are returned to the counties within which the Forest lies. These returns are earmarked for county road and school purposes. The distribution to counties is based on the percent of National Forest land in each county according to General Land Office acres.

The acquisition of Sylvania entitled Gogebic County to a greater share of 25 percent fund receipts beginning in 1966. Since meandered lakes are not included, Sylvania involved an increase of 14,890 acres to Gogebic County's list of eligible lands. The returns per acre have been:

1966 - 11.97 cents

1967 - 12.20 cents

1968 - 11.48 cents

1969 - 11.50 cents

1970 - 11.93 cents

These returns per acre will vary and annually reflect timber market conditions, recreation seasons, sale of commodities such as sand and gravel, and fees for special land uses.

Column 3 shows the total of 14,890 acres times the return per acre as listed above.

Column 4. In 1969 Thomas Kelley, under the direction of Professor C. R. Crowther and Michigan Technological University at Houghton, Michigan, prepared a thesis entitled, "Sylvania Recreation Area and Its Local Economic Influence, 1966-1969." Based on interviews conducted in Sylvania, Mr. Kelley determined each Sylvania visitor spent an average of $3.22 in Watersmeet Township. Using this figure, we determined the amount visitors spent in Watersmeet by years since Sylvania was opened to the public in April of 1967.

3

Unfortunately there have not been any other Sylvania visitor studies which provide an indication of recreation visitor economic impacts. Further, we realize the amounts a visitor is apt to spend in any year is dependent on general economic conditions. We believe using Mr. Kelley's figure presents a fair comparison for the time span, 1967 through 1970. Hopefully, future studies will provide better information.

It is interesting to note a decrease in 1970 over 1969. This was primarily due to construction projects making desirable areas such as the beach and picnic grounds at Clark Lake, inaccessible during most of the summer months. This will not be a problem in 1971, and we anticipate an increase over the 1969 figure.

Column 5. This figure is the amount spent by the Forest Service to date on the reconstruction of County Highway 535. This road, known as the Thousand Island Lake Road, passes across the north edge and provides access to the Sylvania entrance road. The Forest Service assumed the obligation to reconstruct this road in the early negotiations with Gogebic County which led to the county's approval of the acquisition of Sylvania. This road is a direct economic benefit to Watersmeet Township and Gogebic County. Reconstruction was required, and it is being accomplished by the Forest Service, not the local governmental units. The road will be turned over to Gogebic County for maintenance after construction is completed.

It is shown only as a total investment to date since it is a project not associated with annual returns.

Column 6. As with County Highway 535, the Forest Service, in the negotiations with Gogebic County, agreed to reconstruct County Highway 527, the Bass-Beatons Road. This road is also located in Watersmeet Township. The above discussion concerning 535 also applies to 527, except that 527 does not pass through Sylvania.

Some other pertinent information, aside from that mentioned in the attached chart should be mentioned. Although recent budget limitations have not permitted the Forest Service to accomplish fully its planned development, much has been accomplished. Investments in Sylvania since acquisition include:

Road Construction	$ 895,000
Recreation Construction	325,000
Total Sylvania Development	$1,220,000

4

In addition, the Sylvania Visitor Center at Watersmeet was completed this year. The total cost of the project was $463,000. We hope you will help us dedicate it this summer and will write you later regarding dedication plans. It is expected to attract 50,000 visitors in 1971.

In 1966 during the period of negotiations with Gogebic County, the Forest Service agreed to renovate the Black River Harbor area as soon as possible. The county was particularly interested in this project since it is one of the most significant recreation areas in the Upper Peninsula. Again, good strides have been made. To date $408,000 has been invested in this work. Plans for a new marina have been completed and await funding.

In summary, Sylvania's full worth has not yet been approached nor its beneficial effect fully felt by adjoining communities. This can only be accomplished as an orderly program of development is completed and Sylvania is "discovered" by recreation visitors. Full development also presents a challenge to maintain high standards of operation and maintenance in keeping with the outstanding natural resources involved. An austere budget period has caused some difficulties, but Sylvania has received fair treatment and we are very appreciative of your helpful efforts in appropriation actions.

If we can be of any further service, just let us know.

Sincerely,

for JAY H. CRAVENS
Regional Forester

Enclosure

DIRECT SYLVANIA RETURNS TO WATERSMEET TOWNSHIP
& GOGEBIC COUNTY 1966-1970

(1)	(2) Public Law 874	(3) 25% Fund	(4) Return from Recreation Visitors	(5) Reconst. County Hwy. 535	(6) Reconst. County Hwy. 527
1966	$ -	$1,782	$ -	$ -	$
1967	$ 37,132	$1,816	$ 24,100	$ -	$ -
1968	$ 42,647	$1,709	$ 53,100	$ -	$ -
1969	$ 48,396	$1,712	$ 64,400	$ -	$ -
1970	$ 44,725	$1,776	$ 49,100	$ -	$ -
Total	$172,900	$8,795	$190,700	$469,200*	$232,032**

*An estimated $98,300, programmed in FY 71, will complete this project.

**An estimated $413,532 is programmed to complete this project within the next 3 years, depending on the availability of funds.

TOTAL 1966 - 1970: $1,073,627

APPENDIX B

OPINION OF THE COURT

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

NORTHERN DIVISION

DR. JERRY GANDT, et al., Plaintiffs,	)	
vs.	)	Civil Action
CLIFFORD HARDIN, et al., Defendants.	)	No. 1334

OPINION OF THE COURT

DATE: December 11, 1969

PLACE: Marquette, Michigan

BEFORE: Honorable W. Wallace Kent, Chief Judge

APPEARANCES:

MR. FRED A. REITER
De Pere, Wisconsin
and
MR. H. ANTHONY RUCKEL
Denver, Colorado

On behalf of Plaintiffs;

MR. JOHN MILANOWSKI
United States Attorney
Grand Rapids, Michigan
and
MR. NELSON H. GRUBBE
Department of Justice
Washington, D. C.

On behalf of Defendants.

OPINION OF THE COURT

THE COURT: This action for declaratory judgment and injunctive relief was brought pursuant to Section 10 of the Administrative Procedure Act, 5 USCA Sections 701 through 706, the Declaratory Judgment Act, 28 USCA Sections 2201-2202, and Sections 1331, 1346, and 1361 of the judicial code, which is Title 28, USCA.

The plaintiffs ask that this Court declare certain of the activities being engaged in at the behest of the defendants in that portion of the Ottawa National Forest known as the Sylvania Tract are improper in view of the congressional directives found in the Multiple-Use Sustained-Yield Act of 1960, 16 USCA Sections 528-531.

Plaintiffs have dropped any claims asserted under the National Wilderness Preservation System Act, 16 USCA, Section 1131, and under the Endangered Species of Fish and Wildlife, 16 USCA Section 68(aa).

The plaintiffs claim that the defendants have arbitrarily and capriciously begun to cut and clear trees and other growth within the Sylvania Tract for the purpose of building a permanent road; and they contend further that the defendants have acted arbitrarily and capriciously in entering into a logging contract with

Kimberly-Clark Company.

It is the theory and claim of the plaintiffs that the defendants should be enjoined from implementing the Sylvania Recreation Area and Management Plan, which is Exhibit 1 for the plaintiffs.

The record shows that the government of the United States acquired this property in 1967 pursuant to an appropriation authorized by the Congress. Prior to the acquisition, as appears in the statements in the hearings before the House and the Senate, this land had been closed to the public for at least fifty years.

It is the theory and claim of the plaintiffs that the tract has retained its primitive character during all of this period, and they claim that it was unblemished by the use of man, which claim has not been borne out by the evidence.

Since it appears that the property had been privately owned by the Fisher family and others, and that houses and lodges and other outbuildings had been erected within the area, the immediate location of which has not been established by the evidence, there is some claim, but no evidence, that logging had been done in the area on prior occasions, but I don't recall any evidence to that

effect.

Basically, the claim of the plaintiffs is that the defendants have acted arbitrarily and capriciously by adopting a plan without full and proper consideration of all the factors required by the Multiple-Use Act.

The subject of what constitutes arbitrary and capricious action by parties or agencies such as the defendants, since the agencies are necessarily involved, is covered and discussed in 73 CJS, Section 209, pages 568 and 569, under the heading Public Administrative Bodies of Procedure. And, without a direct quote, what the treatise says is that the unreasonableness and unlawfulness of agency action must be clearly established by the evidence, and it must appear that the action of the agency was in effect malicious and illegal, and the principle of arbitrary action is not applicable if the action was a rational action resulting from a consideration of the factors involved.

The evidence shows that, so far as this Court is concerned on this record, that the Forestry Service and the Department sought the advice and counsel of many people, including some of the plaintiffs, with regard to the planning of the use of the Sylvania

Recreation Area. The record shows that there was a discussion before the Congress indicating that it was intended that this should be a public recreation area. The basic objection is that the plan adopted in November of 1968 and published and made available to and secured by at least one of the plaintiffs in January 1969 is arbitrary and capricious because it does not, under the plan, maintain the primitive character of a substantial portion, if not all, of the Sylvania Tract. There is no claim that the defendants did not seek and obtain advice from interested parties.

Now, at the outset let me say this, so there will be no misunderstanding: If this Court were faced with the decision as to the use which was to be made of this tract, and have the authority to promulgate a plan, there are numerous aspects of the adopted plan which the Court would not like, one being the use of motors on lakes in an area such as this. Another would be the possibility -- and it doesn't appear from the plan whether it is possible or impossible -- of the use of what are called snowmobiles, or any other mechanical devices, creating such noise as is created by outboard motorboats and other similar devices, snowmobiles included. But that is a personal opinion.

The first question which must be answered before any other question is considered is whether the United States has waived sovereign immunity and authorized judicial review of actions of the type challenged here. While the suit names the Secretary of Agriculture and certain of his aides and assistants as defendants, it is clear to this Court that in reality it is an action against the government of the United States of America. The Fifth Circuit discussed the historical background for the tendency to name individuals within the government as defendants when actually seeking relief against the government, in Estrada against Ahrens, 296 F.2d 690, and particularly at page 698. From that it appears to this Court that the plaintiffs are certainly not seeking relief against the named defendants as individuals; as a matter of fact, the Plan was implemented with a different individual as Secretary of Agriculture. As to change of personnel of the other individuals named, this Court is in no position to state from the record whether or not each of them held the same position at the time the land was acquired and at the time the Plan was adopted as is held now. But from that, we can reach only the conclusion that this suit in reality is against the government of the

United States, in an effort to stop the government from implementing Management Plan Exhibit 1.

In determining whether or not there has been a waiver, whether there has been proper consideration of the area, we must go to the Act, the Multiple-Use Sustained-Yield Act, 16 USCA Section 529, which states in part:

> ". . . The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528-531 of this title."

There is, however, no actual specific waiver of sovereign immunity. The plaintiffs rely upon the Administrative Procedure Act, 5 USCA Section 701-706. Two portions of Section 10 of the Administrative Procedure Act 5 USCA, Sections 702 and 704, provide pertinent information. Section 702 provides:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

Section 704 provides in part:

"Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. . ."

The statutory provisions demonstrate to this Court the desire on the part of the Congress to make final agency action reviewable in the federal courts unless otherwise provided.

In that connection, one should examine Abbott Industries versus Gardner, 387 U.S. 136, where the Court says at Page 141:

"The legislative material elucidating that seminal act manifests a congressional intention that it cover a broad spectrum of administrative action, and this Court has echoed that theme by noting that the Administrative Procedure Act's 'generous review provisions' must be given a 'hospitable' interpretation. (Citing authorities.) Again in Rusk v. Cort, the Court held that only upon a showing of 'clear and convincing evidence' of a

contrary legislative intent should the courts restrict access to judicial review."

The Act at 5 USCA Section 701 enumerates those actions which are not reviewable, and includes under Subsection (a) cases where statutes preclude judicial review, and second, where agency action is committed to agency discretion by law.

The question of discretion is discussed in Knight Newspapers, Inc. versus United States, 395 F.2d 353, a decision by the Court of Appeals for this Circuit in 1968, where it is said at Page 358:

"A court may not review a decision committed to the discretion of an agency pursuant to a permissive type statute, but may do so where the decision was made pursuant to a mandatory type statute, even though the latter decision involves some degree of discretion", to the same effect as Freeman versus Brown, 342 F.2d 205, a Fifth Circuit decision in 1965.

We must, therefore, analyze the Multiple-Use Sustained-Yield Act to determine whether or not decisions made under that Act are subject to judicial

review. The Act provides in pertinent part, 16 USCA Section 528:

> "It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes . . ."

It further provides in Section 529 of the same title:

> "The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas . . ."

The cited portions of the Act indicate that Congress intended to make certain actions on the part of the Secretary of Agriculture mandatory in determining proper management of national forests. And it should be

noted that there is no express provision in the Act which precludes judicial review or which specifically commits agency action under the Act to complete agency discretion.

In the legislative history it appears in U.S. Code Congressional and Administrative News for the 86th Congress, Second Session, at Page 2378, in the discussion of the bill:

> "The purpose of this bill is to provide a direction to the Secretary of Agriculture to administer the national forests for multiple use and sustained yield of their several products and services. It would name in a single statute the renewable surface resources for which the national forests are established and shall be administered."

The House Report goes on to say at Page 2378:

> ". . . there are four basic reasons for the enactment of this bill: (1) There should be a statutory directive to administer the national forests under sustained yield; (2) there should be a similar directive to administer the

national forests for multiple use . . ."

Thus it is clear that the Act was designed as a directive to the Department of Agriculture as to what factors should be considered in determining how the various national forests are to be developed. The Congress was not enacting a permissive statute, but rather adopted a mandatory statutory list of factors to be considered in the development of the national forests.

Consequently, it appears beyond doubt that there is no "clear and convincing evidence" as stated in the cases that Congress intended that the Secretary of Agriculture's actions which effect the implementation of the Act should be beyond judicial review; rather, in view of the fact that the Act is mandatory instead of permissive, it seems clear to this Court that the Secretary's actions, when they seem to be in contravention of the Act, are subject to judicial review, as set forth in Knight Newspapers against United States previously cited, where the Court concludes that it is subject to review.

The next question which is presented to the Court is the standing of the plaintiffs to appear in this court and challenge the action of the Secretary and those who work under him.

The concept of "standing" comes under Article III, Section 2, of the United States Constitution, which permits this Court to consider cases in controversies to which the United States shall be a party under the laws of the United States. This was interpreted in Flast versus Cohen, 392 U.S. 83, a 1968 decision, where the Court said:

> ". . . in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution. It is for that reason that the emphasis in standing problems is on whether the party invoking federal court jurisdiction has 'a personal stake in the outcome of the controversy,' " -- citing Baker versus Carr -- "and whether the dispute touches upon 'the legal relations of parties having adverse legal interests' ", citing Aetna Life Insurance Co. versus Haworth.

In Flast, the Court also made the following

reflections:

"The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable", which issue we have already decided.

The Court went on to say in Flast:

"We have noted that, in deciding the question of standing, it is not relevant

that the substantive issues in the litigation might be nonjusticiable. However, our decisions establish that, in ruling on standing, it is both appropriate and necessary to look to the substantive issues for another purpose, namely, to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated . . ."

In the more recent case of Jenkins versus McKeithen, 395 U.S. 411, the Court said:

"The concept of standing to sue, as we noted in Flast v. Cohen, 'is surrounded by the same complexities and vagaries that inhere in the concept of justiciability' in general. Nevertheless, the outlines of the concept can be stated with some certainty. The indispensable requirement is, of course, that the party seeking relief allege 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon

which the court so largely depends for illumination of difficult constitutional questions . . .' ", citing Baker versus Carr and other cases. "In this sense, the concept of standing focuses on the party seeking relief, rather than on the precise nature of the relief sought."

Plaintiffs contend that they have the requisite standing by virtue of that portion of Section 10 of the Administrative Procedure Act which provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

The plaintiffs contend that they have been adversely affected and aggrieved by the Sylvania Recreation Area Management Plan.

The meaning of the term "aggrieved" has been the subject of much judicial commentary. In Utility Users League versus Federal Power Commission, 394 F.2d 16, a 1968 decision, the Seventh Circuit said at Page 19:

"The term 'aggrieved party' has long

eluded precise definition, and, as the Supreme Court has noted, its meaning 'is in any event more or less determined by the specific circumstances of individual situations.' Clearly, a petitioner for review need not show injury to a personal economic interest." And cites Scenic Hudson, to which there has been previous reference, and which we will now refer to.

In Scenic Hudson Preservation Conference versus Federal Power Commission, 354 F.2d 608, a Second Circuit decision, the Court said at Page 616:

"In order to insure that the Federal Power Commission will adequately protect the public interest in the aesthetic, conservational, and recreational aspects of power development, those who by their activities and conduct have exhibited a special interest in such areas, must be held to be included in the class of 'aggrieved' parties under §313(b)."

We concede, and I think everybody will concede, that Scenic Hudson is a landmark case. That

decision was discussed by a District Judge in Road Review League, Town of Bedford versus Boyd, 270 F.Supp. 661, a 1967 decision in the Southern District of New York, where Judge McLean, at Page 660, says in part:

> "I have based my decision" -- as to the plaintiffs' standing -- "upon the implications, rather than the exact holding, of the recent decision of the Court of Appeals in Scenic Hudson."
>
> It says further on:
>
> "The Adminstrative Procedure Act (5 U.S.C. §702) entitles a person who is 'aggrieved by agency action within the meaning of a relevant statute' to obtain judicial review of that action."

Then Judge McLean at a later point goes on to say:

> "I have concluded that these provisions are sufficient, under the principle of Scenic Hudson, to manifest a congressional intent that towns, local civic organizations, and conservation groups are to be considered 'aggrieved' by agency action which allegedly

has disregarded their interests. I see no reason why the word 'aggrieved' should have a different meaning in the Administrative Procedure Act from the meaning given to it under the Federal Power Act."

And we agree with Judge McLean in that respect.

Then he goes on with the "private attorney general" concept, which is not necessary to be extended at this time.

In any event, based upon the authorities which have been reviewed, this Court has reached the conclusion that these parties plaintiff have standing in this court.

One other issue of law is presented, and that is the issue as to the timeliness of the filing of plaintiffs' action. Timeliness is basically, as pointed out by counsel for the plaintiff, an issue of laches, laches being a very technical term.

The Supreme Court in Abbott Laboratories versus Gardner, a previously cited case, in discussing the declaratory judgment statute, points out at Page 155 as follows:

". . the declaratory judgment and injunctive remedies are equitable in nature, and other equitable defenses may be interposed." As, for instance, "The defense of laches could be asserted if the Government is prejudiced by a delay."

And they cite, in that connection, an earlier decision in Southern Pacific Co. versus Bogert, 250 U.S. 489, in which admittedly a great period of time had elapsed, but the Court pointed out:

"Here plaintiffs, or others representing them, protested as soon as the terms of the reorganization agreements were announced; and ever since, they have with rare pertinacity, and undaunted by failure, persisted in the diligent pursuit of a remedy, as the schedule of the earlier litigation referred to in the margin demonstrates." That was cited by the Supreme Court in Gardner.

This Court is of the opinion that they might better have cited Penn Mutual Life Insurance Co. versus Austin, 168 U.S. 685, where in an opinion by Mr. Justice

White the Court said:

"Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. . . . 'Laches and neglect are always discountenanced; and therefore from the beginning of this jurisdiction there was always a limitation to suits in this court.' " This is at Page 696.

And it goes on to say at Page 697:

"The question of laches turns not simply upon the number of years which have elapsed between the accruing of her rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the changes in value, and other circumstances occurring during that lapse of years."

There is a greater discussion of the issue of laches as it goes on.

Perhaps the one most applicable to this

situation is in an opinion written by Judge Shelbourne, a District Judge in the Western District of Kentucky, well known to this Court, at 189 F.Supp. 821 where, at Page 826 the Court said, speaking through Judge Shelbourne:

> "There is no fixed rule by which to measure the degree of laches which is sufficient to bar the enforcement of a right. Each case must be determined according to its own particular facts and circumstances."

In the opinion of this Court, the areas of law have been investigated, and it is necessary, then, to apply them to the facts and, in this situation, the plaintiffs are in rather dire shape. All that they have shown is that they want to substitute the judgment of their witnesses and themselves for the judgment of the Forest Service. They make a challenge to the action of the Department and the Forestry Service, and claim that they have not complied with the Multiple-Use Sustained-Yield Act. They have not carried out the burden of proof in that connection, and it is axiomatic the burden of proof in connection with an action such as this is completely upon the plaintiffs. They can only prevail if they can

establish by clear and convincing proof that the action of the defendants is arbitrary and capricious and not in accordance with law. This they have failed to do. The evidence is not only not clear and convincing, there just plain isn't any evidence of any failure on the part of the defendants to consider all of the factors.

So it appears to the satisfaction of the Court that the challenge of the plaintiffs is not to the defendants' failure to consider the factors; rather, the challenge is as to the decision reached by the defendants after considering the factors, and that, except as it may be arbitrary and capricious, is not for this Court to review. There is no evidence in this case that any action taken is arbitrary or capricious.

That would be sufficient to decide the case, but in addition this Court is completely satisfied, as probably was evidenced during the course of the hearing, that if there ever was anybody who was guilty of laches, it was the plaintiffs in this case, and particularly the Number One and apparently principal plaintiff, Dr. Jerry Gandt. He had a copy of Exhibit 1 for the plaintiffs almost as soon as it was printed. He had access to the personnel of the Forestry Service, he had access to the

area, he knew from the plan, as would anybody else, what use was anticipated to be made of the area. It would appear obvious, or certainly the information was readily available to him, that there would be some contracting done for cutting of timber and for clearing of areas for road construction. It appears right in the plan that that was contemplated. It would be incumbent upon him, then, to seek the information as to when it was going to be done.

And there is nothing in this record to show that any defendant or anybody working under the defendants has ever withheld any information from the plaintiff, Dr. Gandt. And I presume that there was communication between him and the other plaintiffs; the Court is forced to assume that, since they joined in this action.

To permit the government to enter into these contracts for the cutting of certain areas of timber, to permit the government to enter into contracts for and commence upon the construction of roads pursuant to the plan without in any way challenging, so far as this record shows, the actions, it appears to the Court to be laches as described in every case which this Court has ever read. It is true that it was only a period of months, but it was obvious, or should have been obvious at the time when the

plan was presented and made available, that it was not anticipated that a long period of time would pass before it would be at least partially implemented.

So the plaintiff has been guilty of laches, in the opinion of this Court. But basically, we are satisfied that, as a practical matter, the plaintiffs have not sustained the burden of proof; they not only have not established by clear and convincing evidence, they have not even established by any evidence that this Court would consider would require the defense to go to their proofs, that there was any fault on the part of the defendants in the action taken. In other words, this Court is satisfied that, to permit the case to go on and substitute this Court's judgment for the judgment of the Forestry Service, would be a clear case of arbitrary action and abuse of discretion on the part of the Court.

So, for the reasons stated in the Court's opinion, which will stand as the Court's findings of fact and conclusions of law, the application for an injunction is denied and the complaint is dismissed, and you may present an order to that effect.

I assume, Mr. Reiter and Mr. Ruckel, that there is no question, in the light of the order for hearing

signed by the Court, but what this case was to be brought on on its merits and for final disposition?

MR. RUCKEL: That is correct, your Honor.

THE COURT: All right. You may present the order.

The Court will adjourn.

- - - - - -

CERTIFICATE OF REPORTER

I, Ruth G. Price, Official Court Reporter for the United States District Court, Western District of Michigan, do hereby certify that the above and foregoing is a full, true and correct transcript in this matter, according to my original stenographic notes.

Ruth G. Price
RUTH G. PRICE

APPENDIX C

CONTRACT BETWEEN THE FOREST SERVICE AND MICHIGAN STATE UNIVERSITY

Entire x Severable ____
Basic ____ Applied x

COOPERATIVE AGREEMENT
SUPPLEMENT NO. 20
to
MASTER MEMORANDUM OF UNDERSTANDING OF DECEMBER 6, 1961
between
THE FOREST SERVICE, U. S. DEPARTMENT OF AGRICULTURE
and
MICHIGAN STATE UNIVERSITY

Contract No. 12-11-009-22423

STUDY TITLE: A study of litigation related to management of Forest Service lands and its effect on policy decisions.

WORK UNIT NO. FS-NC-4201.

WHEREAS, the parties hereto have heretofore executed a Memorandum of Understanding effective December 6, 1961, authorizing and providing for cooperation in forestry research of mutual interest; and

WHEREAS, the parties hereto are mutually interested and desire to cooperate (1) in encouraging students to take graduate work in forest policy and (2) in conducting certain studies relating to studies of forest policy more particularly and fully described as follows:

The systematic investigation of legal decisions on forest policy and the relationship of lawsuits to forest policy decisions.

NOW, THEREFORE,

A. The Forest Service Agrees to:

1. Collaborate with the University in preparing mutually acceptable detailed plans for the study.

2. Make available its equipment, files, and materials, as arranged for with the Division of Information and Education, Forest Service, U. S. Department of Agriculture, Washington, D.C., and required to facilitate conducting the study.

3. Provide access to Forest Service lands and areas on which to conduct the study and help in selecting specific study locations.

4. Reimburse the University for its direct costs for the items listed below, applicable to the work under this Agreement, in addition to any other Forest Service contribution in the form of services and supplies, but not to exceed a total of

$2,700.00 as shown in the estimated budget marked Exhibit A which is attached and made a part of this Agreement. Payments to the University will be made upon receipt of itemized expenditure statements from the University as provided for in the Master Memorandum of Understanding or amendments thereto.

a. Salaries and wages of laboratory assistants, laborers, etc., and/or services of graduate student(s) on research work.

b. Supplies and materials.

c. Services of contractors, or direct charges of service branches of the University.

d. Travel necessary in carrying on the research study.

B. The University Agrees to:

1. Conduct this research in accordance with the study plan and terms of this Agreement, complete the study, and prepare a report on the results by December 31, 1970.

2. Assist the Forest Service in selecting research areas.

3. Provide leadership and supervision essential to the satisfactory carrying out of the study.

4. Provide laboratory facilities and other equipment and materials available and needed on the study.

5. Employ and supervise personnel in the conduct of the study.

6. Arrange for interdepartmental assistance essential to the conduct of the study.

7. Provide the Forest Service with four copies of the final report of the results of this study.

C. Both Parties Agree:

1. That this Agreement may be terminated by either party by giving 60 days' notice to the other in writing.

2. That all provisions of the Master Memorandum are applicable to this Supplement.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement this 23rd day of March, 1970.

FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE
North Central Forest Experiment Station

By D. B. Kenig DIRECTOR

MICHIGAN STATE UNIVERSITY

By H. G. Tanner

Title Director of Natural Resources

By Sylvanth Ruthven

Title Director, Agricultural Experiment Station

By Raleigh Barlowe

Title Chairman, Resource Development

By R. E. Wilkinson Stephen H. Terry

Title Acting Vice President for Business and Finance
or Stephen H. Terry, Admin. Assistant to
Vice President for Business and Finance

APPENDIX TO

COOPERATIVE AGREEMENT
SUPPLEMENT NO. 20
to
MASTER MEMORANDUM OF UNDERSTANDING OF DECEMBER 6, 1961
between
THE FOREST SERVICE, U. S. DEPARTMENT OF AGRICULTURE
and
MICHIGAN STATE UNIVERSITY

Contract No. 12-11-009-22423

Work Unit No. FS-NC-4201

EXHIBIT A -- ESTIMATED BUDGET

Personnel:	Amount to be expended:	$1,500.00
Technician: M. Rupert Cutler		
Supplies and Services:	Amount to be expended:	1,200.00
General nature of expenditures: Travel related to project; typing; photocopying; duplicating.		
	Grant Total:	$2,700.00

APPENDIX D

SECRETARY'S MEMORANDUM NO. 1695, SUPPLEMENT 5

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

December 1, 1970

SECRETARY'S MEMORANDUM NO. 1695, SUPPLEMENT 5

Providing Timely Information to the Public About USDA Plans and Programs with Environmental Impact to Obtain the Views of Interested Parties

DIRECTIVE. USDA agencies will use appropriate procedures (1) ". . . to ensure the fullest practicable provision of timely public information and understanding of Federal (USDA) plans and programs with environmental impact in order to obtain the views of interested parties."; and (2) to provide relevant ". . . information on alternative courses of action," as required by Executive Order No. 11514 of March 5, 1970.

POLICY. The public is to be informed. The Department of Agriculture will expand and, wherever possible, improve procedures for providing information to the public and for obtaining and considering local, regional, and national views on matters relating to the environment.

It is an objective of the Department to involve the public in developing its policies and in formulating and implementing its programs. It will discharge its environmental responsibilities in ways that make its management processes visible and its people accessible.

In obtaining the views of interested agencies, organizations, groups, and individuals, USDA will utilize the wide geographic distribution of its staff trained in many disciplines and functions related to the environment.

PROCEDURES. Among procedures to be used by USDA to provide timely public information about plans and programs with environmental impact and to obtain the views of interested parties are:

Direct verbal contact

- Person to person at all organizational levels with individuals or groups

Meetings

- Conferences, seminars, workshops, town meetings, tours

- Organized groups, boards, associations, or societies

- Scientific or professional societies

- Advisory groups

Information aids

- Visual aids, pamphlets, leaflets, brochures, flyers, newsletters, press releases, material for professional publications or house organs, written replies to inquiries

Use of public communications media for announcements, commentary or dialogue

- Television, radio, newspapers, magazines, motion pictures

Publication of findings or summarization of information

- Bulletins, handbooks, papers in scientific or professional society journals, technical reports

Public notices

- Federal Register

- Direct mailing

- Newspapers

Circulation of draft project plans to interested Federal, State, and local agencies and other concerned organizations

Informal hearings

(An informal hearing is one conducted by an appropriate official after due notice. Written and oral comments are received, and a summary statement of what transpired is prepared.)

Formal hearings

(A formal hearing is one conducted by an appropriate official after due notice. A verbatim record of oral testimony is prepared and all written statements are accepted for the record.)

The foregoing procedures complement one another; best results are often obtained by using two or more of them.

RESPONSIBILITIES AND GUIDELINES. Within established delegations of authority and responsibilities for coordination, USDA agency heads are responsible for using appropriate procedures for informing the public and obtaining and considering the views of interested parties. Except for emergencies requiring prompt action, they will apply these procedures sufficiently far in advance of proposed actions to permit adequate time for consideration and response by the public.

In most situations, procedures other than hearings will be applied to inform the public and obtain the views of interested parties. These general approaches will be applicable when the matter under consideration is local in nature and generally routine. In some instances, however, informal exchanges may reveal some unexpected controversy and thus the need for an informal or formal hearing.

An informal hearing will be held when needed and the circumstances or requirements do not warrant a formal hearing. A formal hearing will be held in those instances where required by statute or executive order and may be held in other situations where it is deemed necessary.

All hearings, formal and informal, shall provide notice sufficient to inform the public of the proposed action, its expected effect on the environment, and the date, time, and place of the hearing.

Notwithstanding other effective means of communication that may be employed, announcement of pending formal hearings to be held by a

USDA agency shall always be made in part by notice in the Federal Register well in advance (not less than 30 days) of the hearing dates.

In implementing procedures for informing the public and obtaining views, care will be exercised to inform the general public as well as the people usually involved in specific programs. If it is likely that interest in a proposed action will be more than local and may represent a broad-based concern, the information procedures to be used are to be extended to regional or national audiences.

To assure effectiveness of the activities required by this memorandum, agency heads will provide appropriate information and training for USDA employees to broaden their understanding of public affairs and/or procedures for obtaining and evaluating public opinion.

Each agency will issue suitable guidelines for implementing this memorandum.

J. Phil Campbell

J. Phil Campbell
Acting Secretary

BIBLIOGRAPHY

BIBLIOGRAPHY

Public Documents

Council on Environmental Quality. Environmental Quality: The First Annual Report of the Council on Environmental Quality. Washington, D.C.: U.S. Government Printing Office, 1970.

Cunningham, R. N. Forest Resources of the Lake State Region. Washington: Government Printing Office, 1950.

Mackenthun, K. M. et al. Limnological Aspects of Recreational Lakes. Washington: Government Printing Office (U.S. Department of Health, Education, and Welfare), 1964.

Public Land Law Review Commission. One Third of the Nation's Land. Washington, D.C.: U.S. Government Printing Office, 1970.

Ripley, Thomas H. Recreation Impact on Southern Appalachian Campgrounds and Picnic Sites. Asheville, North Carolina: Southeast Forest Experiment Station Paper Number 153, 1962.

Saylor, John P. "Series on 'Law and the Environment' (by Robert Cahn)." Congressional Record, October 1969, pp. H9205-6, H9312-3, H9227-8, H9825, H9907-8.

Saylor, John P. "Law and the Environment." Congressional Record, April 30, 1970, pp. H3774-H3783.

Selke, George A., Chairman. Report of the Magruder Corridor Review Committee. Submitted to the Secretary of Agriculture, April 17, 1967.

Train, Russell E. "Memorandum to the Heads of Executive Departments and Establishments: Interior Guidelines for Statements on Major Federal Actions Affecting the Environment Required by Section 102 (2) (c) of the National Environmental Policy Act of 1969 (P.L. 91-190)." Washington, D.C.: Executive Office of the President, Council on Environmental Quality, April 30, 1970.

Udall, Morris K. "The IRS and Public Interest Law Firms." Congressional Record, October 14, 1970, pp. E9479-E9480.

U.S. Congress. House. Committee on Appropriations. Department of the Interior and Related Agencies Appropriations for 1966. Hearings before a subcommittee of the Committee on Appropriations, House of Representatives, 89th Cong., 1st sess., 1965.

_____. Department of the Interior and Related Agencies Appropriations Bill, 1966. Conference report. House Report No. 513, 89th Cong., 1st sess., 1965.

U.S. Congress. House. Committee on Government Operations. The Environmental Decade (Action Proposals for the 1970's). House Report No. 91-1082. 91st Cong., 2nd sess., 1970.

U.S. Congress. House. Committee on Interior and Insular Affairs. Designation of Wilderness Areas. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, House of Representatives, 91st Cong., 1969 and 1970.

_____. Designating Certain Lands as Wilderness. Report No. 91-1441, 91st Cong., 2nd sess., 1970.

U.S. Congress. Senate. Committee on Appropriations. Department of the Interior and Related Agencies Appropriations. Hearings before a subcommittee of the Committee on Appropriations, Senate, on H.R. 6767, 89th Cong., 1st sess., 1965.

_____. Department of the Interior and Related Agencies. Hearings before a subcommittee of the Committee on Appropriations, Senate, 91st Cong., 1st sess., 1969.

U.S. Congress. Senate. Committee on Commerce. Environmental Protection Act of 1970. Hearings before a subcommittee of the Committee on Commerce, Senate, 91st Cong., 2nd sess., 1970.

U.S. Congress. Senate. Committee on Interior and Insular Affairs. San Gabriel, Washakie, and Mount Jefferson Wilderness Area. Hearings before a subcommittee of the Committee on Interior and Insular Affairs Committee, Senate, on S. 2531, S. 2630, and S. 2751, 90th Cong., 2nd sess., 1968.

_____. Great Swamp; Pelican Island; Monomoy; Seney, Huron, Michigan Islands, Gravel Island, Greey Bay, and Moosehorn Wilderness Areas. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, Senate, on S. 3379, S. 3343, S. 3425, and S. 3502, 90th Cong., 2nd sess., 1968.

_____. San Gabriel, Washakie, and Mount Jefferson Wilderness Areas. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, Senate, on S. 2530, S. 2630, and S. 2751, 90th Cong., 2nd sess., 1968.

_____. Lincoln Back Country Wilderness Area, Montana. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, Senate, on S. 1121, 90th Cong., 2nd sess., 1968.

_____. Desolation and Ventana Wilderness Area, California. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, Senate, on S. 713 and S. 714, 91st Cong., 1st sess., 1969.

_____. Lincoln Back Country Wilderness Area, Montana. Hearings before a subcommittee of the Committee on Interior and Insular Affairs, Senate, on S. 412, 91st Cong., 1st sess., 1969.

_____. Establishing the Lincoln Back Country as Wilderness Area. Senate Report No. 91-207, 91st Cong., 1st sess., 1969.

_____. Law and the Environment--Selected Materials on Tax Exempt Status and Public Interest Litigation. Committee Print, 91st Cong., 2nd sess., 1970.

_____. A University View of the Forest Service. Senate Document No. 91-115, 91st Cong., 2nd sess., 1970.

U.S. Congress. Senate. Committee on Public Works. Opportunities for Economic Development in Michigan's Upper Peninsula. Washington: Government Printing Office, 1961.

U.S. Department of Agriculture. Forest Service. A Study of Proposed Federal Purchase and Forest Service Management of the Lands and Waters of the Sylvania Tract located within Ottawa National Forest, Michigan. Milwaukee, 1964.

_____. Contact Special: Sylvania. Milwaukee, 1967.

_____. Forest Patterns: Beauty and Use. Washington, 1965.

_____. Forest Service Timber Appraisals: Situations Report. Washington, July 1969.

_____. Forests . . . for the Future. Washington, 1969.

_____. Framework for the Future: Forest Service Objectives and Policy Guides. Washington, February 1970.

_____. Lumber and Plywood Supply: Situations Report. Washington, March 1969.

_____. McCormick Ad Hoc Committee Meeting, December 5-6, 1969, Marquette, Michigan. Milwaukee, 1969.

_____. Management Direction for Wilderness and Primary Recreation Zones of the National Forests in the Oregon Cascades. Portland, June 1969.

_____. Ottawa National Forest: Progress Report, Fiscal Year 1964. Ironwood, Michigan.

_____. Recreation Information Management--The RIM System. Washington: Forest Service In-service Training Guide, n.d.

_____. Recreation Planning Handbook FSH 2309.13. Washington; draft copy dated October 28, 1969.

_____. Search for Solitude: Our Wilderness Heritage. Washington, D.C.: U.S. Government Printing Office, 1970.

_____. Sylvania Area Soils Report. Milwaukee, 1966.

U.S. Department of Agriculture. Forest Service. Sylvania Recreation Area Management Plan, Ottawa National Forest. Milwaukee, 1968.

_____. Sylvania Recreation Area map. Milwaukee, 1967, revised 1970.

_____. Sylvania Recreation Area: Public Involvement. Milwaukee, 1969.

_____. The Appeal Regulation. Washington: Government Printing Office, 1965.

_____. Transcript of Meeting on Sylvania, SOSAC-U.S. Forest Service, February 26, 1970. Milwaukee, 1970.

_____. What the Forest Service Does. Washington, April 1969.

_____. Wilderness: The National Forests . . . America's Playgrounds. Washington, D.C.: U.S. Government Printing Office, 1961.

U.S. Department of Agriculture. Office of the Secretary. "Office of the General Counsel: Organization, Functions, and Availability of Information." Federal Register, Vol. 35, No. 189 (September 29, 1970), 15168-9.

U.S. Department of Agriculture. Office of the Secretary. "Secretary's Memorandum No. 1695," four supplements: Supplement 2, August 4, 1970: "Environmental Quality Executive Committee"; Supplement 3, August 4, 1970: "Prevention, Control and Abatement of Air and Water Pollution at Federal Facilities"; Supplement 4, December 1, 1970: "Guidelines for Preparing Environmental Statements Required by Section 102 (2) (C) of P.L. 91-190"; Supplement 5, December 1, 1970: "Providing Timely Information to the Public About USDA Plans and Programs with Environmental Impact to Obtain the Views of Interested Parties." Washington, D.C. (Mimeographed.)

U.S. Department of the Interior. Bureau of Land Management. Where Not To Build. Technical Bulletin No. 1. Washington, 1968.

U.S. Department of the Interior. Office of the Secretary. "Office of Hearings and Appeals: Delegations of Authority." Federal Register, Vol. 35, No. 145, p. 12081.

U.S. Department of Justice. "Standing to Sue." Land and Natural Resources Division Journal, Vol. 8, No. 4 (April 1970), 79-84.

U.S. Department of Transportation. Federal Highway Administration. Bureau of Public Roads. Policy and Procedure Memorandum 20-8: Public Hearings and Location Approval. Washington, D.C., January 14, 1969.

Books

Baldwin, Malcolm F., and Page, James K. Law and the Environment. New York: Walker Press, 1970.

Bennis, Warren G. Changing Organizations: Essays on the Development and Evolution of Human Organization. New York: McGraw-Hill Book Company, 1966.

_____, ed. American Bureaucracy. New Brunswick, N.J.: Aldine Publishing Company, 1970.

Blau, Peter M., and Scott, W. Richard. Formal Organizations: A Comparative Approach. San Francisco: Chandler Publishing Company, 1962.

Burk, Dale A. The Clearcut Crisis: Controversy in the Bitterroot. Great Falls, Mont.: Jursnick Printing, 1970.

Buchanan, James M. and Tullock, Gordon. The Calculus of Consent. Ann Arbor: The University of Michigan Press, 1962, 1965.

Clawson, Marion and Knetch, Jack L. Economics of Outdoor Recreation. Baltimore: Johns Hopkins Press, 1966.

Cooley, Richard A. Politics and Conservation: The Decline of the Alaska Salmon. New York: Harper & Row, 1963.

Cooley, Richard A., and Wandesforde-Smith, Geoffrey. Congress and the Environment. Seattle: University of Washington Press, 1970.

Cox, Edward F., Fellmeth, Robert C., and Schulz, John E. Nader's Raiders: Report on the Federal Trade Commission. New York: Grove Press, 1969.

DeBell, Garrett, ed. The Environmental Handbook. New York: Ballantine Books, Inc., 1970.

Dunbar, Willis F. Michigan: A History of the Wolverine State. Grand Rapids: Eerdmans Publishing Company, 1965.

Environment Reporter. Washington: The Bureau of National Affairs, 1970.

Esposito, John C. Vanishing Air: The Ralph Nader Study Group Report on Air Pollution. New York: Grossman Publishers, 1970.

Etzioni, Matai. Modern Organizations. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1964.

_____. Complex Organizations: A Sociological Reader. New York: Holt, Rinehart and Winston, Inc., 1962.

_____. The Active Society: A Theory of Societal and Political Processes. London: Collier-Macmillan; New York: Free Press, 1968.

Fellmeth, Robert C. The Interstate Commerce Omission. The Ralph Nader Study Group Report on the Interstate Commerce Commission and Transportation. New York: Grossman Publishers, 1970.

Freeman, Orville L., and Frome, Michael. The National Forests of America. New York: G. P. Putnam's Sons, 1968.

Friedman, Lawrence M., and Macauley, Stewart. Law and the Behavioral Sciences. Indianapolis: The Bobbs-Merrill Company, 1969.

Frome, Michael. Whose Woods These Are: The Story of the National Forests. Garden City, N.Y.: Doubleday & Company, Inc., 1962.

Gottschalk, Louis; Kluckhohn, Clyde; and Angell, Robert. The Use of Personal Documents in History, Anthropology, and Sociology. New York: Social Science Research Council, 1945.

Holbrook, Stewart H. Holy Old Mackinaw: A Natural History of the American Lumberjack. New York: The Macmillan Company, 1938.

Holbrook, Stewart H. Iron Brew: A Century of American Ore and Steel. New York: The Macmillan Company, 1939.

Gilbert, Douglas L. Public Relations in Natural Resources Management. Minneapolis: Burgess Publishing Company, 1964.

Grad, Frank P. Environmental Law Sources and Problems. New York: Matthew Bender, 1970.

Gray, Oscar S. Cases and Materials on Environmental Law. Washington: The Bureau of National Affairs, Inc., 1970.

Helfrich, Harold W., Jr., ed. The Environmental Crisis. New Haven: Yale University Press, 1970.

Kaplan, Abraham. The Conduct of Inquiry. San Francisco: Chandler Publishing Company, 1964.

Kaufman, Herbert. The Forest Ranger: A Study in Administrative Behavior. Baltimore: The Johns Hopkins Press, 1960.

Jones, Harry W., ed. The Courts, the Public, and the Law Explosion. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1965.

Kelley, Stanley, Jr. Professional Public Relations and Political Power. Baltimore: The Johns Hopkins Press, 1966.

Lipset, Seymour Martin, ed. Politics and the Social Sciences. New York: Oxford University Press, 1969.

Mitchell, John G., and Stallings, C. L., eds. Ecotactics: The Sierra Club Handbook for Environmental Activists. New York: Pocket Books, 1970.

Mosher, Frederick C. Democracy and the Public Service. New York: Oxford University Press, 1968.

Reich, Charles A. The Greening of America. New York: Random House, 1970.

Sax, Joseph L. Defending the Environment: A Strategy for Citizen Action. New York: Alfred A. Knopf, 1971.

Schulz, William F., Jr. Conservation Law and Administration. New York: The Ronald Press Co., 1953.

Smith, Frank E. The Politics of Conservation. New York: Random House, 1966.

Tullock, Gordon. The Organization of Inquiry. Durham: Duke University Press, 1966.

Woll, Peter. American Bureaucracy. New York: W. W. Norton and Company, Inc., 1963.

Articles, Booklets, and Reports

"A New Right to Sue Polluters." Time, August 24, 1970, p. 37.

Abramson, Rudy. "Nader's Branching Out." The State Journal, Lansing, Michigan, September 27, 1970, p. C-2.

Bentley, William R. "Forest Service Timber Sales: A Preliminary Evaluation of Policy Alternatives." Land Economics, Vol. 19, No. 2, May 1968, pp. 205-218.

Brandborg, Stewart M. A Handbook on the Wilderness Act. Washington, D.C.: The Wilderness Society, 1970.

Catton, William R., Jr. "Motivations of Wilderness Users." Trends--Park Practice, Vol. 7, No. 4, October 1970, pp. 9-17.

Cohen, Bernie S. "The Constitution, Public Trust Doctrine, and the Environment." Utah Law Review, June 1970.

"Conservation Law I: Seeking a Breakthrough in the Courts." Science, Vol. 166, December 19, 1969, pp. 1487-91.

"Conservation Law II: Scientists Play a Key Role in Court Suits." Science, Vol. 166, December 26, 1969, pp. 1601-06.

Esposito, John. "What to do while Waiting for Washington." Harvard Civil Rights and Civil Liberties Law Review, January 1970.

Fisher, R. Frederic. "Environmental Law." Sierra Club Bulletin, January 1971, pp. 24-29.

Grad, Frank P., and Rockett, Laurie R. "Environmental Litigation--Where the Action Is?" Natural Resources Journal, Vol. 10, No. 4, October 1970, pp. 742-762.

Haik, Raymond A. "The Law: Enforcing Quality." No Deposit--No Return. Edited by Huey D. Johnson. Reading, Mass.: Addison-Wesley Publishing Company, 1970.

Hamill, Louis. "The Process of Making Good Decisions About the use of the Environment of Man." Natural Resources Journal, April 1968.

Hanks, Eva H. "Environmental Bill of Rights." Rutgers Law Review, June 1970.

_____, and Hanks, John L. "The Right to a Habitable Environment." The Rights of Americans: What They Are--What They Should Be. Edited by Norman Dorsen. New York: Pantheon Books [Random House], 1970.

Hardin, Garrett. "The Tragedy of the Commons." Science, Vol. 162, December 13, 1968, pp. 1243-48.

Jackson, Henry M. "Public Policy and Environmental Administration." Bioscience, December 1967, pp. 883-885.

Jemison, George M. "Impacts of Recreation on the Ecology of Temperate North American Forests." Proceedings and Papers of the International Union for the Conservation of Nature, June 1966. Lucerne: IUCN, 1967, pp. 173-185.

Johnson, Mrs. Lyndon B. "Sylvania Recreation Area." The Living Wilderness, Vol. 32, No. 101, Spring 1968.

Jorling, Thomas C. "Information, the Tax Law, and the Legislative Process." Oregon Law Review, Vol. 48 (April 1969), 227-236.

Journal of Forestry. Special issue on decision making in forest resource management. October 1968.

Keane, John T. "Conservation Comes to Court." Journal of Forestry, April 1971, pp. 206-209.

Kendall, Don. "Forest Service Plans New, Strict Guidelines for Cutting Timber." The State Journal, Lansing, Michigan, January 1, 1971. (Associated Press story datelined Washington.)

Kohlmeier, Louis M. "High Court Gives Individuals and Concerns Standing to Sue Federal Administrators." The Wall Street Journal, March 4, 1970, p. 6.

"Law Student Training in Environmental Action." Action: April 22. Washington, D.C.: Environmental Teach-In, Inc., April 9, 1970, p. 3.

Lohrmann, Robert R. "The Environmental Lawsuit: Traditional Doctrines and Evolving Theories to Control Pollution." Wayne Law Review, XVI (Summer 1970), 1085-1135.

McCloskey, Michael. "The Wilderness Act of 1964: Its Background and Meanings." Oregon Law Review, Vol. 45 (June 1966), 288-321.

McCloskey, Michael. "A Bill of Environmental Rights." No Deposit--No Return. Edited by Huey D. Johnson. Reading, Mass.: Addison-Wesley Publishing Company, 1970.

Mock, H. Byron. "Forest Management and Litigation." Journal of Forestry, April 1971, pp. 200-205.

"New Federal Law May be Giant Step on Road to Environmental Quality." Conservation Foundation Newsletter, April 4, 1970.

Perin, Constance. "The Noiseless Secession from the Comprehensive Plan." Journal of the American Institute of Planners, September 1967.

Price, Don K. "Purists and Politicians." Science, Vol. 163, January 3, 1969, pp. 25-31.

Reich, Charles A. "The Public and the Nation's Forests." California Law Review, Vol. 50, No. 3, August 1962, pp. 381-407.

Reich, Charles A. Bureaucracy and the Forests. Santa Barbara, Calif.: Center for the Study of Democratic Institutions, 1962.

Richards, Frederick S. "Walton v. St. Clair: The Standing Question." Natural Resources Lawyer, Vol. IV, No. 1, January 1971.

"Rigid Institutions Blamed for Upheaval." The State Journal, Lansing, Michigan, September 18, 1970, p. A-6.

Rogers, James P. "The Need for Meaningful Control in the Management of Federally Owned Timberlands." Land and Water Law Review, Vol. IV, No. 1, 1969, 121-143.

Sax, Joseph L. "Emerging Legal Strategies: Judicial Intervention." The Annals of the American Academy of Political and Social Change, Vol. 389, pp. 71-76.

Sive, David. "Some Thoughts of an Environmental Lawyer in the Wilderness of Administrative Law." Columbia Law Review, Vol. 70, No. 4 (April 1970), 612-651.

"Standing to Sue--and Public Timber Resources." Natural Resources Lawyer, Vol. 3 (July 1970), 444-460.

Sylvania. Ann Arbor: University of Michigan School of Natural Resources, 1965.

The Case for a Blue Ribbon Commission on Timber Management in the National Forests. Jointly published by the Rocky Mountains Chapter of the Sierra Club and the Western Regional Office of the Wilderness Society, 1970.

Twiss, Robert H. "Recreationists as Decision Makers." Proceedings of the 57th Western Forestry Conference, December 7-9, 1966, published by the Western Forestry and Conservation Association, Portland, Oregon, pp. 42-45.

Twiss, Robert H. "Conflicts in Forest Landscape Management: The Need for Forest Environmental Design." Journal of Forestry, Vol. 69, No. 1 (January 1969), 19-23.

Vose, Clement E. "Litigation as a Form of Pressure Group Activity." American Government: Readings and Cases. Edited by Peter Woll. Boston: Little, Brown and Company, 1962.

Whiteside, E. P., et al. Soils of Michigan. Special Bulletin 402, Michigan State University Agriculture Experiment Station, 1963.

Willner, Don S. "Who Has Standing in Oregon to Defend the Environment?", Environmental Law, Vol. 1, No. 1 (Spring 1970), pp. 44-59.

Yannacone, Victor J. "Sue the Bastards." Earth Day--The Beginning. Edited by the National Staff of Environmental Action. New York: Bantam Books, Inc., 1970.

Unpublished Material

Chappelle, Daniel E. Social Science and Computer Skills Needed by Resource Researchers. East Lansing, Michigan: Michigan State University, 1970, mimeo.

Clady, Michael. Regulation of Fish Populations in Three Lightly Exploited Lakes in Northern Michigan, for degree of Doctor of Philosophy in the University of Michigan, 1970.

Environmental Law - 1970. Course Materials, November 13-14, 1970. The Institute of Continuing Legal Education, Ann Arbor, Michigan.

Foster, Charles H. W. "The Case for Environmental Conciliation." Speech to American Institute of Biological Sciences, Burlington, Vermont, August 19, 1969.

Freeman, Orville L., Secretary of Agriculture. "Decision on the Request by the Colorado Department of Highways to route Interstate 70 through the Gore Range-Eagle Nest Primitive Area . . ." May 17, 1968.

Gandt v. Hardin: Transcript of Proceedings. Western District Michigan 1964, Civil Docket No. 1334, December 9-10, 1969.

Hansen, Roger P. "Creating New Institutional Arrangements for Environmental Quality Control." Speech to American Bar Association, St. Louis, Missouri, August 11, 1970.

Humphrys, Clifford R. The Evaluation of Physical Factors in Relation to Land Use: A Study of Gogebic and Ontonagon Counties, Michigan. Dissertation for degree of Doctor of Philosophy, Michigan State College of Agriculture, 1952.

Humke, John W. A Comparative Study of Four State Natural Area Systems with Recommendations for Michigan. East Lansing, Michigan: Michigan State University, 1970, unpublished M.S. thesis.

Kizer, Ralph D. Sylvania the Way It Is. Speech mimeographed at Ottawa National Forest headquarters, Ironwood, Michigan, September 8, 1969.

Leighty, Leighton L. "The Legal Aspects of Natural Resources." Speech to Society for Industrial Microbiology Summer Institute, East Lansing, Michigan, July 1, 1970.

Leighty, Leighton L. "Environmental Law Programs in Michigan." Speech to Flint Rotary Club, August 28, 1970.

Schmid, A. Allan. "The Quality of the Environment and Man: Some Thoughts and Opinions on Economic Institutions." Speech to Michigan Chapter, Soil Conservation Society of America, January 15, 1966.