Corporatisation: Implementing Forest Management Reform in New Zealand

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Corporatisation: Implementing Forest Management Reform in New Zealand*

Robert L. Fischman**
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INTRODUCTION

New Zealand and the United States share a similar history of public land management. In both countries, a forest service whose purpose was to manage public forests according to principles of multiple use evolved separately from a national park service. Both forest services nurtured a fraternal cadre of foresters who, until recently, made management decisions largely insulated from political or judicial pressure.

The past fifteen years have brought increased outside scrutiny to bear on the New Zealand and United States forest services. The agencies have been criticized from both economic and environmental perspectives.1 Observers have identified poor planning, hidden subsidies, and a general lack of accountability as causes of wasteful spending and poor resource management. In both New Zealand and the United States,
some critics have proposed exposing national forest managers to market incentives as a way to improve forest management and reduce costs.\textsuperscript{2}

New Zealand recently attempted implementing such a reform through "corporatisation."\textsuperscript{3} In this Article, we borrow the New Zealand terms "corporatisation" and "corporatise" to refer to a reform in which a state-owned company is vested with management authority over lands formerly administered by a government agency. This Article examines New Zealand public forest management and explores its similarities to United States Forest Service (USFS) problems and corporatisation proposals in the United States.

This Article does not address the question of whether market motivations for economic efficiency are proper incentives for national forest management.\textsuperscript{4} Rather, it explores the problems of using a state-owned corporation as a means of applying market incentives to forest managers.\textsuperscript{5} It is too early to pronounce a final verdict on the outcome of the New Zealand experiment; however, a study of its implementation highlights some of the difficulties faced by proposed reforms in the United States.

The most difficult issue facing public forest decisionmakers is how to manage land that is valuable for both its natural features and its productive potential. In the United States, this tension in land use decisions is played out in the conflicts over USFS forest plans.\textsuperscript{6} New Zealand's experience shows that public corporate management does not resolve land use conflicts; it merely alters the form of the debate from a planning controversy to a land allocation dispute.\textsuperscript{7}

\begin{itemize}
\item \textsuperscript{3} See infra notes 25-40 and accompanying text for a more detailed explanation of corporatisation.
\item \textsuperscript{5} See, e.g., Teeguarden & Thomas, supra note 2, at 385 (raising this distinction in a proposal to separate the "usual objections to using economic efficiency criteria as a basis for public land management [from the shortcomings of the specific proposal.").
\item \textsuperscript{6} See infra notes 8-21 and accompanying text.
\item \textsuperscript{7} See infra notes 119-44 and accompanying text.
\end{itemize}
Part I of this Article reviews some of the current criticism of USFS planning and proposed reforms that would force USFS to employ market incentives. Part II describes forest management in New Zealand before corporatisation and notes its similarities to current practice in the United States. Part III explores New Zealand's implementation of corporatisation. Finally, Part IV analyzes some of the problems New Zealand has encountered in its reforms and outlines what we in the United States can learn from that experience. The New Zealand experience exposes important issues that current U.S. corporatisation proposals neglect.

I

NATIONAL FOREST MANAGEMENT IN THE UNITED STATES: CRITICISMS AND PROPOSED REFORMS

USFS manages its lands according to the principle of multiple use. Multiple use management requires tradeoffs between the various goods a forest produces to maximize "long term net public benefits in an environmentally sound manner." Conflicts between incompatible uses, such as logging and wilderness recreation, are managed through forest planning. Two acts govern national forest planning in the United States: the Forest and Rangelands Renewable Resources Planning Act of 1974 (RPA), and the National Forest Management Act of 1976 (NFMA). These Acts create a forest planning process under which USFS must assess the renewable resources on its lands every ten years, propose long-range strategic objectives for its activities every five years, and evaluate its progress toward these objectives every year. In addition to this broad-scale planning effort under the RPA, the staff of each national forest must develop a plan setting forth the objectives, uses, and milestones for specific land areas and resources. After receiving comments on a


9. 36 C.F.R. § 219.1(a) (1988). Multiple use gives consideration to "the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." Id. § 219.3. "[S]ome lands will be used for less than all of the resources." Id.


12. The ten-year assessment under the RPA is required by id. § 1601, the five-year objectives are required by id. § 1602, and the annual evaluation is required by id. § 1606.

13. The procedures and required elements of national forest plans are set forth at 36
draft forest plan, the local staff issues a final plan, which is then subject to administrative appeals and possibly judicial review. Together, these statutes and the regulations promulgated under them provide an opportunity for interest groups to participate in the formulation of individual national forest plans. Of the ninety-two final forest plans issued as of February 1989, eighty-nine had been appealed.

A. Criticisms

Critics argue that national forest planning is not working. Public participation is difficult without a technical understanding of the basic assumptions and judgments hidden in the systems analysis underlying the planning process. USFS's investment (in both dollars and person-hours) in the forest planning process is enormous and growing. In spite of this effort, USFS continues timber sales that are not rational from a social, economic, or environmental perspective. The essence of USFS's planning problem is that shifting political norms make it exceedingly difficult to reconcile the inherent conflicts between competing forest uses.

Like any government agency interested in maintaining and expanding its programs, USFS must choose between either spending all allocated funds even if its objectives could be achieved more cheaply, or risking a reduction in funding. This tradeoff, combined with numerous incentives and subsidies that favor logging over other forest uses, has led to further criticism of USFS. The Knutson-Vandenberg Act of 1930, for instance, rewards managers who sell timber by allowing them to keep an unlimited share of the timber receipts to pay for reforestation and other activities that otherwise might not be funded.

16. See R. O'TOOLE, supra note 2, at 54-69; Allen & Gould, Complexity, Wickedness, and Public Forests, J. Forestry, Apr. 1986, at 20. For instance, USFS implements the planning procedures by using complex computer programs such as FORPLAN, which create confusing technical documents that are often indecipherable to the layperson. R. O'TOOLE, supra note 2, at 178. See generally LeMaster, On Expanding the Supply of Forest Resources from Federal Forest Lands, in REDIRECTING THE RPA (Yale School of Forestry & Environmental Studies Bull. 95, 1988).
17. R. O'TOOLE, supra note 2, at 176-77; see Behan, RPA/NFMA—Time to Punt, J. Forestry, Dec. 1981, at 802, 804 (noting the "exponentially rising costs" of attempting to make the forest plans "legally invincible").
At the same time, managers can collect recreation fees only for developed recreation, such as campgrounds with toilets and garbage collection. One effect of these budgetary incentives is that the recreation industry is not considered a potential promoter of another important national forest objective—community stability. Instead, agency planners promote community stability almost exclusively through the timber industry and use this rationale to justify some below-cost timber sales.

B. Proposed Reforms

Proposals to improve forest management range from reforming USFS to selling the national forests themselves. These proposals can be categorized according to whether they include government or private ownership and management of forest lands. USFS reform proposals would retain government ownership and management of the national forests. Privatization proposals would relinquish both ownership and management to the private sector. A hybrid third option is corporatisation, in which the government transfers resource management authority to a corporate entity or entities, but retains ownership by holding stock in the corporation or by keeping title to the land. New Zealand currently is implementing this hybrid approach.

20. R. O'TOOLE, supra note 2, at 168-69. Furthermore, the fees collected for developed recreation do not augment the forest manager's budget; they are invested in the Land and Water Conservation Fund. Id.

21. Id. at 90-92.

22. Richard Alston agrees with O'Toole's call to collect user fees, but rejects market-driven management of USFS. Alston, Book Review, 15 ECOLOGY L. Q. 503 (1988) (reviewing R. O'TOOLE, supra note 2). McQuillan suggests charging full market value for recreation and prohibiting timber sales unless revenues from the sales exceed costs. McQuillan, The Forest Planning Nightmare, 14 W. WILDLANDS 34 (1988). Behan proposes the repeal of RPA and NFMA so that management can proceed according to "solid, professional, experienced judgement" without the possibility of invasive judicial review. Behan, supra note 17, at 802-03.

A number of other suggestions for introducing market mechanisms into public forest management are found in: M. CLAWSON, supra note 4, at 171-229; Clawson, supra note 2, at 195-234; Hyde, Demand-Side Management in REDIRECTING THE RPA (Yale School of Forestry & Environmental Studies Bull. 95, 1988); Nelson, Improving Market Mechanisms in U.S. Forestry in REDIRECTING THE RPA, supra. These suggestions include large-scale, long-term leasing of forest lands. For instance, Porterie, Gartley, and Horton suggest long-term forest regeneration contracts for national forest management. Porterie, Gartley, & Horton, Stewardship Contracts, J. FORESTRY, Nov. 1986, at 29. By contrast, Clawson proposes a "pull-back" provision for land sales and leases under which a competing user could apply for part of the land to be "pulled back" from another user's purchase or lease application. M. CLAWSON, supra note 4, at 216-24.

23. R. STROUP & J. BADEN, supra note 4, at 123-26; Gardner, The Case for Divestiture, in RETHINKING THE FEDERAL LANDS, supra note 2; Hanke, Privatize the National Forests, Wall St. J., Aug. 23, 1988, at 26, col. 3. Transferring forest ownership to private entities is discussed in M. CLAWSON, supra note 4, at 189-95; Clawson, supra note 2, at 210-14. See generally An Exchange on "Privatization," supra note 4.

24. Teeguarden & Thomas, supra note 2, at 375-76.
Recently, corporatisation has been suggested by Randal O'Toole, as well as by Dennis Teeguarden and David Thomas, as a solution to the problems with USFS.\(^5\) Corporatisation is viewed as a way to increase the accountability of forest managers by subjecting them to the constraints and incentives of the market. Under corporatisation, each national forest would "be chartered to operate as a wholly governmentally-owned autonomous corporation with a board of directors and administrative officers."\(^6\) O'Toole suggests that state governors and the Secretary of Agriculture appoint directors to each corporation to insure its public accountability.\(^7\) Teeguarden and Thomas favor a national Public Corporations Board to regulate the performance of individual forest corporations.\(^8\)

Under corporatisation, the discipline of the market would alleviate the need for the complex cost-benefit planning mandated by RPA and NFMA.\(^9\) The market approach to management would also remove now-hidden subsidies and appropriations that currently support uneconomic practices of USFS. National forest programs and uses would be forced to pay their own way. If the federal (or even local) government wanted a forest to fulfill a social function, such as community stability, it would have to contract explicitly with the particular forest corporation and thus reveal the true program price.\(^10\)

25. R. O'TOOLE, supra note 2, at 215; Teeguarden & Thomas, supra note 2, at 374 passim. Earlier specific proposals for transferring forest management to public corporations are described by M. CLAWSON, supra note 4, at 195-200; Clawson, supra note 2, at 214; and Nelson, Ideology and Public Land Policy, in RETHINKING THE FEDERAL LANDS, supra note 2, at 275, 291-92. Two proposals for corporatisation similar to the ones described in the text do not fit squarely in the state-owned model. Robert H. Nelson proposes creating corporations for the federal government's prime timber lands. Although stock in the corporations initially would be held by local counties and the federal government, the federal government's stock would gradually be sold to private owners over a transition period. Nelson, Making Sense of the Sagebrush Rebellion: A Long Term Strategy for the Public Lands 41 (Oct. 1981) (paper presented at the Third Annual Conference of the Association for Public Policy Analysis and Management, Washington, D.C.). In 1957, Marion Clawson and Burnell Held proposed a single public corporation that would be charged with managing all federal lands. However, Clawson and Held were concerned that a public lands corporation would become too commercial in its management style. M. CLAWSON & B. HELD, THE FEDERAL LANDS: THEIR USE AND MANAGEMENT 347-62 (1957).

26. Teeguarden & Thomas, supra note 2, at 374.

27. R. O'TOOLE, supra note 2, at 215. O'Toole, though, believes that the market method of financing has a stronger influence on an organization than the composition of its board of directors. Id. at 107-09.

28. Teeguarden & Thomas, supra note 2, at 375. Teeguarden and Thomas do not discuss details, such as the instruments of regulation or the Board's enforcement authority.

29. See Behan, supra note 17, at 804. Behan observes that large industrial forests are managed in a constrained, pragmatic, and cost-effective manner, even though they are not required to abide by the detailed planning requirements of RPA/NFMA. Id.

30. See Teeguarden & Thomas, supra note 2, at 375, 381-82. Teeguarden and Thomas do not specify which goods would be purchased by the government and which would be obtained through regulation.
By vesting management authority in each individual forest corporation, planning would be decentralized. Private sector management would be able to reward success more effectively than government management, and local decisionmakers would be more accountable for the risks they take. The responsiveness of forest corporations to local environmental constraints and economic priorities would also improve because managers would not be subject to national quotas or directives.\(^{31}\)

The regional and national levels of USFS's hierarchy would not be duplicated in the forest corporations. O'Toole suggests that the only role for a regional or national forestry body would be to provide support services such as research.\(^{32}\) In fact, O'Toole regards the Teeguarden and Thomas proposal for a national Public Corporations Board with regulatory authority as a threat to the creative diversity of decisions made by autonomous forest corporations.\(^{33}\)

O'Toole and Teeguarden and Thomas believe that recreation providers respond to the public's demand for recreation opportunities.\(^{34}\) Therefore, their proposals for the United States would place nonwilderness areas that are used primarily for recreation in the control of forest corporations.\(^{35}\) However, they also assert that the National Wilderness Preservation System should not be subject to profit maximization.\(^{36}\) Proposals for managing wilderness areas under corporatisation include creating wilderness trusts, leasing areas to private environmental groups, transferring lands to the National Park Service, and permitting the forest corporations to administer the areas pursuant to the Wilderness Act.\(^{37}\)

\(^{31}\) See id. at 384-85.

\(^{32}\) R. O'TOOLE, supra note 2, at 215, 228.

\(^{33}\) Id. at 219.

\(^{34}\) Id. at 204-06. O'Toole maintains that recreation fees will increase recreation opportunities. Id. at 206. Teeguarden and Thomas foresee the provision of outdoor recreation by national forests in order to improve public relations and to avoid the costs of preventing recreation. Teeguarden & Thomas, supra note 2, at 381. Whether profit-maximizing corporations can actually provide an appropriate level of recreation is a question beyond the scope of this Article. See generally sources cited supra note 4. A major focus of the debate over forest management is whether the market is responsive to biological diversity and other nonpriced resources. This, too, is beyond the scope of this Article. Here, we only focus on the feasibility of implementing corporatisation, not the adequacy of the goods it provides.

\(^{35}\) This differs somewhat from the New Zealand situation in which most land used primarily for recreation was placed in the control of a government conservation agency. See infra text accompanying notes 105-18. The allocation process used to divide land between wilderness and commercial managers would be substantially more contentious in the United States where the mix of uses on forest land is more diverse than in New Zealand. See infra text accompanying notes 171-73.


\(^{37}\) R. O'TOOLE, supra note 2, at 216; Teeguarden & Thomas, supra note 2, at 381. See generally Baden, Free Markets Can Protect the Earth, High Country News, Feb. 27, 1989, at 13 (describing a similar private sector approach to national park management).
Teeguarden and Thomas recommend testing their model by "corporatising" a portion of the national forest system. O'Toole is wary of this sort of test because recreationists in the test region could travel elsewhere to avoid user fees. However, even if one of the models were tested nationwide, users could still avoid fees by using state or local parks and forests that would remain free. In any event, a test of corporatisation is already in progress in New Zealand. It behooves us to learn from the New Zealand experience before considering implementation of such reforms in the United States.

II
PUBLIC FOREST MANAGEMENT IN NEW ZEALAND

A. The Physical Setting

New Zealand is a nation of more than three million people on two mountainous islands with an area of just over 100,000 square miles (about the size of Colorado). In pre-Polynesian times, 78% of the islands' area was forest. Polynesian settlement by the Maori people, beginning about 1000 years ago, and European settlement, beginning about 150 years ago, have resulted in clearing to the extent that only 27% of the country remains forested.

European settlers viewed the impenetrable indigenous forest as an obstacle and cut it to provide fuel and grazing lands. In the early 1900's the government, as a conservation measure, established exotic plantation forests. The pace of planting boomed in the late 1920's and early 1930's, providing employment and responding to projected timber shortages. In the 1960's, planting increased again with the aim of doubling the area of exotic forests by the end of the century. Although they

38. Teeguarden & Thomas, supra note 2, at 386-87.
39. R. O'TOOLE, supra note 2, at 220.
42. 20 ENCYCLOPEDIA AMERICANA 255 (1961).
44. H. FLEET, supra note 43, at 95-110.
45. Id. at 96-100. An exotic plantation is a stand of trees that is not native to an area and is planted following a clearcut. The first state plantation was established in 1896. NEW ZEALAND DEPARTMENT OF STATISTICS, 93 OFFICIAL YEARBOOK 555 (1988) [hereinafter 93 OFFICIAL YEARBOOK].
46. The annual rate of new planting increased in the 1970's and has averaged 20,000
This map illustrates the areas involved in public forest corporatisation. National Parks, formerly managed by the Department of Lands and Survey, were allocated to the Department of Conservation. State Exotic Forests, formerly managed by the New Zealand Forest Service, were allocated to Forestry Corporation. The allocation of State Indigenous Forests, formerly managed by the New Zealand Forest Service, created tremendous political and technical problems because both the Department of Conservation and the Forestry Corporation wanted to manage many of the native forest stands. Ultimately, the Department of Conservation received the vast majority of the State Indigenous Forest lands.

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compose only 17% of the total forest area in New Zealand, exotic plantations now account for over 90% of timber harvests. The remaining indigenous forests continue to be under pressure for use by both the forestry and pastoral industries. In addition, environmental concerns have now become an important part of the public land policy debate.

The New Zealand Government owns about 50% of the total area of the country. Approximately one-twelfth of the land area of the nation is set aside as parks and reserves. The state plantation forests, which account for half of all plantation forests in New Zealand, have been planted with fast-growing, exotic conifers, such as radiata pine, *Pinus radiata*. These trees reach sawlog size after twenty-five to thirty years. The indigenous state forests are composed of slower-growing species, such as the rimu, *Dacrydium cupressinum*.

B. The Agencies

Before 1987, when New Zealand transferred the management of its public forests to several new entities as part of the corporatisation experiment, the two main agencies responsible for forest management were the New Zealand Forest Service (NZFS) and the Department of Lands and Survey. NZFS was established in 1919 under the direction of Leon McIntosh Ellis, a Canadian forester who practiced conservation forestry in the same tradition as Gifford Pinchot. Like Pinchot, who shaped the


48. Indigenous forests compose 86% of the total forest area in New Zealand (the balance is exotic). Over 80% of these natural stands are state-owned. 92 Official Yearbook, supra note 46, at 395.

49. The New Zealand timber industry contributes a little over 1% of the New Zealand GNP and accounts for about 13.8% of the value of exports. 91 Official Yearbook, supra note 43, at 797, 801; New Zealand Department of Statistics, New Zealand - 1987 (1987).


52. 91 Official Yearbook, supra note 43, at 416.

53. Id. at 474. USFS, by comparison, manages 18% of the nation's commercial forest land and 51% of the softwood sawtimber inventory in the United States. Dowdle & Hanke, Public Timber Policy and the Wood-Products Industry, in Forestlands: Public and Private 77, 79-81 (R. Deacon & M. Johnson eds. 1985).

54. See H. Fleet, supra note 43, at 6-10, for a description of indigenous forests.
character of USFS, Ellis left an indelible mark on the character of NZFS. 55

NZFS was organized in three levels: a head office in Wellington, where the Director General approved all major policies and plans; conservancies, which oversaw different regions of the country; and districts, which ran field operations. State forests were managed exclusively by NZFS, which was charged to give due regard to sound forestry practices, public use, and socioeconomic welfare on both a regional and national basis. 56 These forests contained three types of areas: exotic plantations devoted entirely to timber production, multiple use forest parks, and indigenous preservation reserves.

Almost all New Zealand foresters were trained in NZFS. By continually rotating its personnel through forests around the country, the service fostered an esprit de corps among its professionals. 57 In large part, this included subscribing to the creed of technically sound multiple use management. Similarly, USFS is also known for its use of frequent transfers to foster institutional camaraderie. 58

The Department of Lands and Survey also played an important forest management role as the steward of New Zealand's national parks. In addition, the department administered high-country pastoral leases. 59 Like NZFS, the Department of Lands and Survey had a mandate that was part preservation (park protection) and part production (farming and grazing). 60

C. Criticisms of Forest Management

As in the United States, the environmental and fiscal shortcomings of public forest management in New Zealand began to surface in the late 1960's and 1970's. Environmentalists complained that multiple use was mere rhetoric, used by NZFS foresters who were really only interested in timber production. Most controversial were NZFS programs to log indigenous tree species. 61 Despite attempts to give environmentalists ac-

55. Id. at 113 (describing Ellis's influence on the management and administration performed by NZFS).
56. 91 OFFICIAL YEARBOOK, supra note 43, at 421.
58. See M. Clawson, supra note 40, at 14-16 (discussing the similarities between NZFS and USFS); see also Growing Up, supra note 57, at 171. On USFS, see generally Wilkinson, supra note 8.
61. See H. FLEET, supra note 43, at 147 (describing the clearcutting of areas of virgin forests over substantial environmental objections); A. Lees, The Forest Service: Its Environmental Record 2-8 (n.d.) (available from the Maruia Society, Nelson, New Zealand) (describing the poor to nonexistent implementation of the Indigenous Forest Policy by NZFS).
cess to the long-insulated NZFS institutional culture, environmentalists still felt excluded from forest management decisions.62

In New Zealand, where the judiciary is more deferential to government decisions than in the United States, environmentalists are far less likely than their American counterparts might be under similar circumstances to challenge a management plan in court.63 By the 1980’s, there was a growing sense among environmentalists that NZFS could not be relied on to protect indigenous forests as long as it was also charged with commercial production and job creation.64 The 1986-87 budget for NZFS allocated 4.3% of its funding for state forest protection, compared with 76.7% for sawmilling and production forest management.65

Fiscal conservatives and officials in the New Zealand Treasury were also unhappy with the performance of NZFS.66 Although there is some doubt whether the production arm of NZFS ever broke even,67 NZFS as a whole ran large annual deficits: growing from $(N.Z.)92 million in 1980-81 to $(N.Z.)211 million in 1984-85.68 Management of public for-

62. In 1976, a new policy required NZFS to consider public comments on management plans. N.Z. Stat. 45 (1976); see also Kirkland, The Rise and Fall of Multiple-Use Forest Management in New Zealand, N.Z. FORESTRY, May 1988, at 9 (discussing the need for administrative accountability in the allocation of “forest-based” benefits). However, no plans were ever changed after public comment. See also Salmon, Balance, in 1986 DEBATE SERIES—ENVIRONMENT MEETS ECONOMICS 29-30 (Environmental Council & Ministry for the Environment eds. 1986) (describing the lack of public input in forest management decisions); Wylie, Public Accountability, in 1986 DEBATE SERIES—ENVIRONMENT MEETS ECONOMICS 44 (Environmental Council & Ministry for the Environment eds. 1986) (analyzing the lack of accountability of NZFS to legitimate public concerns about management programs); Native Forests Action Council, Submission on Environmental Administration in New Zealand 3-4 (Feb. 28, 1985) (submission to the State Services Commission discussing the numerous scientifically based objections to forest plans that were ignored by NZFS).

63. New Zealand society is more homogeneous and less litigious than that of the United States. Also, the parliamentary system in New Zealand vests tremendous power in the government, which not only controls lawmaking in the House of Representatives (Parliament), but also implements laws through departments and ministries.

64. See the discussion of NZFS employment schemes in H. FLEET, supra note 43, at 114 (noting that radiata pine was planted in depressed areas to boost regional employment) and P. McKitKINLAY, CORPORATISATION: THE SOLUTION FOR STATE OWNED ENTERPRISE? 70 (1987) (discussing the NZFS policy of basing planting decisions on employment conditions rather than on the physical suitability of lands for timber or the costs of planting and harvesting timber). The former NZFS Director General, Andy Kirkland (now Managing Director of the New Zealand Forestry Corporation (Forestry Corporation)), noted that NZFS “was charged with reconciling Government objectives of three types—commercial, social, and environmental.” Kirkland, supra note 62, at 9.


67. See P. Grant, The Structure of the Forest Service and its Economic Performance (1985) (published by the Native Forests Action Council, Nelson, N.Z.). Grant estimates that the production forestry operations lost $(N.Z.)2.255 billion from 1980-84, although different accounting techniques would show a modest surplus. Id. at 12, 47.

68. 91 OFFICIAL YEARBOOK, supra note 43, at 423 (the deficits cited include only money
ests was attacked as inefficient because of both the overstaffing of NZFS and the overlapping responsibilities between NZFS and the Department of Lands and Survey. Finally, critics charged that the true costs of social programs, such as job creation schemes and flood control projects, were hidden in the NZFS budgets as costs associated with planting programs.

By the time the current Labour Government came to power in 1984, concerns about the total government deficit were grave. Uneconomic, government-sponsored projects were putting a tremendous strain on the New Zealand economy. The Labour Government sought to cut costs and eliminate subsidies in a number of areas as well as to remove the government from the commercial sector where it was not receiving a competitive rate of return from its investments. Thus, while they had differing reasons for their beliefs, both economists and environmentalists spent on establishing and tending state forests, not general administrative costs). The deficit reported for the final year of NZFS (1986-87) was $(N.Z.)165 million. New Zealand, Commentary on the Estimates of the Expenditure of the Government of New Zealand for the Year Ending 31 March 1988, at 54 (1987) [hereinafter Estimates 1988]. The value of the New Zealand dollar has varied from approximately 50% to 99% of the value of the U.S. dollar over the past few years. Compare Wall St. J., Jan. 2, 1986, at 25 ($N.Z.) 1.00 equal to $(U.S.) 0.5000) with Wall St. J., Jan. 2, 1980, at 22 ($N.Z.) 1.00 equal to $(U.S.) 0.9875).


70. The true cost of social goods provided by public forest planting is not simply the materials and salary for the planting, but also the opportunity cost of using the land subsequently committed to plantation forestry. New Zealand Treasury, supra note 66, at 34-35; see also P. McKinlay, supra note 64, at 69-70 (discussing, by analogy to the effect of corporatisation on the New Zealand Postal Service, the ways in which government evaluations of the costs of forestry projects undertaken purely for social reasons might change with corporatisation). In the East Coast region, NZFS planted trees on steep, eroded mountain headlands to protect farms and coastal towns from flooding and siltation. The trees were effective protection during cyclone Bola in March 1988. Now that corporatisation is being implemented, the Government is figuring the true costs of the protection planting program. Smith, Tapsell Lends Hand to East Coast, Nat'l Bus. Rev. [New Zealand], May 11, 1988. If the Government decides to proceed with the project, it will openly contract with a company to provide protection programs. See State-Owned Enterprises Act of 1986, N.Z. Stat. 124, § 7 (authorizing the government to contract with state-owned enterprises for noncommercial activities).


72. In addition to the forestry and land corporations discussed below, the Labour Government created commercial enterprises to manage state interests in coal, electricity, government buildings, the Post Office, the Post Office Bank, and the telephone system. See New Zealand Maori Council v. Attorney General, 1 N.Z.L.R. 641 (C.A. 1987). See generally P. McKinlay, supra note 64, at 63-73.
became convinced that indigenous forest conservation needed to be divorced from commercial forestry, and as a result, NZFS became one of the first targets of reform.73

III
THE NEW ZEALAND REFORM: CORPORATISATION

In response to the environmental and economic criticism of NZFS, the New Zealand Government “corporatised” production forestry by creating the New Zealand Forestry Corporation (Forestry Corporation).74 Preservation functions, such as the stewardship of national parks, were given to a newly created Department of Conservation.75 A new Ministry of Forestry conducts other former NZFS activities, such as research. Reform through corporatisation is by no means complete. Issues such as the public accountability of state-owned enterprises, the valuation of lands and resources transferred to such entities, and the allocation of lands between production and preservation uses are not yet resolved.

A. Forestry Corporation

The New Zealand Forestry Corporation began business as a state-owned enterprise (SOE) on April 1, 1987. All the SOE's operate under a statutory charter to:

- operate a successful business, and, to this end, to be — (a) As profitable and efficient as comparable businesses that are not owned by the Crown; and (b) A good employer; and (c) An organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.76

Although the SOE's charter appears to accommodate the tradition of multiple use forest management, “[t]he principal objective of the New Zealand Forestry Corporation is to operate as a successful forestry and wood processing business.” 77 With these general statutory mandates and

73. In 1985, the Environment Forum brought together environmentalists who reached a consensus that the production and preservation objectives of NZFS and the Department of Lands and Survey should be separated. Preservation functions of both agencies were to be combined in a government agency, not a state-owned corporation.
74. R. DOUGLAS & L. CALLEN, supra note 71, at 252.
77. NEW ZEALAND FORESTRY CORP., STATEMENT OF CORPORATE INTENT (n.d.) (covering the years 1987-88 to 1989-90); see also N.Z. FORESTRY CORP., 1988 ANN. REP. 5 (affirming the principal objective of business success as measured by profitability and efficiency). Forestry Corporation places a “strong emphasis on effective utilisation of its resources, on marketing and sales, and on customer satisfaction.” NEW ZEALAND FORESTRY CORP., AN
little guidance from shareholding ministers, the officers of Forestry Corporation had to define the company's specific financial goals based on an evaluation of the available resources. Because of the use of different accounting methods by NZFS and Forestry Corporation, and the existence of cross-subsidies in NZFS, it is almost impossible to say whether Forestry Corporation is more efficient than NZFS. However, Forestry Corporation, comparing its first year of operation with NZFS's last year of production, estimates a turnaround of $(N.Z.)100 million. According to Forestry Corporation, these savings are attributable to a reduction of overhead, staffing, and general operations.

One of the reasons Forestry Corporation is able to operate with fewer employees is that it employs independent contractors for most of its needs. The organizational structure of Forestry Corporation was created by a panel of leading New Zealand business people, who designed it to be streamlined and lean. As the top positions in the corporation were filled, the new executives hand-picked the best of the former NZFS employees to work for Forestry Corporation. The new organization is designed to produce timber with less red tape, better communication, and more flexibility. Where NZFS employed mechanics, carpenters, electricians, and loggers, Forestry Corporation bargains with independent contractors when such services are needed and therefore is able to operate with fewer institutional employees.

Some former NZFS employees took advantage of this opportunity by forming small independent contracting businesses and purchasing or leasing old NZFS equipment. The only corporate employee Forestry Corporation will have in the field during a timber harvest is a representative to monitor an independent logging gang's performance. While these reforms, abandoning uneconomic indigenous timber harvests, logging with smaller gangs, and reducing pruning, planting, and thinning operations, have increased the profitability of public forest management, corporatisation has also displaced workers and contributed to unemployment in the timber industry.

A complaint made by many of the parties that deal with Forestry Corporation is that some former NZFS employees now working for the

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79. The Establishment Board for Forestry Corporation made a number of recommendations regarding the functioning of the SOE that were ultimately accepted by the Government. NEW ZEALAND FORESTRY CORPORATION ESTABLISHMENT BOARD, REPORT OF ESTABLISHMENT BOARD OF THE PROPOSED NEW FORESTRY CORPORATION (1986).

80. Total unemployment has risen to 9.4% from 4.9% since the Labour Government came to power in 1984. McGurn, New Zealand's Painful Economic Cure. Wall St. J., Oct. 11, 1988, at 22, col. 3. Many small communities that relied heavily on forestry for jobs are struggling with pressing social problems resulting from high unemployment.
SOE do not negotiate in a commercially reasonable manner. Overzeal for short-term gains due to a misapprehension about standard business practices or to demands by government shareholders for immediate profitability may damage Forestry Corporation's future financial health and business reputation. For example, small dependent sawmilling operations forced by Forestry Corporation to bear the entire burden of the downturn in sawn timber demand may go bankrupt and leave Forestry Corporation with fewer buyers in the future.

The SOE system requires the corporations to purchase their assets, including the lands allocated to them, from the government. Of all the SOE's created by the Labour Government, Forestry Corporation has presented the most difficult asset valuation problem. The New Zealand Treasury and Forestry Corporation, the parties engaged in negotiating the sale price of the forests, cannot agree on two crucial elements of the valuation: (1) the price of wood over the next decade or two, and (2) an appropriate discount rate. Slight differences in either figure can change the value of forest assets by millions of dollars. Negotiations are further complicated by the fact that, unlike a commercial negotiation where the seller has most of the information regarding what is being sold, the buyer of these forests, Forestry Corporation, has all of the information and expertise regarding the forest resources being valued. In addition, it is difficult to establish a true market price for the forests when there is no true competing bidder.

The inability of the Treasury and Forestry Corporation to agree on an asset price has led the Government to propose retaining title to the lands allocated to Forestry Corporation and leasing the timber resources. The government would consider lease bids from any company. The average length of leases, under the proposed plan, would cover two rotations of radiata pine (about sixty years). The length of the lease is designed to encourage replanting after logging. Such issues as whether leaseholders will be required to replant after “mining” the timber in the leased forest,
especially in areas prone to erosion, remain unresolved. Regardless of how leasing would be implemented, Forestry Corporation may become less of a forest manager and more of a Crown real estate agent if the Government moves forward with this plan.

Another issue that has faced Forestry Corporation, and other SOE's generally, is its public accountability. Forestry Corporation has officers and a board of directors like a private corporation. The Minister of Finance and the Minister for State-Owned Enterprises are the only voting shareholders, but they may raise capital by issuing state enterprise equity bonds, which are nonvoting, ordinary shares. Parliament monitors and evaluates SOE performance based on a statement of corporate intent. So far, Forestry Corporation has developed a corporate strategy without direct political interference. The shareholding ministers have generally distanced themselves from the day-to-day business decisions of the SOE's.

While the government holds all the voting stock in the SOE's, their public accountability has not been precisely defined and is the subject of much debate in New Zealand. Some argue that because SOE's have been removed from the appropriations process Parliament will not scrutinize the enterprises and public accountability will be reduced. Furthermore, before corporatisation, a Member of Parliament (M.P.) responding to a constituent's inquiry about state forest management would go directly to NZFS. Now, the M.P. must go through one of the shareholding ministers to reach the forest manager.

89. See infra notes 94-101 and accompanying text.
90. N.Z. Stat. 124, §§ 5, 10, 11, 13 (1986). The board of directors represents a wide range of skills and experience including banking, business, and forestry. NEW ZEALAND FORESTRY CORP., OUR FIRST SIX MONTHS 2, 6 (1987). The Board appoints the Managing Director of Forestry Corporation who, in turn, appoints the other officers. Most of the officers came from positions in NZFS.
91. N.Z. Stat. 124, § 12 (1986). For a description of the role of the ministerial shareholders, see P. MCKINLAY, supra note 64, at 60-66. For a discussion of the nature of and problems with equity bonds, see id. at 74-78.
92. R. Mascarenhas, supra note 85, at 15.
93. Id. at 17.
94. P. MCKINLAY, supra note 64, at 60-66; Boston, Transforming the Public Sector in New Zealand: Labour's Quest for Improved Efficiency and Accountability, PUB. ADMIN. (U.K.) (forthcoming). See generally Wylie, supra note 62.
96. See State-Owned Enterprises Act of 1986, N.Z. Stat. 124, § 18 (providing that the board of a SOE may supply information to the Minister of Finance or a responsible shareholding Minister).
On the other hand, ministerial monitoring of performance may be sufficient to insure that Forestry Corporation is responsive to public concerns, so long as performance criteria are clearly set forth. The Labour Government applies performance monitoring to Forestry Corporation as well as to traditional government departments, requiring them to produce corporate-style statements of intent, and specifies department administrators’ performance criteria in their contracts. Public accountability is also protected to the extent that the public has a right, through the Official Information Act, to receive copies of important government documents; however, it is unclear whether this right may be enforced against Forestry Corporation.

Perhaps surprisingly, one conflict that has not plagued Forestry Corporation to date is the demand for recreational use of corporation lands. The reason for this is that most of the lands are plantations, and the recreationists have tended to prefer natural forests. However, in some cases access across (rather than to) SOE lands is important to recreational users who want to reach preserves managed by the Department of Conservation. In addition, hunting and fishing have been popular in some plantation forests. Current Forestry Corporation policy is to allow public access to the forests with no more restrictions than NZFS imposed. Forestry Corporation benefits from the resulting good public relations, but provides no guarantees that its policy will not change.

B. The Department of Conservation

The other major forest manager under the corporatisation reform is the New Zealand Department of Conservation (DOC). DOC’s various roles with respect to New Zealand’s natural resources are set out in the Conservation Act of 1987:

97. P. MCKINLAY, supra note 64, at 60-61; Palmer, supra note 71, at 29-31.
100. Id. §§ 21-22.
101. The Act allows SOE’s to protect information where disclosure would expose a trade secret or unreasonably prejudice the commercial position of the SOE or the subject of the information. Official Information Act Amendment of 1987, N.Z. Stat. 8, § 5. See generally Wylie, supra note 62, at 45.
102. The distribution of recreation in the public forests of New Zealand thus contrasts sharply with the rich mix of uses allowed in natural public forests in the United States.
104. To regulate hunters, Forestry Corporation requires them to obtain free permits at a Forestry Corporation office.
(a) To manage for conservation purposes, all lands, and all other natural and historic resources being held under this Act...
(b) To advocate the conservation of natural and historical resources generally
(c) To promote the benefits to present and future generations of the conservation of natural and historic resources...
(e) To the extent that the use of any natural or historic resource is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism.

The rationale behind corporatisation was to divide land management into two single objective categories: production and protection, with Forestry Corporation responsible for the former and DOC for the latter. However, DOC is really a multiple-objective manager concerned with providing a full spectrum of uses (except logging). These include recreation, education, moss harvesting, grazing, mining, and environmental protection. In the austere fiscal climate of the late 1980's, balancing these often conflicting objectives is a politically sensitive task, and the division of lands between Forestry Corporation and DOC has not avoided conflict.

The Labour Government's fiscal program requires many agencies to earn a portion of their budgetary needs. The New Zealand Treasury ultimately expects DOC to raise 20% of its expenditures through user charges. This requirement adds pressure for DOC to deploy its resources in a manner that creates a broad revenue base. Of course, timber, potentially the most valuable DOC asset, is the one commodity DOC is forbidden from selling. In its first year of operation, DOC overspent its $(N.Z.)111 million budget by $(N.Z.)3.5 million. This
deficit will be added to the amount DOC will be required to recover through revenue or cost-cutting in the 1988-89 fiscal year, placing even more pressure on the agency to favor revenue generating uses.\textsuperscript{113}

Some of DOC’s budget difficulties result from costs inherited from other agencies and the initial start-up expenses of a new department.\textsuperscript{114} However, part of the financial problem comes from the fact that, unlike Forestry Corporation, DOC retains a NZFS-like centralized hierarchy that produces high overhead costs.\textsuperscript{115} The organizational structure requires forest offices to report to district conservators, who report to regional managers, who, in turn, report to the central office in Wellington.\textsuperscript{116}

Once DOC’s organizational structure was designed, hiring guidelines virtually prevented DOC managers from employing personnel from outside government service.\textsuperscript{117} Moreover, the people who were hired were poorly deployed. For example, in the Auckland region, one district office has an exclusive concentration of wildlife expertise, while the neighboring office has a concentration of forestry expertise. A consensus is growing that too many DOC workers are at the central and regional offices, and not enough are in the field.\textsuperscript{118} Furthermore, too few DOC employees have the expertise in financial or personnel management needed to solve these types of problems.


\textsuperscript{114} DOC’s main problems “derive from financial and resource allocations which appear to be insufficient to carry out the requirements of the Conservation Act 1987.” \textit{New Zealand National Parks and Reserves Authority, Report for the Year Ending 31 August 1988}, at 3; \textit{see also} Townsend, supra note 113.

\textsuperscript{115} The SOE’s internal structures are created by independent boards of business people. DOC, like all government departments, was organized by the State Services Commission, which creates and evaluates the institutional structures of the New Zealand bureaucracy.

\textsuperscript{116} New Zealand Department of Conservation, Rotorua Regional Newsletter (n.d.). Each regional office divides DOC’s responsibilities into a number of categories staffed by specialists. \textit{Id.} DOC employees in the field complain that communication through the hierarchy is garbled and slow. Unlike NZFS, which could rely on the common training of its employees to help communication, DOC employs professionals with backgrounds in rival agencies (NZFS, Department of Lands and Survey, and New Zealand Wildlife Service) who lack a common base of experience.

\textsuperscript{117} Hiring guidelines were established by the State Services Commission. Wilkinson notes that the domination of USFS by people trained in forestry hinders interdisciplinary multiple-resource management. Wilkinson, supra note 8, at 27. Because DOC is dominated by foresters from NZFS, it must struggle to broaden its perspective on wildlife, recreation, and wilderness issues.

\textsuperscript{118} The Government now plans to implement a consultant’s suggestion to restructure DOC by decentralizing authority. Interview with Dr. Peter Alan Simpson, Member of Parliament, in Washington, D.C. (June 9, 1989).
C. Land Allocation

One of the most controversial issues associated with corporatisation is the allocation of land between DOC and Forestry Corporation. The government allocated land to Forestry Corporation if its production values outweighed its conservation values. Based on this principle, exotic plantation forests were allocated to Forestry Corporation, and national parks and reserves were allocated to DOC. However, disagreement arose in areas where indigenous natural forests were suitable for logging or previously had been logged. Many of the areas valuable for both conservation and production became the focus of intense lobbying.

The initial attempt at allocating lands was made by a panel created by NZFS during the final months of its existence. This first attempt was vociferously criticized by a coalition of environmental groups. Some indigenous forests were allocated to Forestry Corporation because NZFS had developed long-term harvesting plans. Other public forests with stands of both exotic and indigenous trees were also allocated to Forestry Corporation. Finally, many boundaries were drawn with no regard for terrain or vegetation patterns.

In response to these perceived shortcomings, the environmental coalition produced a large volume of maps showing where they felt the allocation was in error and why. The coalition's effort forced the Government to propose two more allocation plans; the reiterations of the planning process eventually reduced the areas in dispute to a few dozen.

Some people in the timber industry criticized DOC for its eagerness to deny land to Forestry Corporation. Because DOC was not going to pay for its allocated land, the critics maintained that, unlike the SOE, it had no incentive to take account of the costs of preserving forest lands. On the other hand, some environmentalists criticized DOC for not advocating preservation zealously enough. Blame often was placed on former NZFS employees who were perceived as carrying a timber production bias over to DOC. Although DOC knew that there was not much room

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120. T. Buhrs, supra note 50, at 4 (“conservation of indigenous forests . . . has dominated environmental demands and actions in New Zealand.”). Protecting the remaining native forests in New Zealand has been a major goal of environmentalists for the past decade. Environmentalists supported corporatisation based on the Government's promise to establish a new land conservation agency that would protect natural areas. Therefore, allocation of indigenous forest to DOC was a central environmentalist goal: NEW ZEALAND STATE SERVICE COMMISSION, REPORT OF THE POST-ENVIRONMENT FORUM WORKING PARTY, ENVIRONMENT 1986 27-38 (1985) (outlining a Heritage New Zealand department that would champion conservation interests).

121. A broader representation of SOE and environmental interests than the original NZFS land allocation panel participated in these subsequent efforts.
for its budget to be altered to reflect its land management responsibilities, its official strategy was to seek allocation of all indigenous forests. In the end, most disputed lands were allocated to preservation.122

Even in cases where indigenous forest was finally allocated to Forestry Corporation, environmentalists were able to protect some natural values by having three covenants placed on the title. The covenants require sustained yield management, public access, and the maintenance of native species (i.e., no exotic interplanting).123 The enforceability and effectiveness of these covenants is, however, untested.

The dispute over land allocation in New Zealand was particularly acute concerning the indigenous forests of Westland and Southland,124 where political compromises were necessary to tip the scales in favor of conservation values. In the northern part of Westland, the new Ministry for the Environment mediated the allocation issue. Working parties composed of representatives from government agencies, regional government, environmental groups, and industry hammered out compromises that left some indigenous forests under productive use, keeping local saw mills supplied with native timber until sources of exotic timber become available. Again, however, most lands were allocated to the Department of Conservation under a compromise accord.125

In contrast to Westland, Southland had no ongoing native logging operations. Nevertheless, Forestry Corporation earmarked indigenous forests that had been logged in the past for future harvesting. Here, the allocation decision was made directly by a committee of Labour M.P.'s, with no recommendation from local interest groups.126 Although some

122. Kirkland, supra note 62, at 11-12. DOC now manages 26% of New Zealand's land area, while Forestry Corporation's allocated lands consist of 3% of the country's land area. 93 OFFICIAL YEARBOOK, supra note 45, at 497.
124. These two areas on the South Island have the most extensive intact indigenous forests in New Zealand.
125. See A. Gibson, supra note 123, at 5-6 for a summary of the mediation process. In the southern part of Westland, the working party was unable to come up with a workable compromise. It recommended that over 90% of the public forest land be allocated to DOC with the remainder held in neutral tenure while the government studies its potential for sustained yield timber management. See generally NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, SOUTH WESTLAND SOUTH OF THE COOK RIVER RESOURCE MANAGEMENT STUDY—SUMMARY OF FINAL REPORT (1988). However, in February 1989, the Minister for the Environment announced that the Government would allocate all of the public forest to DOC. In return, the government will spend $1.5 million over the next three years to improve recreational and tourist facilities in the area. Gibson, South Westland Forests Decision, ENVIRONMENT UPDATE, March 1989, at 3.
126. The M.P.'s most involved with land allocation were sympathetic to the environmentalist viewpoint. It was as much the influence of nongovernmental environmental organizations as DOC that resulted in the land being allocated to DOC.
lands were allocated to logging, the amounts were not sufficient to sustain an indigenous logging operation.\textsuperscript{127}

In both Westland and Southland, the allocation disputes were emotional, divisive issues. Communities already economically depressed from the downturn in domestic timber demand and the strong New Zealand dollar felt that the environmentalists had no regard for the human cost of forest preservation. Many environmentalists viewed the indigenous timber industry as moribund and favored a quick death for it before the remaining native trees were felled. Although the environmentalists appear to have gotten the best of the allocations, they have done so at some political cost.

Another controversial allocation issue involved the riparian areas along the margins of rivers. The Act establishing DOC requires that these marginal strips be held for conservation purposes.\textsuperscript{128} Consequently, a twenty-meter corridor on each side of every stream on land transferred to Forestry Corporation was reserved by the Crown for management by DOC.\textsuperscript{129} However, the SOE's are now lobbying to amend the law so that they will own these strips of land. They object to the high cost of fencing and surveying to exclude riparian areas from the rest of their property. Also, the SOE's want to be able to exclude certain forms of recreation during periods when the surrounding land is sensitive to damage.\textsuperscript{130} Finally, there is the potential problem that an underfunded DOC will be unable to control noxious weeds and animal pests on the marginal strips.

Perhaps the most difficult and unforeseen issue arising from corporatisation is the acceleration of Maori claims to land the Government is proposing to transfer to the SOE's.\textsuperscript{131} In 1840, the Treaty of Waitangi established the relationship between the British and the native Maori people in the New Zealand colony.\textsuperscript{132} In 1975, the Treaty of Waitangi Tribunal\textsuperscript{133} began hearing claims by Maori people to land and

\textsuperscript{127} According to Forestry Corporation, the proposed allocation would have provided timber for logging for only 10 years; however, regeneration would take 40 years. \textit{DOC Taking Over Beech Forests}, The Southland Times, July 10, 1988, at 1, col. 1.


\textsuperscript{129} \textit{Id.} The set-aside of riparian areas also applies to transfers of property to another entity, the New Zealand Land Corporation. Land Corporation, like Forestry Corporation, operates under the system outlined in the State-Owned Enterprises Act of 1986, N.Z. Stat. 124. Land Corporation, which engages in commercial farming, assumed the production function of the Department of Lands and Survey.

\textsuperscript{130} Forestry Corporation is concerned about fire hazards and Land Corporation is concerned about agitation of livestock during calving season.

\textsuperscript{131} The former Director General of DOC claims that some officials raised the issue of Maori land claims in 1985. Letter from K.W. Piddington to Robert Fischman (Nov. 20, 1988).


other natural resources that had been taken in abrogation of the Treaty.\textsuperscript{134} As in the United States, in New Zealand the European relationship with native peoples has not been characterized by fair play.

Many Maori claims to resources on Crown land have long lain dormant. However, the number and extent of claims on Crown land grew considerably with the specter of land transfers to corporations, particularly because the state-owned entities are able to alienate property.\textsuperscript{135} The State-Owned Enterprises Act mandates that the Crown act in a manner consistent with the principles of the Treaty of Waitangi.\textsuperscript{136} In a landmark decision, the highest court in New Zealand found that Section 9 of the Act prohibits the Crown from transferring land to the SOE's until safeguards are established to prevent prejudice to foreseeable Maori claims.\textsuperscript{137} Parliament has responded by passing a bill that will allow the government to transfer land, yet resume its interest in the land if a claim is judged valid by the Tribunal.\textsuperscript{138} In most cases this will protect successful Maori claimants from having to seek relief from private landowners. However, the Tribunal also would have the power to recommend that some land be exempt from the Crown's power of resumption.\textsuperscript{139} Until asset valuation and land transfers are complete,\textsuperscript{140} Forestry Corporation operates under a deed of license from the Crown.\textsuperscript{141}

Even though it was recently expanded, the Treaty of Waitangi Tribunal will take years to adjudicate Maori resource claims, given the current backlog.\textsuperscript{142} The increased political activism of many Maori groups has focused national attention on the issue of Maori rights and the Maori condition in New Zealand. The Government's most recent plan to sell

\textsuperscript{137} Treaty of Waitangi (State Enterprises) Bill, House of Representatives, May 5, 1988. The bill permits the Treaty of Waitangi Tribunal to make a binding recommendation for the return to Maori ownership of any land transferred to an SOE. The Government now permits SOE's to transfer assets (such as timber) on the land that is subject to Maori claims.
\textsuperscript{138} Id. § 8a.
\textsuperscript{139} Id. § 10.
\textsuperscript{140} \textit{NEW ZEALAND FORESTRY CORP.}, \textit{supra} note 90, at 1.
\textsuperscript{141} Id. § 8a.
\textsuperscript{142} Large claims are taking as long as two years to work through the tribunal process. Ansley, \textit{supra} note 135, at 16-18. There are currently 164 claims before the tribunal, which has recently increased its membership from 7 to 17 in an attempt to reduce this large backlog of cases. \textit{Tribunal Gets New Members}. The Wellington Post, Mar. 13, 1989.
leases to timber companies to use land allocated to Forestry Corporation for logging creates further problems for Maori groups. If the Tribunal validates Maori claims to commercial Crown forest land, then the Maori claimants may receive land title, but no right to use the land until the leases expire. Maori interests are likely to oppose the leasing plan.

D. Other Pieces of the Corporatisation Puzzle

The aftermath of forest corporatisation in New Zealand cannot be described completely by just the experiences of Forestry Corporation and DOC. A number of resource management functions are filled by neither institution. The government, through NZFS, used to oversee half the logging in New Zealand. Corporatisation removed this central government control over timber practices on public lands. At present, no new agency fills this void by regulating the environmental effects of logging.

1. Timber Practice Regulation

Forestry Corporation is designed to operate in the manner of a private business and, thus, has no specific duty to consider or mitigate the environmental effects of its logging practices. The corporation currently manages slightly over half of New Zealand's production forests. If Forestry Corporation receives title to this land, it will have the authority to sell parcels to private companies. Therefore, the proportion of logging on land not subject to direct central government control will increase in the future. If, however, the government leases the land to Forestry Corporation, the government will need to determine the degree of control it will exercise over timber practices.

143. The term of the proposed forest leases would commit the timber for at least 30 years. This method of transferring assets would bypass the Treaty of Waitangi because title to the land would remain with the Crown. Maori Council chairman Sir Graham Latimer characterized the Government's leasing proposal as an insult. Forest Plan an Insult Says Latimer, THE DOMINION, Nov. 29, 1988, at 2, col. 1.


145. See supra notes 45-56 and accompanying text.

146. In other areas, services that used to be provided by NZFS or the Department of Lands and Survey are now provided by new agencies such as the Ministry of Forestry and the Department of Lands. See generally infra notes 147-66 and accompanying text.

147. NEW ZEALAND FORESTRY CORP., supra note 90, at 18 (graph).

148. See supra notes 131-43 and accompanying text.

149. The regulation of timber practices is important to protect water quality, stream beds, soils, animal habitats, and other conservation values. It is especially important when the costs of environmental degradation are borne outside of the property being logged.
Traditionally, there has been little central government regulation of land use or logging on private lands in New Zealand. Although local planning boards control land use, they have not attempted forest practice regulations like the programs in some states in the United States. If aggressively pursued, the Labour Government’s policy of “devolution,” which is intended to enlarge the responsibilities of regional governments, may embolden local authorities to oversee forest management more actively. On the other hand, regional economic pressures may lead local authorities to be lax about regulations.

While the New Zealand Government no longer has direct control over the forest practices of SOE’s, it may still regulate forestry procedures by mandating environmental impact statements. Private projects that are of a certain size and that need licenses under a variety of laws activate impact statement requirements. Removal of timber falls under these licensing requirements. The Ministry for the Environment, which is currently reviewing these laws, proposes to strengthen

152. A number of observers are skeptical about Labour’s commitment to devolve real authority to regions. Fisher, The New Environmental Management Regime in New Zealand, ENVTL. & PLAN. L.J., Mar. 1987, at 41. There is also some question as to whether the regions have the resources to handle greater responsibility. NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, PROPOSED POLICY ON ENVIRONMENTAL ASSESSMENT PROCEDURES 14 (1987). See generally LOCAL GOVERNMENT DIVISION, NEW ZEALAND DEPARTMENT OF INTERNAL AFFAIRS, REPORT OF THE REGIONAL GOVERNMENT WORKING PARTY (1988); NEW ZEALAND OFFICIALS CO-ORDINATING COMMITTEE ON LOCAL GOVERNMENT, REFORM OF LOCAL AND REGIONAL GOVERNMENT (1988).
154. Native Forests Action Council, supra note 62, at 3, 8, 10 (describing the concern that local tribunals will be more amenable to economic development projects than national conservation needs).

Another trend in land use regulation is for landowners to grant conservation covenants to a private trust. At least one SOE, Land Corporation, has expressed an interest in working with the Queen Elizabeth the Second National Trust to arrange for conservation covenants on some of its farm land formerly managed by the Department of Lands and Survey.
155. NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, ENVIRONMENTAL PROTECTION AND ENHANCEMENT PROCEDURES 3-5 (1987). Impact statements may be required at the discretion of local bodies or ministers. Fisher, supra note 152, at 39. Impact statements (in the form of assessments or reports) discuss the environmental consequences of actions and possible measures to mitigate harmful impacts, but do not require selection of any particular project option or mitigation strategy. See generally Morgan, Reshaping Environmental Impact Assessment in New Zealand, 8 ENVTL. IMPACT ASSESSMENT REV. 293 (1988) (outlining the history of environmental assessment in New Zealand and current reforms).
156. NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, supra note 155, at 1.
157. NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, LAWS UNDER REVIEW (1988)
environmental impact statement requirements for corporate operations.\footnote{158}

Another option for regulating the environmental effects of private timber management is the Parliamentary Commissioner for the Environment, who monitors the overall system of environmental protection in New Zealand. While the Commissioner’s oversight responsibilities encompass regulation of SOE practices,\footnote{159} she has no enforcement authority and few resources.\footnote{160} Her power is the special status and independence of her office, which has a direct line of communication to government ministers.\footnote{161}

The limitations of these regulatory components was illustrated in the case of a proposed management plan for an indigenous beech forest in Westland. When NZFS was managing this forest, it had decided that a public management plan was necessary to address environmental concerns over logging. However, Forestry Corporation refused to prepare such a plan once the lands were transferred to it. In response, the Beech Forests Action Council complained to the Parliamentary Commissioner for the Environment. The Commissioner decided that it was not possible to force Forestry Corporation to issue a plan covering such a broad area; the SOE could only be compelled to produce plans for specific logging operations.

2. Ministry of Forestry

Another new government agency created in the wake of corporatisation is the Ministry of Forestry. The Ministry provides the research, policy, and consulting expertise that formerly resided in NZFS. Because the Ministry of Forestry’s activities are more marketable than DOC’s, it is expected to recover an even greater portion of its expenditures than DOC.\footnote{162} Pursuant to this policy, the agency now charges for consulting with private landholders and solicits private funding from the beneficiaries of forestry research.\footnote{163} As a result, the emphasis of research has shifted to more commercially useful applications.

\footnote{158}{\textit{NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, REVIEW OF RESOURCE MANAGEMENT STATUTES—UPDATE ON PROGRESS 2} (1988).}
\footnote{159}{\textit{NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, PROPOSED POLICY ON ENVIRONMENTAL ASSESSMENT PROCEDURES} 18-19 (1987).}
\footnote{161}{\textit{Id.}}
\footnote{162}{\textit{See, e.g., ESTIMATES 1988, supra note 68, at 22 (DOC to provide 8.1\% of its budget from receipts), 55 (Ministry of Forestry to provide 11\% of its budget from receipts).}}
\footnote{163}{The Ministry also has a small regulatory role, currently under review, in overseas trade of forest products.}
3. The Department of Lands

Lands that were not allocated to Forestry Corporation, DOC, or Land Corporation are managed by a transitional custodian, the new Department of Lands. Department of Lands property is either (1) too difficult or politically sensitive to allocate, or (2) not appropriate for either preservation or commercial management. The Government initially planned to dissolve Department of Lands once the allocation of the first category and the sale of the second category were complete. However, unexpected difficulties arose. Thus, the Crown continues to hold many sensitive tracts of land through Department of Lands, but contracts with the SOE's for management. Other properties that are too small to survey economically are also being retained by the Department of Lands. As a result of these problems, the Department of Lands has grown beyond the size originally expected by the Government. Its future is currently under review. For now, the Department of Lands represents an ongoing expense of the awkward transition to corporatisation.

IV

LEARNING FROM THE NEW ZEALAND EXPERIENCE

The reality of corporatisation in New Zealand is that it has caused unanticipated changes in areas other than land management. Studying the New Zealand experience illuminates important issues not considered in corporatisation proposals, such as native peoples' land claims, job displacement, and SOE accountability to public concerns. These issues must be resolved before corporatisation can be supported on an environmental or economic basis. Furthermore, the details of the corporatisation process, such as the criteria used to allocate lands and resources between forest corporations and wilderness trusts, and the institutional structures of the new management organizations are pivotal to the feasibility of reforms in the United States. The New Zealand experience demonstrates that one cannot reform just forest management.

164. ESTIMATES 1988, supra note 68, at 83. In South Westland, land that both DOC and Forestry Corporation wanted to manage was held neutrally by the Department of Lands until a final allocation decision was made. NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, supra note 125, § 6.

165. For instance, high country pastoral lease lands are held by Department of Lands. Land Corporation manages the leases under a licensing agreement with the government.

166. The Crown continually acquires small parcels of land that escheat to it. Also, some of the public domain consists of parcels for which title has never been issued. The Survey and Land Information Department estimates that a complete survey of public forests allocated to Forestry Corporation will require $N.Z. 21 million over three years. Pirie, $21 Million for Full Survey of Forests, THE DOMINION, Nov. 30, 1988.
A. The Initial Allocation of Resources

Proposals for forest management reform concentrate on how resources are to be managed by different agencies or companies, but fail to focus on the crucial issue of how these resources are to be allocated initially. Allocation of resources, however, is the critical step in corporate management because it determines how lands valuable for both preservation and production are used.

In New Zealand, the blueprints for corporatisation did not examine how lands would be divided between Forestry Corporation and DOC. Because there was no plan, the first land allocation was attempted in haste and the entire process had to be repeated several times to address logistical and political objections. Logistical objections can be reduced by studying the character of the land before allocating it. Political objections can be reduced by mandating agreement on a fair allocation process before allocation begins.

In the United States, where national forests include a wider variety of ecosystems and where productive forests are not dominated by exotic plantations, land allocation would be even more difficult than in New Zealand. Almost all USFS land is valued highly for its natural features. Forestry Corporation's land base, after the settlement of a series of allocation controversies, now consists almost entirely of exotic plantations that environmentalists do not value highly. Because little USFS land is analogous to New Zealand's exotic plantations, partitioning USFS land in a manner similar to the New Zealand example would be impossible.

O'Toole suggests that wilderness areas be excluded from the lands transferred to forest corporations. Environmentalists, if faced with
such reforms, should ensure that clear, workable criteria are developed ahead of time to decide which lands will be designated for profit maximization, and which will be designated for protection. Until a politically acceptable process is created for dividing lands, the dilemma of multiple use remains.\textsuperscript{173}

One approach to land allocation in the United States would be to divide forests along the current Wilderness Preservation System boundaries. However, that might effectively freeze any further wilderness designation on national forest lands because corporations utilizing the potential wilderness land are likely to oppose any diminution of their asset base.\textsuperscript{174} Also, some corporations may preempt wilderness designation by logging potential wilderness lands to generate cash for investment or debt service. Such questions as whether Congress would compensate a forestry corporation for designating additional wilderness, and what Congress would do with current roadless areas eligible for inclusion in the Wilderness Preservation System, should be answered before corporatisation is pursued.

The assertion of dormant claims of the Maori people for resources on public lands was a largely unexpected consequence of corporatisation.\textsuperscript{175} Native Americans, who also prefer to place claims on public rather than private lands, would find it in their interest to assert rights to resources on national forests before the forests are corporatised. In New Zealand, the Maori community was not involved in the debates that gave rise to corporatisation, and the potential danger to Maori interests was not fully understood by the policymakers until the Court of Appeals halted implementation. Forest reformers in the United States must work with Indian tribes to ensure that corporatisation would not compromise Indian interests. The reforms proposed by O'Toole, and Teeguarden and Thomas, do not project how corporate management might affect Indian claims or activities on national forest lands.\textsuperscript{176}

Implementing corporatisation is not just a question of allocating lands and resources. In New Zealand, the valuation of assets has been almost as controversial as deciding which lands would be managed for production. The awkward negotiation of a purchase price for the forests in New Zealand has collapsed, precipitating plans for the competitive

\textsuperscript{173} See Kirkland, \textit{supra} note 62, at 12.

\textsuperscript{174} O'Toole suggests that donations and receipts from wilderness lands may be used to purchase new lands of the same type. \textit{R. O'TOOLE, supra} note 2, at 216. However, this would require wilderness lands to generate enough revenue to exceed management costs.

\textsuperscript{175} See \textit{supra} notes 131-39 and accompanying text.

\textsuperscript{176} It remains to be seen whether the public trust doctrine would constrain the transfer of management or title to public corporations.
sale of timber leases on land allocated to Forestry Corporation.\textsuperscript{177} O'Toole recognizes the difficulties with asset valuation and avoids the problem by proposing that the U.S. Treasury receive a share of each forest company's receipts rather than require up-front payments.\textsuperscript{178} Teeguarden and Thomas, however, suggest that their proposed Public Corporations Board establish a minimum rate of return for each corporation's assets.\textsuperscript{179} This would require an initial valuation of forest assets that is at best troublesome and at worst a serious barrier to implementing corporatisation.\textsuperscript{180}

\textbf{B. Transition Management}

Even if New Zealand had worked out the initial allocation of resources before implementing corporatisation, it still would have faced difficulties because too little attention was directed at how the transition from NZFS to Forestry Corporation and DOC would work. Policymakers must provide for a period of adjustment to allow people affected by institutional reforms to respond to a new climate of market incentives.\textsuperscript{181}

As in New Zealand, a reduction of uneconomic logging operations in the United States would increase unemployment in the timber industry. O'Toole recognizes the need to cushion workers and recommends putting a portion of the funds formerly appropriated to USFS in a fund available to displaced employees.\textsuperscript{182} The transition for workers also could be eased through training programs, worker relocation, and a gradual reduction in logging.\textsuperscript{183}

Displaced workers are not the only people who need retraining to adapt to a corporatised forest system. The New Zealand experience teaches that some forest service professionals will find niches in the new corporations, but also that these workers need time to adjust to market incentives and business practices.\textsuperscript{184} Managers who are accustomed to planning timber sales need training to learn about promoting recreation and other land uses. One of DOC's difficulties in fulfilling its multiple

\begin{itemize}
  \item \textsuperscript{177} See supra notes 84-88 and accompanying text.
  \item \textsuperscript{178} R. O'TOOLE, supra note 2, at 213.
  \item \textsuperscript{179} Teeguarden & Thomas, supra note 2, at 380, 383.
  \item \textsuperscript{180} O'Toole criticizes the Teeguarden and Thomas approach because the valuation of assets is difficult and could result in lower operating funds for the national forests. R. O'TOOLE, supra note 2, at 218-19.
  \item \textsuperscript{181} This is not to say that implementation of such a reform should be slow. However, in structuring or evaluating a new agency or quasi-public entity, reformers must account for the period of time during which people adjust to a new institutional climate and shape new standard operating procedures. The checks and balances in the federal government guarantee that corporatisation, if it could happen in the United States, would happen more slowly.
  \item \textsuperscript{182} R. O'TOOLE, supra note 2, at 226. Workers can be given stock in the corporation if nonpublic shares are to be issued.
  \item \textsuperscript{183} Id.
  \item \textsuperscript{184} See supra notes 81-83 and accompanying text.
\end{itemize}
use mandate has been that few resources are available for teaching for-
mer NZFS, Department of Lands and Survey, and Wildlife Service em-
ployees about the skills of their colleagues from other agencies. As a 
result it has been difficult to get the agency to work as a coherent whole.

Finally, it is not sufficient to privatize only capital resources. With- 
out the flexibility to fire and promote employees at will, forest corpo-
rations in the United States would have difficulty establishing true market 
incentives for their personnel. Neither O'Toole nor Teeguarden and 
Thomas indicate how civil service regulations will affect corporatisation. 
If new forest corporations are forced to fill their positions with displaced 
forest service employees, like DOC, then the corporations may lack the 
management expertise needed to run an efficient business. If the new 
corporations are not subject to civil service requirements, then reformers 
must consider the cost to the government of terminating all of its em-
ployment obligations.

Without a well-managed transition, the state-owned corporations 
may never build a firm business foundation. Because financially troubled 
corporations may be forced to sell off assets to survive, a policy of 
corporatisation might easily turn into a transfer of public assets to the 
private sector. 185

C. Accountability

Corporatisation can be viewed as a reform designed to clarify ac-
countability. Shareholders hold private corporations accountable to pro-
vide an adequate return on their investments. However, state-owned 
enterprises, because their assets are still under public ownership, do not 
have such a clear line of accountability. 186 The New Zealand experience 
shows that if shareholders are politicians, or appointed by politicians, 
they may intervene in the corporation's business affairs to achieve poli-
tical objectives. Some critics charge that the ministerial shareholders of 
Forestry Corporation are applying too much pressure for immediate 
profitability to reduce the government's deficit. 187 Others charge that the 
ministers are ignoring the economic well-being of local communities in 
favor of environmental concerns. The Public Corporations Board, which 
Teeguarden and Thomas propose, would add another layer of political

185. Recent economic pressures have forced many U.S. timber companies with decades of 
business experience to liquidate assets in takeovers. The pressure is particularly acute in the 
Northeast where the value of private forests has risen rapidly. Anderberg, Wall Street and the 
The Future of New England's Forests, ENVTL. FORUM, Nov.-Dec. 1988, at 19; They Cut Red-
woods Faster to Cut the Debt Faster, N. Y. Times, Mar. 2, 1988, at A16, col. 1; Where Have All 

186. For instance, the public, which owns the SOE, may have limited rights of access to 
information. See supra notes 94-101 and accompanying text.

187. See supra note 81 and accompanying text.
accountability to this picture. The interest groups on such a board can be expected to engage in the same political rent seeking that has been attributed to factions on public utility boards. Finally, one must question how concerned an SOE will be about investors so long as the government stands in the wings to rescue the corporation should it face insolvency.

Decreasing public involvement in forest management will necessitate a reexamination of forestry regulation in the United States. Forest practice laws, where they exist, vary considerably from state to state. If these state rules do not apply to federally owned corporations, Congress may need to pass a federal timber practice act. Certainly, the Endangered Species Act would continue to apply to the forest corporations, but new laws may be needed to protect other resources on federal lands. The natural area protection debate would shift from the proprietary management authority to the sovereign regulatory power of the federal and state governments.

In New Zealand, DOC's mandate was designed to make the agency more accountable for conservation values than NZFS had been. Although the design was successful in the sense that DOC cannot implicitly sacrifice conservation values for logging the way that NZFS did, the mixed nature of DOC's land management objectives still demands some balancing of competing uses. The New Zealand Treasury's requirement that DOC earn revenue from its lands and services means that preservation may still be rejected in favor of more immediately lucrative uses. Furthermore, by excluding the most productive forest land and activity (logging) from DOC's purview, corporatisation has foreclosed a strategy of using revenues from logging to pay for preserving an even larger land area. If a conservation agency is to fund its own programs, it

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188. Teeguarden & Thomas, supra note 2, at 375-76; see supra notes 28, 32-33 and accompanying text.
189. "While the financial objective of the corporation would not necessarily be to maximize profit, there would be a requirement to manage the corporate assets so as to earn at least a public utility level rate-of-return." Teeguarden & Thomas, supra note 2, at 383.
190. See generally P. McKINLAY, supra note 64, at 75 (noting that the government wants the SOEs to have normal corporate channels of accountability). O'Toole would permit forest corporations to go bankrupt. Bankrupt corporate assets would then be sold to adjacent forest corporations or wilderness trusts. In the event there were no bidders, the government would manage the forests on a custodial basis. R. O'TOOLE, supra note 2, at 215. In the U.S. proposals, several forest companies would be created. The number of companies and their small relative size would mitigate the consequences of a bankruptcy. On the other hand, the inability of smaller companies to cross-subsidize operations in less productive areas might increase the likelihood of a bankruptcy.
192. O'Toole believes that some strengthening of the Endangered Species Act may be needed. R. O'TOOLE, supra note 2, at 210.
193. The corporate plan, which spells out performance objectives, is an attempt to make the tradeoffs clear. See supra notes 105-09 and accompanying text.
194. See supra notes 110-13 and accompanying text.
should be allowed to retain and use some productive lands.\textsuperscript{195} O'Toole's proposal for wilderness trusts would be funded by recovering costs from recreation, grazing, and mining uses.\textsuperscript{196} The New Zealand experience teaches that commercially productive lands must be allocated to these trusts so that they can generate enough revenue for preservation management.

Effective institutional reform requires more than a change in mandate. New Zealand erred when it relied heavily on a traditional, centralized bureaucracy as an organizing principle for DOC; as a result, the agency operates inefficiently and has exceeded its budget, leading to increased pressure to favor uses that generate revenue.\textsuperscript{197} The administrative organization of forestry corporations or wilderness trusts in the United States should not adopt the bureaucratic structures of USFS without a careful examination of those structures' potential problems.\textsuperscript{198}

\section*{V
CONCLUSION}

In an atmosphere of rapid, ongoing reform of the entire state sector and of natural resource laws, it is difficult to predict the future of forest management in New Zealand. Corporatisation is stalled; the breakdown of asset sale negotiation has the Government pushing for private management for the duration of timber leases on public forests. However, it is possible to apply the lessons of implementation to similar calls for reform in the United States. The proposals that have been made for corporatisation of forest management in the United States are sketchy at best. Before plunging into such schemes, difficult issues must be resolved concerning the initial allocation of resources, management during the transition, and public accountability. The resolution of these issues will be pivotal for corporatisation to achieve its economic and environmental goals.

The difficult conflicts between competing forest land uses that face USFS will not disappear with the creation of public forest corporations. Instead, the stakes for preservation or production in forests will rise as it becomes more difficult to reverse the land and resource allocation decisions implementing corporatisation.

\textsuperscript{195} A recreation agency could eliminate cross-subsidies by requiring users to pay their own way. However, a conservation agency directed to preserve nature must be supported by subsidies from other users or a budget appropriation.

\textsuperscript{196} R. O'TOOLE, supra note 2, at 216.

\textsuperscript{197} See supra notes 112-15 and accompanying text.

\textsuperscript{198} Although originally designed to make decentralized management decisions, USFS has become more of a centralized bureaucracy in recent years due to the planning process and the additional power assumed by political appointees at the Department of Agriculture. Wilkinson, supra note 8, at 28.
The New Zealand Labour Government first created Forestry Corporation, then announced its intention to sell the state-owned enterprise,\textsuperscript{199} and now proposes to lease forests to private companies. DOC’s continuing fiscal woes raise the possibility that it, too, will not long survive.\textsuperscript{200} Thus, the ultimate lesson of New Zealand’s corporatisation experience may be that corporatisation is not a stable institutional arrangement, but merely a step along the road to full “privatisation.”


\textsuperscript{200} Government Departments Say How They’ll Cope, The Evening Post (Wellington), July 29, 1988, at 8, col. 7. In 1988-89, DOC will sell vehicles, land, buildings, and lay off wage workers to meet a budget cut resulting from overspending during the last fiscal year. See supra note 112 and accompanying text. Further, statutory reform focusing on resource utilization may fragment an already-splintered DOC. The Department has been heavily criticized by industry, for opposing development and meddling in industry’s affairs, and by environmentalists, for not being sufficiently vigilant in preservation efforts. Some critics from both sides suggest that DOC land might be better managed through a wilderness trust. For an example of such a trust, see R. O’Toole, supra 2, at 216.