

*J. Craig Patrick Leahy Dennis DeConcini*

COLLOQUY FOREST SERVICE APPEALS

Mr. Craig: Mr. President, I would like to raise a matter contained in the Conference Report with the distinguished floor manager of the bill. If I may have his attention.

Mr. Byrd: I will yield to the Senator from Idaho.

Mr. Craig: Mr. President, as the floor manager knows, when the Senate was considering the Fiscal Year 1993 Interior Appropriations bill, I, along with Senator DeConcini offered an amendment concerning the Forest Service's administrative appeals process. Our efforts in this regard were, in my opinion, a reasonable and balanced approach to resolve the debate over the future of the Forest Service's appeals process. During the Conference on this bill, the Craig/DeConcini amendment was modified. I have had the opportunity to review these modifications and I am satisfied with the results of the Conference.

Mr. DeConcini: Will the gentleman yield?

Mr. Craig: I will be happy to yield to my friend from Arizona.

Mr. DeConcini: I thank the Senator from Idaho. As a co-author of the Craig/DeConcini amendment, I am also satisfied with the result of the Conference on this matter. The Chairman of the Agriculture Committee deserves special recognition for his and his staff's efforts to resolve some of the concerns that had been raised with the amendment as it passed the Senate. I feel that his suggested changes to the Craig/DeConcini amendment were constructive and resulted in a better final product. Thanks to Senator Leahy, we now have an Administrative appeals process mandated by statute.

Mr. Leahy: Will the Senator from Arizona yield?

Mr. DeConcini: I yield to my friend.

Mr. Leahy: Mr. President, both Senator Craig and Senator DeConcini are to be commended for their efforts to develop and pursue their amendment concerning Forest Appeals. While I did not support it when it was considered by the Senate, I am appreciative of their willingness to listen to my concerns and make the necessary modifications. Consequently, I can now support this provision. I feel that through our collaborative efforts, we have now preserved an appeals process that gives the citizens of this country an opportunity to participate in the management of their National Forests.

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Mr. Craig: I wonder if I may engage the Chairman of the Agriculture Committee and the Senator from Arizona in a colloquy to clarify a few points with respect to the provision contained in the Conference report concerning Forest Service appeals. First, as both of the Senators know, the Forest Service has a separate appeals process concerning licenses and permits. Is it their understanding that the appeal provisions contained in the Fiscal Year 1993 Interior Appropriations bill would not affect this separate appeals process?

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Mr. DeConcini: The Senator from Idaho is correct. As both a co-author of the original Craig/DeConcini amendment and a Conferee, it was my intent that the appeal provision contained in this legislation, HR 5503, should only apply to decisions implementing Forest plans and that the separate appeals processes for the Forest Plan themselves and decisions on licenses and permits should remain unaffected by this legislation.

Mr. Leahy: I concur with both Senators in this regard.

Mr. Craig: On another matter, the amendment that was adopted by the Conference Committee provides that an individual may appeal a Forest Service decision so long as that person "...was involved in the public comment process" for the decision under appeal. It is this Senator's opinion that the Forest Service must establish a record in order to identify those who have met the standing requirement contained in this legislation. I wonder if the Senator from Arizona and the Senator from Vermont have any thoughts on this issue.

standing  
record  
requirement

Mr. DeConcini: The Senator from Idaho raises an important point. The Craig/DeConcini amendment as passed by the Senate was criticized by some because they were under the mistaken impression that it may limit participation in the appeals process. Rather, it was this Senator's intent to encourage participation in the public involvement processes associated with decisions made by the Forest Service. Consequently, with respect to the issue of standing, I feel that it is imperative that as the Forest Service implements the appeal provision in this legislation, they must clearly define a process by which the public comments that are received, in whatever form, are clearly documented. If there ever is a question of standing, I feel that the burden of proof should be on the Forest Service to prove that an individual does not have standing rather than the appellant having to prove that he or she is eligible to file an appeal.

burden on FS

Mr. Leahy: I wholeheartedly concur with the Senator from Arizona. In fact, one of my suggested modifications to the appeal provision provides for a clearly defined public comment

period for each individual Forest Service decision. I felt this was necessary because as the original Craig/DeConcini amendment was drafted, in order for a person to have standing, they must have participated in the public involvement process for the underlying decision. The problem with this is that current Forest Service practice does not require a uniform public involvement process for each individual decision. Therefore, my modification to the Craig/DeConcini amendment will add clarity to the appeals process by providing a statutorily mandated public comment period during which an individual's participation will establish standing to appeal. This will prevent confusion in the future on this issue.

STAY

Mr. Craig: One final matter, the appeals provision contained in the Conference Report provides that the automatic stay of action will be lifted when; 1) no appeal has been filed; and 2) when the Secretary fails to act on the appeal within the time frames allowed. The language does not, however, specify what will happen to the stay when the appeal is decided within the timeframes spelled out in the bill. It was certainly my intention that stay of action be lifted 15 days after the decision on the appeal was decided within the deadlines contained in the bill. I wonder if my colleagues share my interpretation in this regard.

Mr. Leahy: The Senator from Idaho's interpretation of this matter is entirely accurate. We did indeed intend for the stay of action to be lifted 15 days after the disposition of the appeal within the time frames contained in the bill. I am confident that as the Forest Service implements this provision, they will recognize that this was an inadvertent error and draft the regulations accordingly.

Mr. DeConcini: Mr. President, I share the opinion of both the Senator for Idaho and the Senator from Vermont in this regard. It is clear that we intended for the stay of action to be lifted 15 days after the disposition of the appeal regardless of whether it was within the amount of time provided for the decision on the appeal or not.

Mr. Craig: I thank the Senators for their clarifications of these issues. In closing, while we have mentioned a number of issues, there are still several that will be resolved during the Forest Service's rulemaking process. We look forward to working with the Forest Service in this regard. Mr. President, I also want to thank the floor manager for his leadership in moving this appeal provision forward.

Mr. Byrd: I thank the Senator from Idaho. I want to say that I share the interpretation of the Senators on the intent of the language in the Conference Report concerning Forest Service appeals.