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The Forests Nobody Wanted: The Politics of Land Management in the County Forests of the Upper Midwest

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PART I INTRODUCTION

While the vast majority of public forest lands in the United States are managed by federal or state agencies, embedded within this huge estate of 316 million acres of public forest lands,¹ are the little-known *county forests*. Concentrated primarily in the Upper Midwest, these forests amount to a not insignificant 5.4 million acres (or slightly larger than the state of Massachusetts).² In fact, they comprise between a quarter to two-fifths of all public lands in at least two states (MN and WI) where they occur³, while producing roughly five times the timber harvest as the adjacent federal lands.⁴ And yet, these “lands that nobody wanted,”

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¹ Figure given as 128 million hectares in U.S. DEP'T OF AGRICULTURE, FOREST SERVICE, U.S. FOREST FACTS AND FIGURES, REPORT FS-696-M (Sept. 2001), available at: <http://fia.fs.fed.us/library/briefings-summaries-overviews/docs/ForestFactsMetric.pdf>

² This figure is comprised from Wisconsin County Forests Association, Wisconsin County Forest Acres, <http://www.wisconsincountyforests.com/wcfa-acr.htm> (last visited April 2, 2012); ROSS N. BROWN AND MICHAEL A. KILGORE, EVALUATING THE ECONOMIC IMPACTS OF RETENTION AND DISPOSAL POLICIES FOR COUNTY TAX-FORFEITED LAND IN NORTHERN MINNESOTA, UNIVERSITY OF MINNESOTA DEPARTMENT OF FOREST RESOURCES STAFF PAPER SERIES NO. 196, i (July, 2008), available at: http://www.forestry.umn.edu/prod/groups/cfans/@pub/@cfans/@forestry/documents/asset/cfans_asset_184727.pdf; and MELVIN J. BAUGHMAN AND PAUL V. ELLEFSON, COUNTY FORESTRY ACTIVITIES: A SURVEY OF PROGRAMS IN SELECTED STATES, UNIVERSITY OF MINNESOTA DEPARTMENT OF FOREST RESOURCES, STAFF PAPER SERIES NO. 14, 3 (April 1980), available at: <http://conservancy.umn.edu/bitstream/5856/1/Staffpaper14.pdf>.

³ For Wisconsin: Wis. Dep't Nat. Resources, County Forests Program History, http://dnr.wi.gov/forestry/history/history_county.htm (last visited June 7, 2012). For Minnesota: this figure is calculated by dividing the county forests acreage (see note 2) by total public land in MN which is found in MINN. DNR DIV. OF LAND & MINERALS, PUBLIC LAND AND MINERAL OWNERSHIP IN MINNESOTA: A GUIDE FOR TEACHERS 1 (2000), available at: http://files.dnr.state.mn.us/lands_minerals/PLteachersguide.pdf

⁴ MINN. DEP'T NAT. RESOURCES, MINNESOTA'S FOREST RESOURCES 2010, 18 (May 2011), available at: <http://forest.nrri.umn.edu/documents/ForestResourcesReport-10.pdf>; Wis. Dep't Nat. Resources, Timber Harvest in Wisconsin, <http://dnr.wi.gov/topic/forestbusinesses/documents/timberharvestwisconsin.pdf> (last visited June 7, 2012).

as some have called them,⁵ exist almost completely beneath the radar in terms of both scholarly and popular perception and are almost completely overlooked in the public lands literature, despite their obvious economic and environmental importance in the states where they occur.

It is the purpose of this study then, to describe county forests as a category and jurisdiction of public land management and investigate how it fits into the larger puzzle of forest politics in the U.S. In his extensive comparison of state and federal forests, Tomas Koontz tests the theory of functional federalism (which finds devolution of authority to the local level to lead to more economic develop-oriented policies), and concludes that state agencies produce timber more efficiently, while federal management offers more environmental protection and citizen participation.⁶ One intention of this study is to see if this pattern holds up or is even more pronounced with county forests which represent, after all, an even more intensely local level of control than state forests. County forest management, then, needs to be compared to that of state and federal agencies in terms of how it deals with the most important elements of forest policy; that is how to balance resource extraction, recreation, and preservation⁷

PART II COUNTY FOREST SYSTEMS—DESCRIPTION AND HISTORY

Of the approximately 5.4 million acres of county forest in the U.S., 95% can be found in just two states, Minnesota and Wisconsin.⁸ Other states with notable acreages of county

⁵ Minnesota Association of County Land Commissioners, Homepage <http://www.mncountyland.org/> (last visited June 11, 2012)

⁶ TOMAS KOONTZ, *FEDERALISM IN THE FOREST* (2002).

⁷ Steven Davis, *Preservation, Resource Extraction, and Recreation on Public Lands: A View from the States* 48 NAT. RESOURCES J 305 (2008)

⁸ *Supra* note 2

forest lands include Michigan (66,000 acres), New York (45,000 acres), Washington (28,000 acres), Oregon (78,100 acres), and Pennsylvania (10,000 acres).⁹ In this study, the term *county forest*, refers to a specific land use designation for mostly forested, multiple use land owned and/or managed by county governments and thus, would not include county park or recreation area designations.¹⁰ Given how extensive, well-established, and well-defined they are, Minnesota's 2.8 million acre and Wisconsin's 2.35 million acre county forest systems obviously dominate this category of land management. Consequently, this study will focus primarily on these two states.

⁹ BRAUGHMAN & ELLEFSON, *supra* note 2 at 3. Given the rather extreme dearth of literature on county forests and the fragmentation of over 3,000 counties in the U.S., pinning down exact acreages and county systems outside of WI and MN is rather difficult. The acreages listed in Baughman and Ellefson's 1980 study are obviously outdated and perhaps, incomplete. Some counties outside of WI and MN confirmed to have county forest systems include Grays Harbor and King Co. WA, Clackamas, Coos, Douglas and Hood River Counties. OR, Marquette and Gogebic Counties. MI, and Jefferson, Otsego, Allegany, and St. Lawrence Counties NY. Clackamas County, Clackamas County Forests, <http://www.clackamas.us/forests/>; Coos County Forestry Department, Coos County Forest History <http://www.co.coos.or.us/Departments/Forestry/History.aspx> (last visited June 11, 2012); Hood River County Forestry Department, Homepage [http://www.co.hood-river.or.us/index.asp?Type=B_BASIC&SEC=\[E5300B0B-0A0B-4663-B7A3-39901D1AD9FD\]](http://www.co.hood-river.or.us/index.asp?Type=B_BASIC&SEC=[E5300B0B-0A0B-4663-B7A3-39901D1AD9FD]) (last visited June 11, 2012); Douglas County Land Department, County Forest Management <http://www.co.douglas.or.us/Land/ForestMgt.asp> (last visited June 11, 2012); Gogebic County Forestry and Parks Office, Homepage <http://www.gogebic.org/forest.html> (last visited June 11, 2012); Marquette County Planning Division, Marquette County Forest http://www.co.marquette.mi.us/departments/planning/county_forest.htm (last visited June 11, 2012); Grays Harbor County Department of Forestry and Tax Title Management, Homepage <http://www.co.grays-harbor.wa.us/info/Forestry/index.htm> (last visited June 11, 2012); King County Parks and Recreation Div., Natural Areas and Working Resource Lands <http://www.kingcounty.gov/recreation/parks/naturalresources.aspx> (last visited June 11, 2012); Otsego County Highways, Forestry and Parks, Homepage, <http://www.otsegocounty.com/depts/hwy/> (last visited June 11, 2012); St. Lawrence County, St. Lawrence County Forest Land <http://www.co.st-lawrence.ny.us/Departments/SoilWater/CountyForestLand> (last visited June 11, 2012); Allegany County Soil & Water Conservation District, Parks and Forests 2011 Annual Report http://www.alleganyco.com/btn_budget/Reports/2011/ParksForests.pdf (last visited June 11, 2012); Jefferson County, County Forests Map, <http://www.co.jefferson.ny.us/Modules/ShowDocument.aspx?documentid=1428> (last visited June 11, 2012);

¹⁰ That said, a few county forests are jointly managed in a single County Parks and Forests Department (such as in Eau Claire County, WI), but exist, nonetheless, as distinct county forests. Even without any county forest component, County park systems can be quite extensive in their own right; with systems exceeding 60,000 acres in Cook (IL), Maricopa (AZ), Hillsborough (FL), Riverside (CA). See Steven Davis, *The Politics of Urban Natural Areas Management at the Local Level: A Case Study 2* KY. J. EQUINE AGRI. & NAT. RESOURCES 130-131 (2010)

County forest systems differ by state as to ownership and management responsibilities as outlined by appropriate state statute. In Minnesota, county forests are technically owned by the state in trust for the counties, but are directly managed by the counties themselves.¹¹ Because Minnesota's county forest system is a component of its larger system of Trust Lands, county forests can be disposed of in order to generate revenue, as is commonly a feature of state Trust Land arrangements.¹² In order to discourage such disposal, the Minnesota Legislature, in 1979, created a system of Payment in Lieu of Taxes (PILT) to make up for lost tax revenues on public land.¹³ In Wisconsin, on the other hand, county forests can be disposed of only with the approval of the state Department of Natural Resources (DNR)¹⁴ and this has, heretofore, never been considered a serious management option on any sort of meaningful scale.

In contrast to Minnesota, Wisconsin's county forest system represents much more of a straightforward arrangement, with both fee simple county ownership and direct county management. The state DNR does play a critical role in providing oversight, technical and budgetary assistance, and a legally-binding framework for making management decisions,¹⁵ but nonetheless, county forests in Wisconsin come closest to being a local analogue to adjacent state forests and national forests.

¹¹ BROWN AND KILGORE, *supra* note 2 at i

¹² *Id* at 2. Trust Lands are a unique category of state lands which are legally bound to be managed to produce revenue for a designated beneficiary, most often, school districts, but in the case of Minnesota Tax Forfeited Forest Lands (TFFL), counties. See JON SOUDER & SALLY FAIRFAX, STATE TRUST LANDS: HISTORY, MANAGEMENT, & SUSTAINABLE USE (1996); MINN. DNR DIV. OF LAND & MINERALS *supra* note 3.

¹³ Minnesota Association of County Land Commissioners *supra* note 5.

¹⁴ BRAUGHMAN & ELLEFSON, *supra* note 2 at 10-11.

¹⁵ Wis. Stat. § 28.11(5)

Mostly situated in the northern tier of both states, counties forests are found in 15 counties in Minnesota and 29 counties in Wisconsin. The size of specific county forests varies greatly from St. Louis County's (MN) 872,000 acre system on down to Vernon County's (WI) tiny 948 acres, with most counties having acreages in the tens of thousands to hundreds of thousands of acres.¹⁶ Although large continuous block certainly do occur, county forests lands, especially in Minnesota, tend to be fairly fragmented, often in a checkerboard-like pattern with nearby private or state lands. This owes, in part, to the county forests' tax-forfeiture origins. In Wisconsin, slightly less than 85% of county forest land is actually forested with the remainder mostly in wetlands, open water, brush and grasslands.¹⁷ Of the forested acres, aspen is, by far, the dominant component of forest stands, comprising about 35% of total acres in both MN and WI. This is followed by northern hardwoods (15% in WI) and pine (11% in WI).¹⁸

Although county forests are quite intensively logged, the median stand age in MN is 52 years which is actually one year older than the figure for all forests in the same counties.¹⁹ While some mass reforestation took place in the 1920s-1940s, most county forests are the result of natural regeneration which is also how currently logged sites tend to be

¹⁶ For full list see Wisconsin County Forests Association *supra* note 2; Minnesota Association of County Land Commissioners *supra* note 5.

¹⁷ Wis. Dep't Nat. Res., Property Cover Type Acreage, County Forests Report 101, 5 (Data file sent by e-mail by John Gritt, Oct. 18, 2010).

¹⁸ *Id.* at 2.

¹⁹ BROWN AND KILGORE, *supra* note 2 at 9. In Wisconsin, mature forests (over 70 years old) typically make up between a third and a fifth of the county forest land base. Aspen forests tend to be the youngest (with 15-35 years the mode range) and hardwoods, the oldest (with 76-80 years the mode range) with pines somewhere in between. Wis. Dep't Nat. Res., Forest Type Age Distribution County Forests Report 103, 5 (Data file sent by e-mail by John Gritt, Oct. 18, 2010). Although in one county, Rusk, the figure is closer to 70% given their rather atypical reliance on uneven-age management. Survey of Wisconsin County Forest Administrators (June-October 2010). See appendix

remediated.²⁰ Reforestation in the relatively wet Upper Midwest, therefore, tends to be much less of a challenge than in the more mountainous or semi-arid parts of the West. Bigger threats, according to county land managers, would be invasive plants and insects as well as nearly a century of fire suppression.²¹

In some ways, the county forests of the Upper Midwest are an accident of history. In the early 19th century, the region was blanketed in seemingly endless forests of white pine, maple and hemlock. In a relatively short period of time after white settlement, the valuable pines and hemlocks were almost completely stripped out by a rapacious logging industry and enterprising homesteaders, all fed by the insatiable demands of a rapidly developing nation.²² As the conifers declined, logging switched to the hardwoods by the 1890s with the pace of deforestation sped up by improving rail access. The leftover slash and debris inevitably dried out until lightning or a spark from a nearby railroad would start massive fires.²³ By the early 20th century, the impact of this large-scale and unsustainable deforestation coupled with repeated cycles of fire became painfully felt as productivity and biodiversity plummeted.²⁴

²⁰ SCIENTIFIC CERTIFICATION SYSTEMS, FOREST MANAGEMENT AND CHAIN OF CUSTODY CERTIFICATION EVALUATION REPORT FOR THE WISCONSIN COUNTY FOREST PROGRAM, 11, 35 (March 2005) *available at*: http://dnr.wi.gov/topic/TimberSales/documents/FSC_WI_Co_Forest_Report_Final_3_12_05.pdf (hereinafter SCS REPORT).

²¹County Forest Administrators Survey, *supra* note 19. This point is reiterated in SCS REPORT *supra* note 20 at 11.

²² FOREST STEARNS, HISTORY OF THE LAKE STATES FORESTS: NATURAL AND HUMAN IMPACTS (1997) *available at*: <http://www.ncrs.fs.fed.us/gla/reports/history.htm>

²³ The most infamous of these fires started on a Oct.8, 1871, the same day as the Great Chicago Fire after a hot and droughty summer and autumn. It soon flared into the largest and deadliest fire in North American history consuming an estimated 1.2 million acres and completely destroying the town of Peshtigo and several others. The death toll was estimated between 1,200-2,400 people. Kim Estep, *Tales of Heroism and Tragedy Swirl* GREEN BAY PRESS GAZETTE, (Nov. 2, 1999); Deana C. Hipke, The Great Peshtigo Fire of 1871 www.peshtigofire.info/ (last visited June 19, 2012).

²⁴ STEARNS *supra* note 22.

The homesteaders who followed the loggers quickly discovered that unlike the deep and rich prairie soils of southern Wisconsin and Minnesota, these brushy and barren “stump pastures” had quite poor, often sandy soil and were largely unsuitable for agriculture. By the late 1920s and early 1930s, the final blow was delivered to these already economically marginalized homesteaders by the Great Depression.²⁵ The result was a tidal wave of foreclosure, abandonment, and subsequent tax delinquency and forfeiture. By the late 1920s, over 4.5 million acres in northern Wisconsin had been tax delinquent at least once²⁶ and tax delinquencies on this scale started to become an existential threat to county and local governments.²⁷

Whether tax delinquent land reverted to state or county control depended who was responsible for tax collection; in Minnesota it was the state, while in Wisconsin, it was the counties.²⁸ Regardless, governments in the Upper Midwest soon enough found themselves in possession of millions of acres of former forest land.²⁹ In Wisconsin, a series of laws were passed starting in the late 1920s in an attempt to deal with this situation. Most importantly, a Forest Crop Law allowed counties to take ownership of tax forfeited land without compensating the state for its share of the delinquent taxes and then gave them zoning powers to control land use within these forested acreages.³⁰ Over the next 30 years, most counties in northern and central Wisconsin used this law to establish county forests within

²⁵ Wis. Dep’t Nat. Resources, *supra* note 3.

²⁶ *Id.*

²⁷ STEARNS *supra* note 22.

²⁸ *Id.*

²⁹ Of the county forest systems of the Upper Midwest, only Michigan’s very modest 66,000 acre system offers an exception to the tax-forfeited origins of county forests. There, nearly half of the county forests were obtained through outright purchase. BRAUGHMAN & ELLEFSON, *supra* note 2 at 6.

³⁰ Wis. Dep’t Nat. Resources, *supra* note 3.

their boundaries.³¹

Incidentally, the six National Forests in Minnesota, Wisconsin, and Michigan³² (as well as the region's numerous state forests) also have their origins in this same mass land abandonment of the Depression Era as the federal (or state) government pieced together a patchwork of adjacent forest lands purchased from the states and counties eager to divest of their tax forfeited lands.³³ (See Figure 1)

PART III--RESOURCE EXTRACTION IN THE COUNTY FORESTS

Public lands are generally managed for one or more of three broad purposes: resource extraction, recreation and the preservation of biodiversity and natural landscapes.³⁴ By far, the largest component of state and federal lands attempt to combine these purposes through the principle of multiple use. County forests are no exception to this rule as can be seen in the common mission statement of Wisconsin county forests:

Natural resources, such as those provided by the County Forest, are the base for addressing the ecological and socioeconomic needs of society. The mission of the County Forest is to manage, conserve, and protect those resources on a sustainable basis for present and future generations....While managed for environmental needs, including watershed protection, protection of rare plant and animal communities, and maintenance of plant and animal diversity, these same resources must also be managed and provide for sociological needs, including provisions for recreational opportunities and the production of raw materials for wood-using industries. Management must balance local needs with broader state, national, and global concerns through integration of sound forestry, wildlife, fisheries, endangered resources, water quality, soil, and recreational practices.³⁵

³¹ In Minnesota, the status of county Tax Forfeited Lands (TFFL) were much more tenuous than in Wisconsin with the TFFL being actively privatized and disposed of well into the 1970s, after which the pace slowed substantially with the advent of PILT legislation which did much to secure the TFFL land base in its present form. BROWN AND KILGORE, *supra* note 2 at 1-2.

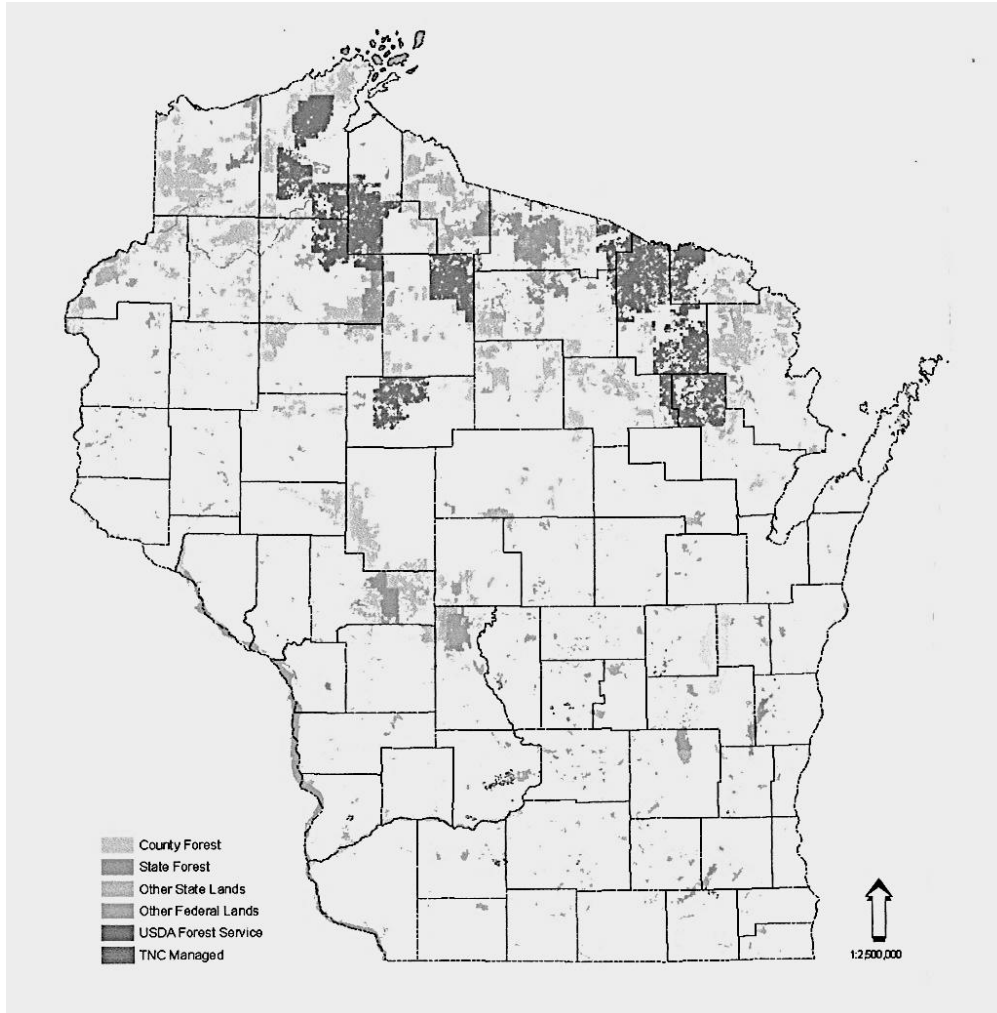
³² The Superior and Chippewa in MN, the Chequamegon-Nicolet in WI, and the Ottawa, Hiawatha, and Huron-Manistee in MI.

³³ STEARNS *supra* note 22. This is in stark contrast to the large unbroken tracts that comprise the national forests in the West. These lands, left over after homesteading allotments were granted, have never left the public domain.

³⁴ Davis, *supra* note 7 at 305.

³⁵ SCS REPORT, *supra* note 20 at 8.

Figure 1. Federal, State, and County Public Forests in Wisconsin



From: http://dnr.wi.gov/topic/ForestPlanning/documents/C1_indicator03.pdf p.5 (map 3b)

So while county forest managers uphold multiple use principles, just like their state and federal counterparts, it is how they weigh and prioritize the specific components of multiple use that is most important here. As previously stated, Koontz finds that state forest managers emphasize timber production more intensively than federal managers as he tests the theory of functional federalism, which predicts that more local policymaking jurisdictions

should be more focused on and sensitive to issues of local economic development.³⁶ If one was to continue along these lines, it should be expected that county forest managers would be even more focused on resource extraction and that certainly seems to be the case in Wisconsin and Minnesota.

While allowable extractive uses on county forests can include gravel mining, mushroom and sphagnum moss collection, Christmas tree harvesting, and the provision of power and pipeline right-of-ways,³⁷ it is timber production that overwhelmingly dominates this category. The fact that Minnesota and Wisconsin both have a mosaic of large blocks of federal, state, and county multiple use forest lands existing side-by-side allows for a direct comparison of how intensively timber is extracted from each jurisdiction. As can be seen in Table 1, the total county forest land base in Minnesota and Wisconsin produces between 3 to 9 times more cords of timber per acre than the national forest (in WI and MN) and about 1.7 times more cords per acre than the state forest land base. Brown and Kilgore, meanwhile, looking at net income per acre, find that the county lands in Minnesota generate \$4.11 of revenue per acre while the state's School Trust Lands (which are well-known to be aggressively managed to produce revenue for their legal beneficiary, the state's schools) produced only \$1.59 per acre.³⁸ Wisconsin county forests produced the most timber per (system) acre (.309 cords), followed by Minnesota county forests (.252 cords). The two state's state lands produced somewhat less at .214 cords in WI and .165 cords in MN. By comparison, the

³⁶ KOONTZ, *supra* note 6 at 13.

³⁷ County Forest Administrators Survey, *supra* note 19.

³⁸ BROWN AND KILGORE, *supra* note 2 at 22.

Table 1 Average Cords of Timber Produced per Acre by Public Forest Jurisdiction^a

| Jurisdiction | Harvest in Cords Equivalent ^b (in thousands) | Total Acres in System (in thousands) | Cords Produced Per Acre in System |
|---|--|---|--------------------------------------|
| MN National Forests | 160.0 | 4,599.6 | .035 |
| MN State Multiple Use Lands ^c | 775.0 | 5,181.4 | .150 |
| MN County Forests | 720.0 | 2,854.3 | .252 |
| Wisconsin National Forests | 152.9 | 1,519.8 | .101 |
| Wisconsin State Multiple Use Lands ^d | 177.7 | 983.9 | .181 |
| Wisconsin County Forests | 730.2 | 2,363.3 | .309 |

^a Data sources for Table 1: WIS. DEP'T NAT. RES., TIMBER HARVEST IN WISCONSIN (2010) available at <http://dnr.wi.gov/topic/ForestBusinesses/documents/TimberHarvestWisconsin.pdf> ; USDA FOREST SERVICE, CHEQUAMEGON-NICOLET NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN: MONITORING AND MIDTERM EVALUATION REPORT: 2009-2010 42-43 (2012) available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5349964.pdf (CNNF MGMT. PLAN HEREINAFTER) ; DONALD DECKARD & JAMES SKURLA, ECONOMIC CONTRIBUTION OF MINNESOTA'S FOREST PRODUCTS INDUSTRY – 2011 EDITION (MINN. DEP'T OF NAT. RES. REPORT 2011) available at <http://files.dnr.state.mn.us/forestry/um/economiccontributionMNforestproductsindustry2011.pdf>; Wis. Dep't Nat. Res., Public Forest Timber Sales CY 1995-2011, Data file sent through email by Jeff Barkley, (March 30, 2012).

^b All of these figures, except for the national forests in WI, are averages for multi-year periods. For the Wisconsin state and county data, it is averages from 1995-2011 (see note a), and all the Minnesota data is an average from 2008-2011 (see note a). The Wisconsin federal data is from 2009.

^c This would include both regular DNR lands and lands managed by the DNR in various state trusts excluding the state lands held in trust for the counties (TFFL)

^d State Multiple Use lands would include State Forests, State Wildlife Areas, and State Flowages. The cords per acres figure for State Forests alone is .229 with 120,900 cords harvested on 527,333 acres

three national forests in those states produce considerably less timber (between .035 to .101 cords).³⁹

Table 2 offers another way to look at this, at least in Minnesota. While private lands, with often far shorter rotations and no sustained yield requirements, clearly produce the most timber per acre, the higher rates of extraction on county lands can be clearly seen.

Table 2 Minnesota Timber Sales by Forest Jurisdiction^a

| Forest Jurisdiction | Pct. of Total MN Forest Acreage | Pct. of Timber Sold in MN |
|--------------------------|---------------------------------|---------------------------|
| Private Forests | .40 | .62 |
| County Forests | .16 | .16 |
| State Multiple Use Lands | .23 | .16 |
| National Forests (in MN) | .21 | .05 |

^a Table 2 Data Sources: Minnesota Forest Industries, Minnesota Forest Facts www.minnesotaforests.com/resources/pdfs/publictimbersales.pdf (last visited June 20, 2012).

³⁹ The far lower figure for timber production per acre in Minnesota National Forests is probably due to the presence of the 1 million acre Boundary Water Canoe Area Wilderness which comprises nearly a quarter of all MN national forest acreage and as wilderness is off-limits to logging. By contrast, WI national forests have only 44,000 acres of Wilderness. USDA Forest Service, Special Places: The Boundary Waters Canoe Area Wilderness <http://www.fs.usda.gov/detail/superior/specialplaces/?cid=stelprdb5202169> (last visited June 20, 2012); USDA Forest Service, Recreation: Wilderness Areas on the Chequamegon-Nicolet <http://www.fs.usda.gov/detail/cnnf/recreation/?cid=stelprdb5176612> (last visited June 20, 2012). On the other hand, the national forests of the Upper Midwest have some of the highest rates of logging in the entire national forest system. Native Forest Network, Endangered Forests Hot Spot: Chequamegon-Nicolet <http://www.nativeforest.org/pdf/CNNF.pdf> (last visited June 20, 2012).

These discrepancies between timber production on county vs. state and especially federal lands are not actually due so much to differences in logging practices or rotations which are fairly standard across jurisdictions. Nor are they due to any great differences in the species composition or structure of these very similar neighboring forests. Indeed, as can be seen in Table 3, sale value per harvested acre in Wisconsin is quite uniform across jurisdictions.

Table 3 Total 2010 Wisconsin Timber Sale Value and Value per Harvested Acre^a

| Jurisdiction | Total Timber Sale Value (in thousands of \$) | Timber Sale Value per Harvested Acre (in \$) |
|--------------------------|--|--|
| County Forests | 29,643.1 | 607 |
| State Multiple Use Lands | 10,796.2 | 657 |
| National Forests (in WI) | 4,696.9 | 600 |

^a Table 3 Data Sources: Wis. Dep't Nat. Resources, Timber Harvest in Wisconsin, <http://dnr.wi.gov/topic/forestbusinesses/documents/timberharvestwisconsin.pdf> 5 (last visited June 7, 2012).

The difference, then, is not the logging methods, nor the resource base, nor the volume or intensity of the logging per acre, but rather in the sheer amount of land logged in any given year. Simply put, county foresters authorize the harvest of far more acres of forest as a

percentage of the total; in Wisconsin, nearly double that of state lands and three times the amount on the federal forests in the state as can be seen in Table 4.

Table 4

Average Total Acres Harvested Annually in Wisconsin as a Percentage of Total Acreage in Jurisdiction^a

| Jurisdiction | Total Acres Harvested | Pct. of Total Acres in Jurisdiction Harvested |
|--------------------------|-----------------------|---|
| National Forests (in WI) | 8,990 | .0059 |
| State Multiple Use Lands | 10,318 | .0104 |
| County Forests | 45, 090 | .0190 |

^a Table 4 Data Sources: CNNF MGMT. PLAN *supra* note a, Table 1 at 121; Wis. Dep't Nat. Res., Public Forest Timber Sales, *supra* note a, Table 1.

Not only is there much greater timber production on county lands, but this is accomplished more efficiently, with fewer resources including especially staff. As Table 5 shows, county forest managers and other employees (at least in WI and MN) have far more ground to cover than their state or federal counterparts.

Table 5 Acres per FTE Employee by Jurisdiction^a

| Jurisdiction | Full-Time Equivalent (FTE) Employees | Acres per FTE Employee |
|-------------------------------------|--------------------------------------|------------------------|
| MN National Forests | 396 | 11,615 |
| MN State Multiple Use Lands | 380 | 13,157 |
| MN County Forests (Subset) | 142 ^b | 19,297 ^c |
| Wisconsin National Forests | 223 | 6,726 |
| Wisconsin State Multiple Use Lands | 374 ^d | 2,483 |
| Wisconsin County Forests (subset) | 41 ^e | 17,713 ^f |
| Grays Harbor, WA County Forest | 4 | 9,500 |
| Washington State Multiple Use Lands | 529 | 3,977 |

^a Table 5 Data Sources: USDA FOREST SERVICE, CHIPPEWA NATIONAL FOREST 2009 ANNUAL REPORT 5 (2010) available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5152041.pdf; Phone interview, Public Affairs Officer, Superior National Forest, (October 11, 2011); Minn. Dep't Nat. Resources, Forestry Careers, <http://www.dnr.state.mn.us/forestry/recruitment/index.html> (last visited June 21, 2012); USDA FOREST SERVICE, CHIPPEWA NATIONAL FOREST ANNUAL REPORT 2009, 5 (2010) available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5152041.pdf; BROWN AND KILGORE, *supra* note 2 at ii; WIS DEP'T NAT. RESOURCES, WISCONSIN'S STATEWIDE FOREST ASSESSMENT 17.2 (2010) available at: http://dnr.wi.gov/topic/ForestPlanning/documents/C6_indicator17.pdf; County Forest Administrators Survey, *supra* note 19; WASHINGTON JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE, FOREST BOARD TRANSFER LAND REPORT 96-5, 20-21 (December 16, 1996) available at: <http://www.leg.wa.gov/JLARC/AuditAndStudyReports/1996/Documents/96-5.pdf>; CHEQUAMEGON-NICOLET NF—2008 YEAR IN REVIEW 2 (2009) available at: http://www.fs.fed.us/outernet/r9/cnnf/reports/annual/2008_YIR_Web_Version.pdf

^b This figure represents a subset of 12 of the 15 county forests in MN

^c The acreage of this subset of 12 county systems was 2.7 million

^d This figure is for the 80% of forestry personnel involved in forest management rather than fire protection.

^e This figure represents a subset of 10 of the 29 county forests in WI.

^f The acreage of this subset of 10 county systems was 726,253

In terms of timber from public lands, the critical importance of the county forests to the local timber economy should be obvious. In Wisconsin, it is estimated that 30,000 jobs in the wood products and related industries are dependent on county forests.⁴⁰ In Minnesota, meanwhile, it is claimed that 40,400 jobs are directly and 89,500 jobs are indirectly tied to county forest timber supporting a payroll of \$1.8 billion in 2010.⁴¹

PART IV RECREATION AND PRESERVATION ON THE COUNTY FORESTS

Given the dominance of timber production on county forest land, it is not surprising that other uses of the forest remain as secondary concerns. However, because they are amongst the most common type of public land in the North Woods, county forests still manage to provide many crucial recreational opportunities. Chief among them is hunting access. Game species, especially white-tailed deer and grouse are drawn to the young aspen forests common in the county forests, while the former also thrive in the brushy new growth of heavily logged areas. A 2008 study by Brown and Kilgore estimates that the cost to replace the hunting access provided by Minnesota county forests would be \$3.6 billion.⁴²

Along with hunting, another strength of county forest recreation, at least in Wisconsin, would be developed campsites. As Table 6 shows, campsite density in Wisconsin county forests is equivalent to the national forests and about half that of the state forests (although there are twice as many campsites in absolute numbers).

⁴⁰ SCS REPORT, *supra* note 20 at 12.

⁴¹ MINNESOTA ASSOCIATION OF COUNTY LAND COMMISSIONERS, A REPORT ON PAYMENT IN LIEU OF TAXES (PILT) Attachment D (February 3, 2011) *available at*: <http://www.mncountyland.org/images/MACLC%20PILT%20Report%20to%20Senate.pdf> (hereinafter: PILT REPORT)

⁴² BROWN AND KILGORE, *supra* note 2 at v.

Table 6 Acres of Forest per Campsite by Jurisdiction in Wisconsin^a

| Jurisdiction | Total Campsites | Acres per Campsite |
|-----------------------------|-----------------|--------------------|
| National Forests (in WI) | 1,193 | 1,273 |
| State Forests | 1,000 | 529 |
| County Forests | 2,000 | 1,181 |

^a Table 6 Data Sources: WIS. DEP'T NAT. RESOURCES, 2010 DIVISION OF FORESTRY ANNUAL REPORT, 5 (2010) available at: <http://www.wistatedocuments.org/cdm/singleitem/collection/p267601coll4/id/3569/rec/6> p.5; USDA Forest Service, Chequamegon-Nicolet National Forest Campground Camping, <http://www.fs.usda.gov/activity/cnnf/recreation/camping-cabins/?recid=27717&actid=29> [tabulated from list of campgrounds] (last visited June 22, 2012); Wisconsin County Forests Association, *supra* note 2.

While county lands tend to lack the well-developed single-purpose hiking trails of many state and federal tracts, they are certainly not wanting for access as thousands of miles of logging roads and fire breaks serve double-duty as hiking, cross-country skiing, snowmobile, equestrian, and all-terrain vehicle (ATV) paths. Outside of developed campsites, though, a certain laissez faire orientation towards recreation prevails; the land is open to the public to recreate as they please, but without the sorts of amenities, oversight, or infrastructure that one would find in, for example, a state park. However, with population growth and especially the growing popularity of motorized recreational vehicles, recreational uses are beginning to expand to the point where they will exceed the county land managers' capacity and expertise to properly manage.⁴³

One case in point might be ATV use. In fact, despite the relatively high level of logging in the county forests, it is ATV access that has tended to be the most intensely controversial

⁴³ SCS REPORT, *supra* note 20 at 32, 34.

and emotional public issue facing county managers.⁴⁴ Numerous county officials mentioned this as a perennial and particularly intractable issue.⁴⁵ While most county forests allow fairly broad use of ATVs on logging roads and developed trails, heavy and unauthorized off-road use is a constant problem which generates a great deal of resource damage⁴⁶.

Understaffed county forest agencies, meanwhile, end up providing little to no enforcement. Aggravating matters in Wisconsin at least, is the fact that surrounding state and federal lands generally have more restrictive ATV policies in place, thereby putting extra pressure on the nearby county lands.⁴⁷ In fact, as shown below in Table 7, there are 1180 miles of ATV trails on county forests in Wisconsin as opposed to only 486 on all the state and national forest lands combined.

⁴⁴ *Id.* at 98.

⁴⁵ County Forest Administrators Survey, *supra* note 19.

⁴⁶ See examples in SCIENTIFIC CERTIFICATION SYSTEMS, FOREST MANAGEMENT AND STUMP-TO-FOREST GATE CHAIN-OF-CUSTODY CERTIFICATION EVALUATION REPORT FOR THE WISCONSIN COUNTY FOREST PROGRAM, 27-34 (October 8, 2009) available at: http://www.scs-certified.com/nrc/certificates/forest_wisconsincounty.pdf (hereinafter SCS REPORT '09). Illegal off-road ATV riding (and even sometimes perfectly legal trail and road usage) can cause grievous damage to forest ecosystems, especially those that are low-lying and tend to be wet. This can be through soil compaction, soil erosion and the related stream pollution it can cause, and the introduction of invasive species from infested areas into pristine ones as seeds embed in the mud on ATV tires. USDA FOREST SERVICE, UNMANAGED MOTORIZED RECREATION, 1-3 (undated position paper) available at: <http://www.fs.fed.us/publications/policy-analysis/unmanaged-recreation-position-paper.pdf>

⁴⁷ This is far more the case in Wisconsin than in Minnesota. In fact Wisconsin State Forests have only 180 miles of ATV trails as compared to 3,300 miles on state lands in Minnesota and they are banned altogether on the largest forest in the system, the Northern Highland-American Legion State Forest. The difference between the two states according to a Wisconsin forest superintendent is summed up as follows: "Here in Wisconsin, our lands were designated as closed to ATVs until we decided to open some of them...That's different than Minnesota where initially everything was open to ATVs and now you're trying to close some trails." Tom Meersman & David Shaffer, *Control at Last or Inviting Trouble?* MINNEAPOLIS STAR-TRIBUNE (Sept. 16, 2008) available at: <http://www.startribune.com/local/28430149.html?page=all&prepage=3&c=y#continue>; Nathan Boortz, *DNR Recommends No ATV Trails in NHAL State Forest* THE LAKELAND TIMES (April 18, 2008) available at: <http://www.lakelandtimes.com/main.asp?SectionID=9&SubSectionID=9&ArticleID=7697>

Table 7 Miles of ATV trails By Jurisdiction Acre^a

| Jurisdiction | Total Miles of ATV trails | Mile of ATV trail per 1000 Acres |
|--------------------------|---------------------------|----------------------------------|
| National Forests (in WI) | 310 ^b | .20 |
| WI State Forests | 180 | .34 |
| WI County Forests | 1,180 | .50 |

^a Data Sources for Table 7: SCS REPORT '09 *supra* note 46 at 13; CNNF MGMT. PLAN *supra* note a, Table 1 at 35; Meersman & Shaffer, *supra* note 47.

^b This is the current figure, although there are long-term plans for 185 more miles to be built. CNNF MGMT. PLAN *supra* note a, Table 1 at 123.

While ATV usage tends to be more intense on the county lands, there is no consensus among stakeholders that this is a good thing. In fact, one northern Wisconsin county in particular, Vilas, went so far in the opposite direction as to completely ban ATVs from all its 41,048 acres of county forest lands and road rights-of-way. This policy was not initiated by county land managers, but instead settled by a county-wide referendum in 2004.⁴⁸ In a bitterly divisive campaign waged over issues of environmental damage, constant noise, recreational access, and competing arguments over what constituted good economic development, 63% of voters ended up supporting the ban.⁴⁹

⁴⁸ Ron Seely, *Vilas County Voters Want ATVs Out*, WISCONSIN STATE JOURNAL B3 (February 19, 2004).

⁴⁹ *Id.*; Douglas Etten, *Town Voters Sound Off For, Against Proposed ATV Ordinance*, LAKELAND TIMES (September 2, 2011); Tom Held, *Line drawn in woods over ATVs: Vilas County set to vote whether to let off-road vehicles in county forests* MILWAUKEE JOURNAL SENTINEL (January 23, 2004). Given the fact that ATV riders in this area tend to be highly organized and mobilized, it is not surprising that the issue, which has simmered for years, flared up again in 2011 as the pro-ATV forces pushed for county legislation to allow for limited ATV routes using existing

As with recreation, preservation-oriented management on the county forests tends cannot be considered a top priority, at least compared to the attention it is paid at the state and especially federal levels. Preservation as a management goal would be defined here as entailing policies which prioritize the maximization of floral and faunal biodiversity as well as the maintenance of large undisturbed blocks of land with at least certain wilderness characteristics.⁵⁰ Although county forests are sustainably managed in ways that ensure productivity and future yield,⁵¹ it would be hard to argue that the preservation management goals stated above are the main focus of county land managers. Indeed, as was previously shown, a comparatively large acreage is logged annually, often employing even-age management techniques (clear-cutting), while a significant portion of the county forest land base is also kept in a monoculture of aspen, a short-lived, but commercially valuable pioneer species.

The main avenue for Wisconsin county foresters to manage for biodiversity would be through the use of the High Conservation Value Forest (HCVF) designation for a particular acreage. While HCVF status does not necessarily preclude active management (even logging), it does generally represent a commitment to maintain a certain ecological regime (which would, consequently, rule out more aggressive forms of management which

county and township roads. As shown by Held, ATV access has proven to be such a vexing and conflictual issue in the management of public lands, that UW-Stevens Point professor and former Clinton-era Forest Service Chief Mike Dombeck argues that they present one of the most complex and difficult conservation challenges of the century.

⁵⁰ Davis, *supra* note 7 at 316-317.

⁵¹ In fact, 27 out of 29 Wisconsin county forests and 90% of Minnesota county forest land are third party certified as sustainably managed by FSC or SFI. Wisconsin County Forest Association, Wisconsin County Forest Certification, <http://www.wisconsincountyforests.com/certification.htm> (last visited June 23, 2012); Minn. Dep't Nat. Resources, Forest Certification <http://www.dnr.state.mn.us/forestry/certification/index.html> (last visited June 23, 2012).

dramatically alter plant cover, such as clear-cutting).⁵² HCVPs represent a relatively small portion of the county forest land base; typically 2% or less on most Wisconsin county forests.⁵³ Furthermore, it is important to recognize that these are largely managed as individual stands; relics with certain biodiverse or otherwise uncommon traits surrounded by “ordinary” working forest.⁵⁴ By contrast the United States Forest Service, (and to a lesser extent the Wisconsin DNR), has begun moving towards planning on a larger landscape scale, trying to manage certain large tracts in ways that will eventually restore old growth characteristics, reduce road densities, provide wildlife corridors, etc.⁵⁵

At the county level, on the other hand, preservation-oriented management tends to be far more fragmented and, in many counties, something of an afterthought. An evaluation report of the Wisconsin county forest system done on behalf of the Forestry Stewardship Council found that the county forests, unlike their state and federal neighbors had generally done inadequate biotic inventories to systematically survey and monitor populations of rare and sensitive species.⁵⁶ Moreover, the report also found wide variability in HCVP identification

⁵² SCS REPORT *supra* note 20 at 12.

⁵³ County Forest Administrators Survey, *supra* note 19. One notable exception is Eau Claire County WI which maintains an impressive 16.5% of its forest as HCVP and also, alone amongst Wisconsin counties, has some acreage designated as *wilderness* (currently 490 acres). This makes Eau Claire quite unique in its relatively strong preservationist impulse among counties. It is also unique in that it is a somewhat urbanized county whereas most of its counterparts in the county forest system are far more rural; a fact that might help explain its more preservationist orientation.

⁵⁴ It is important to point out that the county forest land base, which originally comprised of burned, exhausted, and tax delinquent properties, never contained much high quality or exceptionally biodiverse tracts to begin with.

⁵⁵ Examples of this can be seen in planning documents for the Chequamegon-Nicolet National Forest and the Northern Highland-American Legion National Forest. CNNF MGMT. PLAN *supra* note a, Table 1; WIS DEP'T NAT. RESOURCES, NORTHERN HIGHLAND - AMERICAN LEGION STATE FOREST MASTER PLAN (October 2005) available at: http://dnr.wi.gov/master_planning/nhal/pdfs/final/NHALPlan-Chap2-A.pdf

⁵⁶ SCS REPORT *supra* note 20 at 74.

efforts and the overall frequency and intensity of such monitoring was found to be “insufficient” for meeting sustainability standards.⁵⁷

Table 8 below shows the extent to which the land base of county, state, and federal forests in Wisconsin are dedicated to preservation-oriented management. If one looks at forested acreage not scheduled for timber harvest activities, it is clear that federal forest lands in Wisconsin enjoy the highest levels of protection from disturbance with between 17.2 to 22.0% under some sort of preservation-oriented management (depending on how this is defined). This is compared to 13.7% of the state forests, and followed far behind by county forests which have a meager 2.5% under special management.

⁵⁷ *Id.* at 44.

Table 8 WI Federal, State, and County Forests By Pct. Not Managed for Timber Production^a

| Jurisdiction | Total Forested Acreage (in 1000s) ^b | Acres Under Non-Timber Mgmt. (in 1000s) | Pct. Under Non-Timber Mgmt. |
|-------------------------|--|---|-----------------------------|
| County Forest | 1, 978.5 | 48.5 ^c | .025 |
| WI State Forest | 433.5 | 59.5 | .137 |
| National Forest (in WI) | 1,423.0 | 244.1 (or 312.7) ^d | .172 (or .220) ^e |

^a Data Sources for Table 8: USDA FOREST SERVICE, CHEQUAMEGON-NICOLET NATIONAL FOREST RECORD OF DECISION-FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE 2004 LAND AND RESOURCE MANAGEMENT PLAN SUMMARY AND RATIONALE 7-9, 12-13 (April 2004), available at: http://www.fs.fed.us/outernet/r9/cnnf/natres/final_forest_plan/rod/rod_dec_summary_rational.pdf (CNNF ROD, hereinafter); Wisconsin Council on Forestry, Chequamegon-Nicolet National Forest Facts http://www.wisconsinforestry.org/pdf/cnnf_facts.pdf; Wis. Dep't Nat. Res., Property Cover Type Acreage, County Forests-All Report 101, (Data file sent by e-mail by John Gritt on September 24, 2010); Wis. Dep't Nat. Res., Property Cover Type Acreage State Forests-All Report 101, (Data file sent by e-mail by John Gritt on September 24, 2010); Wis. Dep't Nat. Res.

^b "Forested acreage" would exclude lakes, wetlands, meadows, barrens, rocky areas, etc., which by definition cannot be logged.

^c This includes HCVFs and State Natural Areas (SNAs). This latter designation is granted by the state to any area, federal, state, or county (or even private), which contains certain rare and/or valuable natural features and offers certain legal protections. On county forests, many but not all HCVFs are also dedicated SNAs. SNAs comprise slightly less than 1% of the county forest land base as compared to 8.4% of the state forests and 6.3% of Wisconsin's national forest land. Email from Dawn Hinebaugh, Wis. Dep't Nat. Res. (Oct. 15, 2010).

^d This includes Wilderness Areas, Wilderness Study Areas, Old Growth Areas, Research Natural Areas, and Special Management Areas. Another federal management category, *Semi-Primitive Non-Motorized Areas*, allows only limited selective logging and no roads or motorized vehicles. As such it might be considered at least somewhat of a preservation-oriented management category. If SPNM Areas are included, the acreage of protected areas on WI national forests would increase to 312,695 with the percentage of the land base under preservation-oriented management rising to .220. CNNF ROD, supra note a, Table 8 at 12.

^e See note d.

PART V—THE POLITICAL DYNAMICS OF COUNTY FOREST MANAGEMENT

In comparing state and federal forest management, Koontz finds some significant differences in both policy process and outcomes.⁵⁸ He finds state management to be marked by increased timber production at lower costs leading to greater revenue and subsequently, revenue-sharing with local governments. Federal forest management, meanwhile, is found to achieve higher levels of environmental protection and to incorporate more citizen participation. As shown in Parts III and IV, this study can clearly extend Koontz's findings to the county forest level. In fact, at least for Wisconsin, these differences manifest themselves even more strongly at the county level. That is, county forests produced even more timber, more efficiently, while emphasizing protection of biodiversity to an even lesser extent, with less citizen participation than adjacent state or federal forest land.

What is interesting about Koontz's 2002 findings is that, despite these rather clear contrasts in policy outcomes, he reports no significant differences in the attitudes of state and federal foresters in terms of what constitutes appropriate forest management techniques. Instead, the determining factors tend to be external and linked to mandates, budgeting rules, and external players.⁵⁹ In a later 2007 follow-up, however, Koontz offers a reappraisal of this state vs. federal values comparison and this time finds a fast-evolving and increasingly diverse U.S. Forest Service whose institutional values have indeed begun to diverge from state forest administrators.⁶⁰ While this county forest study did not collect any

⁵⁸ KOONTZ, *supra* note 6.

⁵⁹ *Id.* at 15-16

⁶⁰For example, Koontz reports that in today's Forest Service, 23% of rangers are women, 12% are non-white, and only 33% are foresters by training as compared to state rangers who are 99% white, 95% male, and 84%

data on state or federal managers' values to form any sort of baseline for comparison, nothing gleaned from the surveys of Wisconsin county foresters would seem to suggest that their attitudes about logging, recreation, or biodiversity drastically diverge from those of their state or federal peers. If there is divergence, it is more of a matter of degree. Still, without more data, it is hard to draw any firm conclusion in this respect. Beyond values though, we still need to look to external factors and the political dynamics that evolve from them to explain obvious discrepancies in policy outputs that this study found.

The most important contextual factor that shapes policy outcomes would have to be the legal mandates that various forest management agencies operate under. Not only do these mandates specify different rules and restrictions for forest management practices, but also they define citizen participation requirements (if any) as well as planning requirements and issues related to budgets and revenue. The Wisconsin state law that governs county forest management lays out a fairly mainstream multiple use mandate, but also specifically (in the last sentence) mentions a revenue-generating purpose to the county forest. Most importantly, specific management directives are brief enough and ambiguous enough to provide fairly wide discretion for the county manager:

The purpose of this section is to provide the basis for a permanent program of county forests and to enable and encourage the planned development and management of the county forests for optimum production of forest products together with recreational opportunities, wildlife, watershed protection and stabilization of stream flow, giving full recognition to the concept of multiple-use to assure maximum public benefits; to protect the public rights, interests and investments in such lands; and to compensate the counties for the public uses, benefits and privileges these lands provide; all in a manner which will provide a reasonable revenue to the towns in which such lands lie.⁶¹

foresters. Tomas Koontz, *Federal and State Public Forest Administration in the New Millennium: Revisiting Herbert Kaufman's The Forest Ranger* PUBLIC ADMINISTRATION REVIEW 159 (Jan.-Feb. 2007)

⁶¹ Wis. Stat. § 28.11(1)

Similarly, the Minnesota statute for county forests lays out a fairly flexible multiple use vision of the TFFL devoted to “forestry, water conservation, flood control, parks, game refuges, controlled game management areas, public shooting grounds, or other public recreational or conservation uses.”⁶² But clearly timber production is clearly first amongst equals as Brown and Kilgore note:

TFFL is managed to produce timber. Counties are committed to meeting the local industry’s demand for wood products, as well as generating adequate revenue for local taxing districts through the sale of standing timber. The vast majority of all standing timber on TFFL is sold at public auction. In summary, revenue generated from the management and disposal of TFFL is used to cover the costs of county land department operationsThe remaining net revenue is subsequently divided among county and townships, cities, and school districts located within the county.⁶³

Perhaps just as important as the actual agency mandate is the extent to which mandatory citizen participation is built into the policymaking process. Simply put, the federal laws that govern forest management on USFS lands—most significantly, the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA)—legally guarantee abundant opportunities for citizen and interest group participation and this fact has deeply influenced the political dynamics surrounding federal forest management.⁶⁴ These particular dynamics have allowed a much more balanced and diverse array of interests to be heard and make their policy demands known and this, in turn, has allowed environmentalists to force their way into becoming an important constituency of the USFS.

⁶² Minn. Stat. § 282 (2) (b)

⁶³ BROWN AND KILGORE, *supra* note 2 at 15-16

⁶⁴ National Environmental Policy Act, 42 U.S.C. §§ 4321–4347 (1970); National Forest Management Act, 16 U.S.C. §§ 472a, 476, 500, 513–516, 521b, 528, 576b, 594–2, 1600–1602, 1604, 1606, 1608–1614 (1976).

In contrast, county forest managers report far fewer interest group contacts,⁶⁵ especially in the context of a formal process, such as that required by NEPA and NFMA for nearly every proposed action of any significance on the federal forests. The main vehicle that the Wisconsin county managers reported for soliciting public input was during the process for drawing up 15 year comprehensive forest plans as required by state law.⁶⁶ However, this process was nowhere near as routinized or extensive as it is for its federal counterparts. Apart from this planning process that occurs every decade and a half, Wisconsin county managers described even more sporadic and informal contact with outside participants. While county managers reported contact with a fairly wide variety of groups ranging from loggers and hunters and adjacent landowners to Indian tribes and environmentally concerned community members, the most consistent contact seemed to be with various recreational users, including ATV clubs, snowmobilers, cross-county skiers, mountain biking clubs, and horseback riders.⁶⁷ Conspicuously absent from most managers' list of regular participants were the state and national environmental groups (such as the Sierra Club) that are so intensely active in monitoring, negotiating over, and sometimes challenging federal forest management on neighboring national forest acreage.⁶⁸ In fact, county foresters' contacts with mainstream environmental groups are so comparatively infrequent that it might be argued that the most consistent and effective voices heard at the county level on behalf of more ecological and preservation-oriented management goals comes not from

⁶⁵ County Forest Administrators Survey, *supra* note 19.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ For example, the Chicago-based Environmental Law and Policy Center, has, for more than a decade, represented the Habitat Education Center of Madison with ongoing litigation and negotiation over a series of timber sales in older forests in the Chequamegon-Nicolet National Forest. See, *Forest Service Timber Sale EIS Challenged* in JUDICIAL VIEW (2010) available at: http://judicialview.com/Court-Cases/Administrative_Law/Forest-Service-Timber-Sale-EIS-Challenged/2/12221

traditional environmental groups, but rather state DNR liaisons (who provide some oversight and technical aid) and organizations that provide sustainability certification for logging.

There has always been debate in the public lands literature as to how effective the large volume of citizen participation in the national forests has been. While some scholars, like Twight, have argued that the U.S. Forest Service's response has been largely pro forma and grudging, others such as Culhane or Mohai find the agency open to, and influenced by public input.⁶⁹ Meanwhile, Tipple and Wellman as well as Koontz go on to argue that this high level of routinized public participation has actually changed the agency and its institutional practices and values.⁷⁰ Whatever the ultimate impact of public participation, however, there is little question that the policy-making process on federal forests features far more of open access to outside actors than at the state or county levels

Also indisputable is how much more prominent the role of litigation is in shaping policy outcomes at the federal level. Just as federal laws in the 1960s and 70s institutionalized citizen participation in the policymaking process, these same laws coupled with expanded federal standing to sue in environmental cases, has given environmentalists a powerful tool with which to influence forest policy at the federal level.⁷¹ Not only have court victories blocked timber sales or otherwise altered forest plans or specific policies in many individual

⁶⁹ BENJAMIN TWIGHT, ORGANIZATIONAL VALUES AND POLITICAL POWER: THE FOREST SERVICE VERSUS THE OLYMPIC NATIONAL PARK (1983); PAUL J. CULHANE, PUBLIC LAND POLITICS: INTEREST GROUP INFLUENCE ON THE FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT (1981); Paul Mohai, *Public Participation and Natural Resource Decision-Making: The Case of the RARE II Decisions* 27 NATURAL RESOURCES JOURNAL, 123-155 (1987).

⁷⁰ Terrance Tipple & J. Douglas Wellman, *Herbert Kaufman's Forest Ranger Thirty Years Later: From Simplicity and Homogeneity to Complexity and Diversity* 5 PUBLIC ADMINISTRATION REVIEW (Sept.-Oct. 1991); Koontz, *supra* note 60.

⁷¹ For example, NEPA's provisions for Environmental Impact Statements (EIS) often provide fertile procedural grounds for court challenge, while the process that NFMA lays out for creating Comprehensive Forest Plans creates similar opportunities for appeal and legal challenge.

cases,⁷² but the mere threat of litigation has often led the USFS to act and plan and manage in ways intended to head off or forestall costly and time-consuming litigation.⁷³

At the county level, by contrast, with a multiple use mandate which affords wide discretion and no equivalent state EIS process, there exists no such legal foothold. Not one Wisconsin county manager surveyed reported a single legal challenge to any county management decision (which, as shown earlier, feature much more intensive and wide-ranging logging operations than on state or federal lands).⁷⁴ This near-total immunity from legal challenge creates a vastly different political environment in which county foresters operate and one which gives them a much freer hand to do as they please within the bounds of the mandate they operate under. The great irony, then, is that Gifford Pinchot's Progressive Era creation, the U.S. Forest Service, with its considerable lore and proud agency culture of bureaucratic professionalism and scientific expertise,⁷⁵ is actually the forest agency that must act most often as referee, conciliator, honest broker, and juggler of diverse public needs, goals, and preferences, while tiny little county forest departments operate as they see fit according to the tenets of professional forestry. In other words, it can be argued that county forest managers are much more the practitioners of the form of "expert" scientific forestry that Pinchot so clearly envisioned for his federal agency. So profound has this shift been, that Koontz as well as Tipple and Wellman argue that the USFS has evolved into a new agency with characteristics that befit its changed role; more diverse

⁷²For example, on the Chequamegon-Nicolet National Forest, environmentalists successfully challenged the Cayuga, McCaslin and Northwest Howell timber sales in Federal District Court in 2005. *Habitat Educ. Ctr. v. Bosworth*, 381 F.Supp.2d 842 (E.D. Wis. 2005); 363 F.Supp.2d (E.D. Wis. 2005); 363 F.Supp.2d 1070 (E.D. Wis. 2005) (J. Adelman).

⁷³ Elise Jones & Cameron Taylor, *Litigating Agency Change: The Impact of the Courts and Administrative Appeals Process on the Forest Service* 23:2 POLICY STUDIES JOURNAL, 310-336 (1995).

⁷⁴ County Forest Administrators Survey, *supra* note 19.

⁷⁵ See, for example, SAMUEL P. HAYES, CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 1890-1920 (1959); HERBERT KAUFMAN, THE FOREST RANGER: A STUDY IN ADMINISTRATIVE BEHAVIOR (1960)

in terms of race, ethnicity, gender, and the professional backgrounds of its officers (that is fewer trained in traditional forestry and more in diverse fields like hydrology, soil science, and wildlife biology).⁷⁶

PART VI—CONCLUSIONS

It has been the goal of this study to shed light on a little-known element of our public lands. Part of this inquiry must be to ask whether these 5.4 million acres of county forests, which, in some ways, are a non-reproducible relic of a particular time and place, have anything to teach us about public forest management. If an observer were to evaluate county forest management strictly from an ecological or preservationist perspective, that observer might come away somewhat disappointed with just how hard county forests are worked; criss-crossed as they are with many miles of logging roads, overrun with ATVs, and producing so much more timber from a larger annual portion of the forest base than adjacent state and especially federal lands. As the data has clearly shown throughout this study, county forests emphasize resource extraction and revenue generation over the protection of biodiversity or the protection of wilderness values or even public recreation.

Looked at another way, however, a different story might emerge. It would be the story of how state and local governments in the Upper Midwest, faced with a simultaneous economic and ecological disaster, fell back upon their *commonwealth* orientation towards the role of government in securing the public interest. This Progressive tradition, which was quite prevalent in the region during that time, arranged for millions of ruined acres to be put into the public domain thereby allowing them to heal, become productive, and serve the

⁷⁶ Tipple and Wellman, *supra* note 70; Koontz, *supra* note 60.

interests of each counties' population far more directly and profoundly than if the ecologically ravaged land were auctioned off and left in private hands. Of course such counter-factual musings are always speculative, but it does seem fairly likely that without the establishment of county forest systems, Minnesota and Wisconsin would have considerably less forest and a North Woods with many more roads, vacation homes, resorts, no trespassing signs and habitat fragmentation.

Because, county governments in Minnesota retain the right to sell off and thereby privatize their county forests (and indeed aggressively did so from the 1930s until the 1970s), this potential periodically resurfaces, especially in response to cost-cutting initiatives from the state government. Brown and Kilgore in their study of disposal vs. retention of the county TFFL in Minnesota, give us a glimpse of what this privatized path may have looked like.⁷⁷ Examining the land that had previously been sold off, they find, not surprisingly, a dramatic decrease in access (50% of acres got posted for no trespassing), decreased management activity (78% have no management plans) and an increase in buildings and fragmentation. Roughly a third of owners plan to build a home or cabin, 14% plan to build permanent roads, 11% plan to subdivide their plot, and 16% plan to provide utilities.⁷⁸

Brown and Kilgore find that the privatization of all county tax forfeited lands in Minnesota would bring in \$1.858 billion to county coffers, but it would cost \$362 million in lost market goods and \$3.643 billion in lost hunting access for an overall net loss of \$2.146 billion.⁷⁹

⁷⁷ BROWN AND KILGORE, *supra* note 2.

⁷⁸ *Id.* at iv.

⁷⁹ *Id.* at v.

Furthermore, it is important to note that this figure does not include any of the substantial, yet difficult to quantify benefits that come out of the county forests for things such as non-hunting recreation, aesthetics or ecosystem services such as nutrient cycling, water filtration, flood control, watershed protection, and soil erosion control.⁸⁰ Most of these, it should be noted, would accrue continually on an intact forest, a point made by Brown and Kilgore:

A TFFL disposal policy would generate a considerable one-time windfall in net income from the sale of forest land, which would primarily benefit the local taxing districts within the counties where the forest land was sold. In contrast, such a policy would result in a substantial and recurring loss in benefits from the non-market goods and services provided by TFFL.⁸¹

Another justification for privatizing TFFLs in Minnesota is to restore tax-exempt public land to the tax rolls, a problem that Minnesota attempted to alleviate with the passage of the Payment In Lieu of Taxes (PILT) law of 1979. A 2011 state report on PILT found that the loss of tax revenue from public county lands was more than offset by a combination of PILT payments and similar state aid, timber revenue, increased tourism, and higher property values on private lands adjacent to TFFL.⁸²

In this light, the county forests experiment could be seen as a resounding affirmation of the very idea of public land. At a time when all aspects of the public sector are under furious ideological and political assault, the county forests enjoy broad public support.⁸³ While this

⁸⁰ *Id.*; Hawken, Lovins, and Lovins takes this idea much further in their thesis regarding *natural capitalism* in which they cite the rough estimate of \$36 trillion dollars as to the annual value of the biological services that flow, mostly unrecognized, from the planet's stock of natural capital, or natural systems. PAUL HAWKEN, AMORY LOVINS, & L. HUNTER LOVINS, *NATURAL CAPITALISM: CREATING THE NEXT INDUSTRIAL REVOLUTION* (2000).

⁸¹ BROWN AND KILGORE, *supra* note 2 at v.

⁸² PILT REPORT, *supra* note 41 at Attachment C, 3-4.

⁸³ See, for example: Gathering Waters Conservancy, Stewardship Has Broad Non-partisan Support, <http://www.gatheringwaters.org/conservation-policy/knowles-nelson-stewardship-fund/stewardships-supporters/> (last visited June 23, 2012); Wisconsin Stewardship Network, Wisconsin Stewardship Fund: Facts and Recommendations, <http://www.wsn.org/WIStewFund/WSFundrecom.html> (last visited June 23, 2012); JAMES JANKE, SHELLY HADLEY, & DAVID TRECHTER, MARATHON COUNTY RESIDENT SURVEY REPORT, 19, 26 (Univ. of

might be due, in part, to a regional political culture in the Upper Midwest that is far less suspicious and resentful of the presence of public land,⁸⁴ it might also be because the county forests are seen as working well in providing county revenue, supporting local economies, providing cheap and abundant recreation and keeping the land covered in forest which offers a myriad of benefits ignored by the market, but never by those interested in the quality of life.

Wis. Survey Research Center Report 2012/7, April 2012), available at:

(<http://www.co.marathon.wi.us/LinkClick.aspx?fileticket=X2mXDeWMNTo%3d&tabid=66>).

⁸⁴ By contrast, public attitudes in other parts of the country such as the rural Mountain West can be much less supportive. See, for example, Florence Williams, *The Shovel Rebellion* MOTHER JONES (Jan.-Feb. 2001) available at: <http://www.motherjones.com/politics/2001/01/shovel-rebellion>.

APPENDIX– County Forest Administrators Survey questions

The following questionnaire was sent to all 29 Wisconsin County Forest Administrators by email. Ten responses were completed from Barron, Oneida, Marathon, Monroe, Florence, Price, Douglas, and Rusk Counties which represented about a third or 726,253 acres of the state's entire county forest system. Follow-up phone interviews were conducted between August and October 2010 with selected county administrators as well as Dean Barkley, the Wisconsin DNR liaison for the county forest program.

COUNTY FORESTS SURVEY QUESTIONS

1. Please state your county .
2. Approximately how many board feet of timber are produced on your county forests in a typical year?
3. On general use actively managed forest lands, approximately what percentage (estimate to nearest 10%) of acres in timber sale areas employ even-age management vs. uneven-age (selective) management.
4. Estimating as best you can to the nearest 10%, approximately what percentage of your county forests are currently mature (over 80 years old)
5. Estimating as best you can to the nearest 10%, how much of your land is managed for aspen forests
6. Approximately how many acres in your county forest system are classified and managed as special use (for example as special aesthetic or recreational areas, High-Conservation Value Forest, exceptional resource area, wildlife area, etc) as opposed to general use?
7. More specifically how many acres of County Forest, if any, have High-Conservation Value Forest (or equivalent) designation?
8. Are there any designated state natural areas within your county Forest system? If so, how many units?
9. What are other major extractive uses (if any) on your county forests? (such as, for example, mining or energy production)

10. What are the major recreational use conflicts that arise on your county forests?
11. Have you ever faced appeals or legal challenges from citizens or outside groups to your management decisions? If so, please specify what issue it regarded
12. In your County's forest management decision-making processes what, if any, are the opportunities for public and/or interest group input?
13. In the course of making management decisions, what organized groups (such as interest/advocacy groups, trade associations, etc.), do you interact with most often?
14. What was your department's operating budget in FY 2009?
15. What were your timber/resource revenues in FY 2009?
16. If your budget exceeded your timber receipts, approximately what percent of the difference comes from the state payments and what percentage from your county's general fund? State _____% County general fund _____%
17. How many full-time and part-time staff do you employ?
18. Is any of your county forest acreage trust land with a fiduciary responsibly to produce revenue for trust beneficiaries? If so, approximately what percentage? Who are the trust beneficiaries?

Open-ended questions

Regarding the decision-making process and the social/political dynamics that surround it, what do you see are the main differences in County Forest management versus State or National Forest management?

When making management decisions, how do you prioritize between preserving biodiversity, extracting marketable resources, and providing recreation?