

QUALMS REGARDING THE  
METHOD BASED ON *LAND VALUE*  
USED BY  
THE UNITED STATES FOREST SERVICE  
IN ESTABLISHING PERMITTEE FEES

THE LEGACY OF  
FRANKLIN ANDREW DILL

THE **1970** APPRAISAL OF ECHO LAKES PROPERTIES  
**1967 TO 1972**

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## A. PRELUDE

In 1967 Raffi Bedayn requested on behalf on the Board of the Echo Lakes Association an explanation for the methodology used by the El Dorado Assessors Office in determining the value of the permittee lots at Echo Lake. The Chief Appraiser for El Dorado County, Myron R. Harrison, responded<sup>1</sup> with the five step procedure that the county assessor used (uses) in determining value. Harrison then went on to indicate that their appraiser used sales [of cabins] in the Echo Road Tracts, Fallen Leaf Lake Tracts and Echo Summit Tracts as indicators of value. The **value** being taxed by El Dorado County was not **land value** but the value of the **right of possession**. The simple formula used by the assessor's office was

$$\text{Value of Right of Possession} = \{\text{Sale Price}\} - \{\text{Value of Improvements}\}$$

Harrison then added a twist. "It is our opinion that the **lower Echo Tract** [emphasis added, ed.] was a very desirable tract and an allocation of \$4,000 was subtracted from our unit appraisal as an allocation to possessory interest." In other words,

$$\text{Allocation to Right of Possession} = \{\text{Unit Value}\} - \$4,000$$

And Harrison finally pointed out that "to lower the **possessory interest** would only raise the **allocation to improvements**" and "in order for us to reduce the assessment, we would have to change our unit appraisal". In other words, Harrison wasn't going to change an appraisal.

Notice that in this initial foray by the Board into the world of land appraisals, the land itself had no inherent value that could be determined in a rational, logical, or mathematical way. Hence there was no inherent unfairness in what El Dorado County was doing with regard to methodology. However, there could have been unfairness in the appraisal of **unit value**.

This was the start of a very successful endeavor on the part of the Board of the Echo Lake Association over the years from 1967 to 1972 to achieve an understanding of the appraisal of lots on the several tracts making up the Echo Lakes Association and to protect every permittee from inflated, unfair, and illegal fee increases. In what followed had nothing to do with El Dorado County anymore – and all to do with the United States Forest Service (USFS).

In March of 1967, an Echo Road permittee, Francis Baerwold, brought up to the board his concerns about the "inequities and apparent absurdities" of the USFS fee-setting methods.<sup>2</sup> He contended that lots should be appraised (1) **individually**; (2) according to **accessibility**; (3) according to **size**; and finally (4) according to **months of usability**. He further commented that

The original U. S. Forest Service contracts with the permittees stated that lots would be assessed according to **USE** [cap. and emph. added], but this policy was unilaterally changed to assessment according to **LAND VALUE**.

This switch to **land value** from **land use** resulted in extremely inflated (unfair) and illegal

assessments made by the USFS in the 1969 - 1972 appraisal period.

The next two years were quiet while the Association waited for the 1969-1970 appraisal to be completed and offered by the USFS. Then at the March 10, 1969 meeting of the Board of directors presided over by then president Harold Wollenberg, issues with the emerging appraisals heated up a bit.<sup>3</sup>

Once again, the Echo Summit permittee, Francis Baerwold, brought to the Board's attention that his Echo Road site fee increased from \$125 to \$235 [an 88% increase in fees in a single year.] This increase would apply to both the Echo Road and Echo Summit Tracts. The Atwood Tract benefitted somewhat by having their fees increased from \$100 to \$125 [a 25% increase]. This appraisal was based on "fair market value of **comparable** (?) private land".<sup>3</sup>

President Wollenberg then offered three options to the Association.

1. Do nothing
2. Register an Association appeal to the Forest Service
3. Have an outside agency or attorney perform the appeal

Based upon the then existent appraisals harmful to the Echo Summit, Echo Road, and Atwood permittees alone [the appraisals for the lakeside tracts hadn't been completed as yet], the Board unanimously moved:

**That the Association immediately file a notice of intent to appeal the fee increases for the tracts [Road, Summit and Atwood only] which have already received their increase notices.**

The Board at the very beginning was willing to have "the many" stand up for and protect. "the few" who had already been harmed. Stuart Dole (South Shore) and Jules Eichorn (Echo Road) were designated to go over the appraisal methodology with the USFS (Placerville Office).<sup>3</sup> Road, Summit and Atwood permittees were going to be represented and protected by **their** Association.

In May of 1969, Stuart Dole (South Shore) in the annual report of the Board, informed the Association members that the Association had notified the USFS Supervisor's Office in Placerville of their intention of appealing these fee increases.<sup>4</sup>

Carrying the burden for Dole and Eichorn, Ed Thomas (Echo Road) met with Ellis Smart, Recreation Staff Officer, Eldorado National Forest in Placerville, California. The purpose of the meeting was to investigate exactly how the USFS generated their appraisals for the Echo Road, Echo Summit and Atwood Tracts of the Echo Lakes Association.<sup>5</sup>

Thomas found out the following facts:

- (1) The original appraisals for the seven lakeside tracts (South Shore, North Shore, Mermaid Cove, Channel, Juniper, Hemlock, and Island) were significantly higher than those of the three tracts along the road. This appraisal was rejected by the Regional Office.
- (2) An independent land appraiser from Stockton, CA was hired to perform a second independent land appraisal of the seven tracts mentioned above.

(3) The procedure used for the three road tracts (Echo Road, Echo Summit and Atwood) were done differently.

Seven sales of privately owned residences in Echo View Estates, Meyers Valley, with a view looking up toward Echo Summit were used to find an indicated value for Echo Road and Echo Summit Tracts. After making a uniform \$2,500 allocation for development for each of the seven sales, the average “indicated value” (i.e., value of right of possession) was determined to be \$4,500. At the assumed rate of 5%, this produced a yearly permittee fee of \$225.00

Atwood Tract sites were compared to (1) Five sales in Phillips (Ralston Trail and Mt. Ralston); and (2) three sales of private properties in a valley off Hi. 89 (Echo Summit). After an adjustment for dirt road access and poor water system (a \$600 decrease), the average appraisal value used was determined to be \$3,500 with a resultant yearly fee to the permittee of \$175.00

As a result of his finding, Thomas remarked to the Board in the meeting of June 13, 1969<sup>6</sup> that the USFS appraisal was done as “objectively as could be”. However, he also indicated to the Board in his report<sup>5</sup> that the Board should take action to (1) maintain the lease fee at a more reasonable level; and (2) plan to attack the 5% figure as being inequitable.

In 1970, the Board retained the services of Franklin A. Dill, attorney at law, in San Francisco, California. It was a fortuitous choice determined with the help of Vern Goodin (Hemlock), Mark Hamilton (Mermaid Cove), Stuart Dole (South Shore), and in the background (as usual) Richard Leonard (South Shore)<sup>7</sup>. All these men were attorneys with practices in San Francisco. Bumping into Mr. Dill was not by luck but by a decided study.

In June of 1970, president Joseph Pickering (South Shore) informs the Association membership of the Board’s choice of Dill.<sup>8,9</sup> Remember, by this time, the USFS had already done their first appraisal (it will turn out to be that of one **Melvin E. McLaury**) which had been rejected at their regional level. They then hired an appraiser out of Stockton (**Walter F. Willmette**, M.A.I.) to review [issues or problems with] McLaury’s initial attempt.

## B. THE LETTER

Dill's experience, qualifications, and training were impeccable. He had served in the Lands Division of the U. S. Attorney General's office in condemnation and right of way proceedings and since that time continued to work in land matters involving condemnation.<sup>9</sup> He got to work quickly and by the end of September of 1970 was able to deliver to **Douglas R. Leisz**, Regional Forester, San Francisco, CA the appeal of the USFS appraisals of 1969 -1970.<sup>10</sup>

This letter and the analysis it contained form the most important substance of this short history. Dill's legacy in this matter was to leave the 1970 Association and all future Associations with a well thought out analysis of "appraisal" with respect to "land value". By the time he concluded with his commentary to Leisz, it was clear how troubling an appraisal methodology based on **land value** can be.

Dill starts with the list of appraisers and respective appraisals that will play a part in the subsequent analysis:

Four primary appraisals were reviewed and analyzed:

- |   |                |
|---|----------------|
| 1. USFS appraisal of <b>Robert A. Smart</b>         | Sept. 25, 1968 |
| 2. USFS appraisal of <b>Melvin E. McLaury</b>       | Jan. 19, 1970  |
| Neither of these appraisers were licensed.          |                |
| 3. Appraisal of <b>Walter F. Willmette</b> , M.A.I. | Aug. 15, 1969  |
| 4. Appraisal of <b>Noble T. Murray</b> , I.F.A.     | Sept. 29, 1970 |

Three secondary appraisals were also reviewed and analyzed:

- |   |                |
|---|----------------|
| 1. Appraisal of <b>Walter F. Willmette</b> , M.A.I.<br>Properties at Fallen Leaf Lake     | Aug. 15, 1969  |
| 2. Appraisal of <b>J. Brice Leggett</b> , M.A.I.<br>Properties at Fallen Leaf Lake Tract  | July. 10, 1970 |
| 3. Appraisal of <b>William M. White</b> , M.A.I.<br>Properties at Fallen Leaf Lodge Tract | July 16, 1970  |

As mentioned above, McLaury had been the original evaluator chosen by the USFS. At this point one cannot call him an "appraiser" since he had neither the training, qualifications, nor experience in this type of real estate activity. Willmette was subsequently hired by the USFS to presumably replace the rejected opinion of McLaury [although this was not to ensue]. **Noble T. Murray**, I.F.A. was chosen by Dill to perform an appraisal of Echo sites for the Association and for his eventual characterization and condemnation of the USFS appraisal of McLaury.

Dill then states the focal issue of the problem facing the Association:

How can a fair and rational analysis of two or more appraisals of the same property be performed. . .what are the principles involved?

Dill answers this query and states explicitly that he will use the following seven well-established tests to compare appraisals:

1. Qualifications and experience of the respective appraiser; [Ed. Clearly specified and showing intimate knowledge of the area in which the lots are located and also of the type of lot (private (State) vs. fee-permit (Federal))]
2. The nature of the **interests** and **estate** to be valued in the property;
3. The physical characteristics of the property;
4. Availability of access, sewers and utilities;
5. Utility of the property;
6. Comparable sales; and
7. REASONS, BASIS and ANALYSIS of the particular appraiser.

He indicates that Murray is well qualified and included his experience, qualifications, and training in his appraisal. McLaury was unqualified and there was no mention of his qualifications, etc. in his appraisal. Willmette, being a member of the American Institute of Real Estate Appraisers (AIREA), was especially well qualified. And it is of interest to note that his appraisal, which supported the Association's appraisal, was rejected by the USFS, the organization that hired him in the first place.<sup>11</sup>

On the nature of the **interests** and **estate** to be valued in the property, Dill provides 15 reasons why appraisal based upon **land value** is doomed to failure, error and unfairness<sup>10</sup>.

In a normal typical appraisal, all that needs be done is to determine the **fair market value of a privately owned lot** with all the attached "bundle of rights" that come along with fee title. Government lots occupied under permit are not sold in the marketplace and any rights that the permittees have are severely limited and restricted.<sup>10</sup> Dill shows that the appraisals of Murray and Willmette take the severe limitations of right into account in their estimations. McLaury (and the USFS) ignore these rights presumedly as being valueless and irrelevant.

These 15 rights to private ownership and lack thereof to permit lessees, according to Dill, must be included in any attempt at appraisal based upon **land value**. The following chart lists this "bundle of rights".

<b>OWNER'S RIGHTS</b>	<b>PRIVATE LOT</b>	<b>USFS LOT</b>
1. <b>RIGHT TO SELL OR TRANSFER</b>	<b>YES</b>	<b>NO</b>
2. <b>SEVERE RESTRICTIONS AS TO BUILDING</b>	<b>NO</b>	<b>YES</b>
3. <b>SEVERE RESTRICTIONS AS TO CUTTING OF TREES</b>	<b>NO</b>	<b>YES</b>
4. <b>RIGHT TO SUBLET</b>	<b>YES</b>	<b>NO</b>
5. <b>RESTRICTION ON USE OF LOT TO FAMILY</b>	<b>NONE</b>	<b>YES</b>
6. <b>RIGHT OF USFS TO TERMINATE USE</b>	<b>NONE</b>	<b>YES</b>
7. <b>UPON CONDEMNATION, OWNER HAS RIGHT TO VALUE OF LAND AND IMPROVEMENTS</b>	<b>YES</b>	<b>LIMITED</b>
8. <b>RIGHT TO USE PROPERTY FOR OWNER'S MAIN HOME</b>	<b>YES</b>	<b>NO</b>
9. <b>RIGHT TO ADVERTISE OR USE SIGNS</b>	<b>YES</b>	<b>NO</b>
10. <b>RIGHT TO CONSTRUCT FENCES</b>	<b>YES</b>	<b>NO</b>
11. <b>FIRE PROTECTION AVAILABLE</b>	<b>YES</b>	<b>NO</b>
12. <b>LIMITATION UPON USE OF PREMISES FOR ANIMALS</b>	<b>NO</b>	<b>YES</b>
13. <b>TENURE</b>	<b>FULL</b>	<b>LIMITED</b>
14. <b>RIGHT TO OBTAIN LOAN</b>	<b>YES</b>	<b>NO</b>
15. <b>LIMITATION IN FUTURE BY FUTURE REGULATIONS OF USFS (MOU)*</b>	<b>NO</b>	<b>YES</b>

Dill continues in this section of his analysis that the USFS used the following formula to determine a use fee based on **land value**:

$$\text{Use fee} = 5\% \text{ (fair market value)}$$

with the following two assumptions (USFS) made about the lot:

- (1) it was to be considered as if it were privately owned (of course, without any of the "bundle of rights" normally associated with private ownership); and
- (2) there are absolutely no limitations timewise (permittee can use his/her lot 365 days of the year, no restrictions).

It is clear that neither USFS assumption was valid. The first was completely invalidated by the list of 15 rights that a permittee does NOT have. The second was flatly a falsehood.

The second premise falls of its own weight in two ways: (1) physically; and (2) by policy. Physically, (1) the water level in the lake is lowered every year on or around Labor Day and is not allowed to rise (by policy) to normal levels until the following June; (2) winter weather is severe and dangerous with extreme cold, snowfall and blizzard conditions prevailing; and (3) the access road is blocked by snow drift throughout the winter (first fall until May 30). These three physical conditions strongly limit the use to three or four months of the year.

Of greater import is the policy of the USFS itself. In written letters to each permittee, the USFS clearly states “that cabins in a summer tract are to be used only as vacation homes – not as year-long residences.”<sup>10</sup>

Dill then showed that the USFS failed in

3. The physical characteristics of the property;
4. Availability of access, sewers and utilities;
5. Utility of the property;
6. Comparable sales

With regard to the seventh and last test to evaluate different appraisals, Dill brings up even more glaring inadequacies in the USFS **land value** based methodology:

1. USFS failed to compare to Donner Lake sales (which would have resulted in a high value given to Echo lots) and then produced values for Echo lots that were higher than Donner Lake values.
2. The USFS admitted that their appraisal was not made by a real estate valuation expert (McLaury was not a member of the AIREA).
3. The USFS could not internally agree on who they wanted to perform the appraisal. In a letter of Irwin E. Bosworth to Douglas R. Leisz dated September 11, 1969, Bosworth states “I chose Willmette’s appraisal because it was done by a professional and therefore should be valid”. Evidently this remark fell on deaf ears. Leisz ignored and rejected the appraisal of Willmette, accepted and put forward the appraisal of McLaury and lost at hearing.<sup>10, 11</sup>

Dill then produced a chart of McLaury’s estimate along with the two licensed appraisers’ opinions.<sup>10</sup> The chart clearly shows the “opinions of McLaury (those backed by USFS) were “unrealistic, excessive and unfair.”<sup>12</sup>

CHART COMPARING THE OPINIONS OF  
**McLAURY, WILLMETTE AND MURRAY**

TRACT	OPINION(APPRaisal)		
	USFS I McLaury	USFS II Willmette, M.A.I.	ELA Murray, I.F.A.
Mermaid Cove			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800
North Shore			
Frontage	\$17,800	\$7,000	\$8,700
Non-frontage	-	-	-
Hemlock			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800
South Shore			
Frontage	\$12,500	\$6,000	\$8,500
Non-frontage	\$7,500	\$2,000	\$3,600
Island	\$20,000	\$8,000	\$10,500
Channel			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800

It is to be noted that the appraisals produced by the qualified professionals Willmette and Murray are in the same ballpark – and well below “95% of the original appraisal” put forward and advocated by the USFS.

But Dill was still not through. Based upon his relationships with certain companies in San Francisco, he was able to obtain recreational rental costs for lakeside mountain cabins in several counties in California. These rental fees [comparable lessee permittee fees] are given in the following table. [Pacific Gas and Electric Co. (PGE); Southern Pacific Railroad (SP)]

LESSEE	LOCATION	YEARLY LEASE FEE
PGE	BUCKS LAKE, PLUMAS CO.	\$125
	SILVER LAKE, AMADOR CO.	\$75
	PHILLBRICK RESERVOIR, BUTTE CO.	\$75 to \$100
SP	BEAR CREEK, ALPINE MEADOWS, PLACER CO.	\$120 - \$135

Dill then concludes that based upon these transactions with Pacific Gas and Electric Company and Southern Pacific that “a yearly fee over \$200 for the Echo Lake lots would appear to be excessive. [Note: This applies to **any** Echo Lake lot whether out along the road on the summit or alongside the Lake with lake frontage.] [Note Well! The Hearing Board ultimately agreed with and advocated the use of comparable lessee rental figures as appropriate in determining correct and fair permittee yearly fees.]

Dill finished with an important principle and a list of important land decisions using this principle. The principle stated

**An opinion is worth no more than the reasons upon which it is based**

The court cases Dill used that were based on this principle:

- Long Beach, etc. Dist. vs. Stewart, 30 Cal 2d 763, 773
- People vs. McReynolds, 31 C.A. 2d 219, 227
- People vs. LaMacchia, 41 Cal. 2d 738
- U.S. vs. Johnson, 285 Fed 2d. 35
- State of Washington vs. U.S. 214 Fed. 2d 33, 43
- 5 Nichols, Eminent Domain, 18.42 (1) pg. 240

Although the record of Leisz response to Dill’s letter is lost to us, it is more than evident that he must have rejected every argument Dill made.<sup>11</sup> It was evident that Leisz made an about face and returned to the original opinion of McLaury and that Dill subsequently filed an appeal with the Hearing Clerk of the Department of Agriculture. If Leisz could have appreciated Dill’s careful analysis and well reasoned and substantiated argument, the whole matter could have been easily and quickly resolved at the Regional level by administrative relief.

Instead Dill and the Association were forced into mitigation.

## C. THE APPEAL

Subsequently, Dill on April 3, 1971 went to hearing.<sup>11</sup> Amongst the twelve sections of his **Grounds for Appeal**, Dill produced the following important points:

1. The USFS appraisals do not meet the proper standards of determining **Land value**; to wit
  - a. the USFS appraisers do not have the extensive experience , training, and background in appraisal and valuation matters . . .
  - b. the USFS appraisers did not make as extensive an investigation as the appellants' appraiser. . .
  - c. the USFS appraiser did not follow correct appraisal procedures.
  - d. the USFS appraisals did not take into consideration AS THEY SHOULD HAVE certain sales relied upon by Appellants
2. The value of the subject lots and fees charged are directly contrary to the opinion of **Walter F. Willmette**, M.A.I. (USFS employed)
3. The USFS set up a standard to apply and then did not follow their own standard; to wit,

*Bulletin of the U.S. Department of Agriculture*

"Fees for Recreation Residence Sites on National Forest System Lands"  
*Paragraph 5*

"Lot values are appraised following principles and approaches recognized by professional organizations such as the American Institute of Real Estate Appraisers (AIREA). **AND ONLY APPRAISERS SPECIALLY TRAINED IN THESE PRINCIPLES AND APPROACHES ARE USED.**"

4. The primary (INITIAL) appraiser used by the USFS was **not a member** of the AIREA. (This was **Melvin E. McLaury**)
5. The secondary appraiser, **Walter F. Willmette**, M.A.I., used by the USFS was a member of AIREA and **his appraisal was rejected** by the USFS
6. The fees are illegal and greatly in excess of the amount that may be properly charged per

**PUBLIC LAW 137 - AUGUST 31, 1951. TITLE V**, to wit

"Such fee shall be **fair and equitable**, taking into consideration direct and indirect cost to the government, value to the recipient . . . "

7. The USFS bases their fees on a technical hypothesis that the appellants theoretically could use their cabins 365 days of the year, when in fact

(a.) weather conditions preclude such usage;

[also, (b.) the USFS, itself, prohibits such usage

(c.) the Lahontan water district prohibits such usage; and

(d.) the water authority (then PGE; now EID) prevents such usage.

Usage is restricted, by **mandated authority**, to 3 months per year. Added by ed.]

8. The fees are illegal and excessive and violate and did not comply with **Regulation 36 CFR 251.3 (U-12)** (See FSM 2715)

9. The fees are excessive in that they are based upon an arbitrary percentage rate of 5%. (Sec. 2715.11 of the USFS FSM sets this 5% rate without any basis or justification.) The Forest Service Manual (FSM) is **not a law** nor a **regulation binding on appellants**.

10. By rejecting the appraisal of **Walter F. Willmette, M.A.I.** the USFS violated their own manual, to wit **Sec. 2721.23e paragraph 2**.

11. [Furthermore!] **Sec. 2721.23e paragraph 2** of the USFS FSM violates and does not comply with **Public Law 137 - August 31, 1951** (See 6., above)

12. The fees violate the *terms of the permits* since they are based on the **assumed usage of 365 day** specifically prohibited by the USFS, [Lahontan, Water Authority] and the physical location of the lots and lack of access and utilities

The **permits** expressly provide that the

**Charges (fees) are to be on a basis commensurate with the value of**

LAND USE

**authorized by such permit**

[NOT LAND VALUE]

13. The fees charged by the USFS were based on the incorrect premise that the Appellants had **unlimited tenure in the lots they occupied**.

Since the USFS (1) RENEW PERMITS; AND (2) ALLOWS SALES ON OCCASION, Appellants do not have unlimited tenure. A value based on such practices on the landlord, the USFS, does not form a part of the “value to the recipient [the permittee]”

Dill sites the following ruling/opinion from the United States Supreme Court for this last. . .

U.S. Supreme Court United States v. Petty Motor Co., 327 U.S. 372 at page 380:

“Changeable intentions are not an interest in land, and although no doubt such intentions may have added practically to the value of the petitioner’s holding, they could not be taken into account in determining what the respondent should pay. They added nothing to the tenant’s legal rights, and **legal rights are all that must be paid for. . . .**”

## D. THE JUDGEMENT FOR APPELLANTS

On December 11, 1972 the following conclusions and mandates were handed down by the Hearing Board.<sup>12</sup> The board was composed of the following five individuals:

1. Paul H. Rapp, Alternate Chairman
2. Ralph Harvey Member
3. Wingate E. Underhill, Member
4. J. Edgar Chenoweth, Member
5. Melvin L. Cotner, Member

All five members signed off on the following three recommendations:

The Chief of the Forest Service shall remand this matter to the Regional Forester [**Douglas R. Leisz**, Regional Forester, San Francisco, CA] for preparation of a **new appraisal report by a qualified appraiser** [emphasis added, ed.]

The new appraisal should:

1. Explain all adjustments to sale price of comparable private sales due to appreciation of land values from date of sale to date used for the appraisal, and any adjustments to sale price due to the fact that the sale is not all cash but subject to financing arrangements; contain a well reasoned analysis as to **size and frontage** of a typical lot in a tract or subdivision of a tract; and explain why a **front foot** or an **acreage** basis is appropriate.
2. Explain why comparable private sales selected for consideration are **deemed appropriate and comparable** – and why private sale [Donner Lake] suggested by appellants were not used or considered, . . .
3. Contain **market rental data** for relevant **market areas**, so that the Forest Service can make a well-informed decision to the appropriateness of use of the 5 percent formula or **whether a different percentage should be used for mountain lake properties here involved.**

Chenoweth then adds his own view:

1. In my opinion, these proposed increases in annual fees are **unrealistic, excessive and unfair.** It is obvious the Forest Service should reconsider these increases and adopt some system of fees that will be less drastic and precipitous. **It is my belief that the 5 percent formula, or any other similar fixed, arbitrary amount, cannot be applied with fairness in all cases.**

The result represented a complete victory for Dill and the Association. They not only won one fee reduction, Dill got a second one as well.

As I have shown, what Dill did for the Association and its members many years ago, on the face of it, was simply to win a fee-increase appeal. Below the surface, however, was his legacy of strength. If an Association should be faced with an appraisal that is “faulty” or plain downright “illegal” set up guidelines for proof. This is what Dill did many years ago. Evidently he asked himself what he needed to do and then set about building the logical framework to accomplish his goal.

I believe Dill’s legacy to the Echo Lake community were the seven well-established tests that he used with such force in his arguments that resulted in victory for the Echo Lakes Association in 1972. Furthermore, he showed for the Association that an appraisal methodology based on **land value** will lead to error. And the Hearing Board agreed with him advocating instead appraisals (opinions) based upon **Land Use** [i.e., comparable rentals that other lessees are paying for similar environments – rural mountain cabins near lakes.]

Maybe it’s time to encourage and support a different approach and methodology for fee-permit lot appraisal.

However, change is hard to come by. So here’s a snippet from the *Tibetan Book of Living and Dying* that might aid the reader in the art of change.

“Autobiography in Five Chapters”<sup>13</sup>

- 1) *I walk down the street.  
There is a deep hole in the sidewalk.  
I fall in.  
I am lost. . . I am hopeless.  
It isn’t my fault.  
It takes forever to find a way out.*
- 2) *I walk down the same street.  
There is a deep hole in the sidewalk.  
I pretend I don’t see it.  
I fall in again.  
I can’t believe I’m in the same place.  
But it isn’t my fault.  
It still takes a long time to get out.*
- 3) *I walk down the same street.  
There is a deep hole in the sidewalk.  
I see it is there.  
I still fall in . . . it’s a habit.  
My eyes are open.  
I know where I am.  
It is my fault.  
I get out immediately.*
- 4) *I walk down the same street.  
There is a deep hole in the sidewalk.  
I walk around it.*
- 5) *I walk down another street.*

## REFERENCES

1. **1967. A.** Letter from **Myron R. Harrison** to **Raffi Bedayn**, **April 28, 1967**
2. **1967. B.** Minutes of the Echo Lakes Board Meeting, **March 13, 1967**
3. **1969. A.** Minutes of the Meeting of the Board of Directors, **March 10, 1969**
4. **1969. B.** Minutes of the Annual Meeting of the Board of Directors, **May, 1969**
5. **1969. C.** Report of **Ed Thomas** to the Board **May 9, 1969**
6. **1969. D.** Minutes of the Meeting of the Board of Directors, **June 13, 1969**
7. **1970. A.** Minutes of the Meeting of the Board of Directors, **March 16, 1970**
8. **1970. B.** Minutes of the Meeting of the Board of Directors, **June 12, 1970**
9. **1970. C.** Letter from the president to the Association, **June 12, 1970**
10. **1970. F.** Letter from **Franklin A. Dill** to **Douglas R. Leisz**, **Sept. 29, 1970**
11. **1971. B.** Letter FRANKLIN A. DILL to HEARING CLERK, **April 3, 1971**
12. **1972. A.** Judgement of the Hearing Board, **December 11, 1972**
  
13. Portia Nelson in Sogyal Rinpoche, *The Tibetan Book of Living and Dying* (HarperSanFrancisco, 1994), pp. 31 - 32.

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a. A copy of Murray's appraisal . . .

b. Four primary appraisals . . .

Three secondary appraisals . . .

c. Dill's guidelines for making a fair and rational appraisal . . .

d. Dill proceeds to discuss in detail the failures . . .

1. **QUALIFICATIONS AND EXPERIENCE . . .**

2. **THE NATURE OF THE INTERESTS AND ESTATE . . .**

3. **THE PHYSICAL CHARACTERISTICS . . .**

4. **AVAILABILITY OF ACCESS, . . .**

5. **UTILITY OF THE PROPERTY**

6. **COMPARABLE SALES**

7. **REASONS, BASIS AND ANALYSIS . . .**

e. Dill finished with the following conclusions and requests

**1971. A.** Letter from HAMILTON & KING to Franklin A. Dill **Jan. 5, 1971**

**1971. B.** Letter FRANKLIN A. DILL to HEARING CLERK **April 3, 1971**

**F. S. Docket No. 226** UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE BOARD OF FOREST APPEALS

a. Appellants: ECHO LAKES ASSOCIATION

STAN FREEBORN

NORMAN F. BROWN

VERNON L. GOODIN

RUSSELL LaBELLE

MARJORIE W. BOYNTON

**1972. A.** Judgement of the Hearing Board, **December 11, 1972**

## II. OUTLINE

1967

### 1967. A. Letter from **Myron R. Harrison** to **Raffi Bedayn** April 28, 1967.

- a. Bedayn requested that the El Dorado County Assessor explain how the county came up with the 1967 assessment of “Forest service homesites in the Echo Lake area.”
- b. Harrison’s response went to explaining the appraisal process:
  1. Obtain sales records from El Dorado County for the last four years.
  2. Mail out questionnaires regarding price, terms, etc.
  3. Appraiser makes field inspections of similar properties separated into different areas. Making an allocation for structure, furniture and personal property. The appraisal is then calculated to be  
Price - Allocation = Value of “right of possession”
  4. Another field inspection is made to determine the “fair market value.” A portion of this total appraisal is allocated as “structure.” All known sales data (?) is considered in addition to many verbal conversations with owners and Forest Service officials.
  5. Final appraisals were reviewed and mailed to owners.
- c. Harrison claimed that in the case of Echo Lake, the appraiser used sales in the Echo Road tracts, Fallen Leaf Tracts and Echo Summit Tracts.
- d. Harrison considered the “Echo Tract(?)” to be very desirable and an allocation of \$4,000.00 was subtracted from the unit appraisal as an “allocation to possessory interest.”
- e. Harrison comments that “to lower the possessory interest would only raise the allocation to improvements”!  
And to “reduce our assessment, we would have to change our unit appraisal.”!

### 1967. B. Minutes of the Echo Lakes Board Meeting, 3/13/67. [Frances Best, Secretary.]

- a. It is reported that the Forest Service usually appraised lots at 5% of the market value of comparable *private lots*.
- b. **Francis Baerwold**, an Echo Road permittee, provided a documented account of inequities and apparent absurdities in the U. S. Forest Service fee-setting methods. He contended that lots should be appraised: (1) individually; and (2) according to accessibility, size, and months of usability.
- c. He pointed out that his lot was appraised at \$11,900 (producing a \$595 fee).
- d. He also reported that the **original U. S. Forest Service contracts with the permittees stated that lots would be assessed according to USE**. This policy was unilaterally changed to *assessment according to LAND VALUE*.
- e. The Board felt that the recent fee increases were unreasonable and at his meeting resolved to investigate the retainment of an attorney.

## 1969

### **1969 A.** Minutes of the Meeting of the Board of Directors, **March 10, 1969**

- a. The president was Harold Wollenberg.
- b. Baerwold reported that his Echo Road site fee increased from \$125 to \$235 (an 88% increase). This same increase applied to the rest of the Echo Road Tract as well as the Echo Summit Tracts. However, the Atwood Tract increased from \$100 to \$125 (a mere 25% increase).
- c. The appraisal was based on fair market value of **comparable private land**.
- d. Wollenberg stated the options open to the Assn.
  1. Do nothing
  2. Register an Association appeal with the Forest Service
  3. Have the NFRA or Attorney Fogerty do the above for us

### **1969 B.** Minutes of the Annual Meeting of the Board of Directors, **May, 1969**

- a. Stuart R. Dole (South Shore) informs the membership that the Board has sent a notice of intent to appeal to the Placerville Office of the USFS

### **1969. C.** Report of **Ed Thomas** to the Board, **May 9, 1969**

- a. A meeting occurred with Mr. Ellis Smart, Recreation Staff Officer, Eldorado National Forest, Placerville, CA. The purpose was to find out how the USFS determined the fees for the three Echo Lake Road Tracts.
- b. Appraisals for South Shore, North Shore, Mermaid Cove, Channel, Juniper, Hemlock, and Island were significantly higher than those of Echo Summit, Echo Road and Atwood Tracts.
- c. Ellis said that these appraisals were not approved by that Regional Office.
- d. A second independent land appraiser (Stockton, CA) was then employed to make a new appraisal to be completed by Jan 1, 1970 and new fees in effect Feb 1, 1971.
- e. 25 recent sales of privately owned property with structures and improvements in the Tahoe Basin were used as comparables. The values were obtained from El Dorado County records as well as IRS tax stamps.
- f. A representative value of \$4,500 was used for Echo summit resulting in a fee of \$225. A representative value of \$2,500 was used for the Atwood Tract resulting in a fee of \$125.
- g. The values for Echo Summit were adjusted downward by \$2,500, allowed for development based on bonds for adjacent Tahoe Paradise subdivisions; and the values for Atwood were adjusted downward by \$600 due to poor water systems and a dirt road for access.
- h. Thomas recommended that the lease fee amount [for all lots in the Association] be further adjusted downward to more reasonable levels and that the 5% (an inequitable rate) be adjusted down to 2% or 3%.

- 1969. D.** Minutes of the Meeting of the Board of Directors, **June 13, 1969**
- a. Thomas's report was delivered to th Board.

# 1970

**1970. A. Minutes of the Meeting of the Board of Directors March 16, 1970**

- a. An ad hoc committee asked Vern Goodin, Mark Hamilton and Stuart Dole to act as legal committee and recommend a non-resident attorney to act as counsel.

**1970. B. Minutes of the Meeting of the Board of Directors June 02, 1970**

- a. Franklin Dill recommends the retention of a licensed appraiser (Noble Murray) to evaluate the findings of the USFS. The goal was to determine the accuracy and appropriateness of the appraisal used by the USFS.

**1970. C. Letter from the president to the Association June 12, 1970**

**(Joe Pickering, president)**

- a. The letter indicated that Franklin A. Dill, attorney, had been retained. He had served for many years as an attorney in the Lands Division of the U. S. Attorney General's office in condemnation and right of way proceedings.

**1970. D. Progress report to the Association July 24, 1970**

- a. A deadline extension was granted to Noble T. Murray to September 30 in his preparation of his re-evaluation of the USFS findings.

**1970. E. Minutes of the Meeting of the Board of Directors August 15, 1970**

- a. Pickering reports to the board that it will take until the end of September before the association can expect results from Dill and Murray.

**1970. F. Letter from Franklin A. Dill to Douglas R. Leisz Sept. 29, 1970**

**Franklin A. Dill**, ATTORNEY AT LAW, San Francisco, CA

**Douglas R. Leisz**, Regional Forester, San Francisco, CA

- a. A copy of Murray's appraisal was included but is lost to this analysis.

- b. Four primary appraisals were reviewed and analyzed:

1. USFS appraisal of **Robert A. Smart** Sept. 25, 1968
  2. USFS appraisal of **Melvin E. McLaury** Jan. 19, 1970
- Neither of these appraisers were licensed.
3. Appraisal of **Walter F. Willmette**, M.A.I. Aug. 15, 1969
  4. Appraisal of **Noble T. Murray**, I.F.A. Sept. 29, 1970

Three secondary appraisals were also reviewed and analyzed:

1. Appraisal of **Walter F. Willmette**, M.A.I. Aug. 15, 1969  
Properties at Fallen Leaf Lake
2. Appraisal of **J. Brice Leggett**, M.A.I. July. 10, 1970  
Properties at Fallen Leaf Lake Tract
3. Appraisal of **William M. White**, M.A.I. July 16, 1970  
Properties at Fallen Leaf Lodge Tract

1970. F. (cont.)

c. Dill's well-established tests or guidelines for making a fair and rational analysis (comparison) of two or more appraisals of the same property (7)

1. Qualifications and experience of the respective appraiser;  
[Ed. Clearly specified and showing intimate knowledge of the area in which the lots are located and also of the type of lot (private (State) vs. fee-permit (Federal))]
2. The nature of the **interests** and **estate** to be valued in the property;
3. The physical characteristics of the property;
4. Availability of access, sewers and utilities;
5. Utility of the property;
6. Comparable sales; and
7. REASONS, BASIS and ANALYSIS of the particular appraiser.

d. Dill proceeds to discuss in detail the failures of the USFS in each of the seven categories he has laid out.

1. QUALIFICATIONS AND EXPERIENCE OF THE RESPECTIVE APPRAISER

- a. Smart and McLaury did not provide any such evidence
- b. Upon questioning, it was found that they didn't possess either the qualifications nor the experience.
- c. The qualifications and experience of Murray, Willmette, Leggett and White were clearly contained and spelled out in their respective appraisals.
- d. Murray's qualifications are then stated.

2. THE NATURE OF THE INTERESTS AND ESTATE TO BE VALUED IN THE PROPERTY

- a. The appraisal of Echo Lake lots presents unusual problems; to wit, the permittee possesses few if any of the "bundle of rights" associated with the fee title to a [privately owned] piece of property.
- b. Due consideration must be given by any fair and equitable appraisal to the fact that Government lots occupied under permit **are not sold in the marketplace** and any "rights" a permittee might have are severely limited.  
In the specific case here, the appraisals of Smart and McLaury ignored these limitations of rights.

1970. F. d. 2. (cont.)

c. The following chart lists comparable “rights” (15) that should be considered in any fair and equitable appraisal.

<u>OWNER’S RIGHTS</u>	<u>PRIVATE LOT</u>	<u>USFS LOT</u>
1. RIGHT TO SELL OR TRANSFER	YES	NO
2. SEVERE RESTRICTIONS AS TO BUILDING	NO	YES
3. SEVERE RESTRICTIONS AS TO CUTTING OF TREES	NO	YES
4. RIGHT TO SUBLET	YES	NO
5. RESTRICTION ON USE OF LOT TO FAMILY	NONE	YES
6. RIGHT OF USFS TO TERMINATE USE	NONE	YES
7. UPON CONDEMNATION, OWNER HAS RIGHT TO VALUE OF LAND AND IMPROVEMENTS	YES	LIMITED
8. RIGHT TO USE PROPERTY FOR OWNER’S MAIN HOME	YES	NO
9. RIGHT TO ADVERTISE OR USE SIGNS	YES	NO
10. RIGHT TO CONSTRUCT FENCES	YES	NO
11. FIRE PROTECTION AVAILABLE	YES	NO
12. LIMITATION UPON USE OF PREMISES FOR ANIMALS	NO	YES
13. TENURE	FULL	LIMITED
14. RIGHT TO OBTAIN LOAN	YES	NO
15. LIMITATION IN FUTURE BY FUTURE REGULATIONS OF USFS (MOU)*	NO	YES

\* MOU = Memorandum of Understanding. In the Term Special Use Permit of the USFS one finds: “Any subsequent regulations or requirements of the Forest Service, US Department of Agriculture, applying to residence permits, shall be applicable to this permit upon notification by the Forest Supervisor” [i.e.; this is a MOU – the USFS can do anything they want to, whenever they want to, regardless of “fairness.”]

1970. F. d. 2. (cont.)

d. Dill goes on to establish the **goal:**

“to determine to annual **value** of the **use** authorized by the particular permit.”

The formula advanced and adopted by the USFS is

$$\text{USE VALUE} = (5\%) * (\text{FAIR MARKET VALUE})$$

based upon the following two assumptions:

- (1) the lot is considered as **privately owned**
- (2) the lot has no **time-wise limitations**.

Assumption (1) cannot be fully applied due to the 15 differences listed in the chart on page -6-, above [1970.F. d.2.c].

Assumption (2) is not true. The USFS failed to recognize nor to acknowledge nor to make due allowance in the annual fee for the **existent and very real limited period of use** of Echo Lake lots.

Dill points out that the USFS claims “ the Permittees have the right to maintain an exclusive use of the lot for the entire year and prevent its use by others”.

Dill shows that this argument must fall, since “prevention of use” is due to:

- (1) Lowering of the water level in Echo Lakes [soon thereafter Labor Day by Public/County authority] ;
- (2) Snowfall [and freezing in-climate weather conditions Oct 1 through May 20 with snow storms and blizzards and the freezing of the lake surface]
- (3) Closing [complete blockage due to snowfall] of the [dirt] access road from US Highway 50 from Nov 1 through May 20 [typically]

**IN FACT: NEITHER THE PERMITTEE NOR ANYONE ELSE CAN USE THESE HOMESITES EXCEPT FOR THE LIMITED PERIOD OF APPROXIMATELY THREE MONTHS PER YEAR**

FURTHERMORE, BEYOND THE PHYSICAL FACT OF WEATHER, THE FOREST SERVICE **POLICY** IS TO LIMIT USAGE; “THAT CABINS IN A SUMMER TRACT ARE TO BE USED ONLY AS VACATION HOMES - - NOT AS YEAR-LONG RESIDENCES”.

DILL FURTHERMORE OFFERS PUBLISHED FOREST SERVICE LETTERS TO PERMITTEES IN SUPPORT OF THIS LAST SEVERE RESTRICTION AND LIMITATION OF USE.

1970. F. d. 2. (cont.)

**[FURTHERMORE, ALL “PREVENTION OF USE” WAS DUE TO (AND STILL IS) NATURAL CAUSE, COUNTY AGENCY OR THE UNITED STATES FOREST SERVICE.**

**ABSOLUTELY NO “PREVENTION OF USE” WAS (AND STILL IS) DO TO ANY ACTION BY ANY ECHO LAKE PERMITTEE]**

### 3. THE PHYSICAL CHARACTERISTICS OF THE PROPERTY

- a. The remote location of these lots should be taken into consideration as to their value.
- b. The lack of road access to the lake side cabins had a substantial negative effect on their value.
- c. The lots were/are located on a type of terrain that does not allow the construction of a [municipal-type] sewer is also a negative factor [Donner Lake and other tracts admit of already installed trunk sewer lines]
- d. [The Chappie Bill (California Water Code Sections 13950-13951) required the Association members to transport every bit of black water sewage out of the basin by hand, which had/has a decidedly negative effect on property value]

### 4. AVAILABILITY OF ACCESS, SEWERS AND UTILITIES

- a. Dill stated that it is “undisputed” that the Echo Lake lots have limited access. Access was (and still is) by boat [or walking].
- b. Access was (and still is) further reduced by
  - (1) the right of the [current water authority] to lower the water [level] in the lakes [after Labor Day]
  - (2) the weather [absolute access stopping weather from Nov 1 through May 20]
- c. The road access from Highway 50 is blocked by snow in the winter
- d. Echo Lakes lots lacked sewers, utilities (gas, water, electricity, telephone)
- e. It was (and still is) not feasible [nor allowed by the USFS and TRPA] to supply such services
- f. These facts were (and are currently) not given due consideration by the USFS appraiser in analyzing and comparing private sales of property to the Echo Lake lots
- g. It was commented that the USFS appraiser McLaury made “but a minor allowance, if any, for the lack of road access”.

1970. F.

d. 5. UTILITY OF THE PROPERTY

- a. Dill maintained that “ the utility of a piece of property is what produces or gives value to the property”.
- b. “Utility” may be restricted due to limitations found in (1) law or regulation or (2) the physical characteristics or availability of access [see 3. and 4., above]
- c. The USFS failed to compare and relate to Donner Lake sales. Donner Lake sales had (and continue to enjoy) (1) year-round access (2) all utilities (3) sewers and (4) full use of snow and winter sports as well as summer water sports.

6. COMPARABLE SALES

- a. USFS appraiser McLaury, Willmette and Murray all agreed as to “terms”.
- b. USFS appraiser McLaury did not make adjustments to his appraisal based upon *land value* consistent with the differences established in parts 3., 4., and 5. between private ownership and fee-permit usage.
- c. USFS appraiser McLaury did take into account the limited nature and interest of the estate to be valued as discussed in item 2.
- d. McLaury restricted his estimate to three sales: (1) Krell to Murtaugh; (2) Stedman listing [found to be expressly prohibited by California Evidence Code Section 822 and many State and Federal judicial decisions]; and (3) Stanford Camp Assoc. to Stanford Alumni Assoc.
- e. *McLaury failed to use the more valuable Donner Lake sales to develop appraisal estimates yet came up with Echo Lake lot evaluations with higher value than Donner Lake properties.*
- f. Dill concluded that [because of these glaring inequities] the USFS appraisals of Echo Lake lots were too high.

7. REASONS, BASIS AND ANALYSIS OF THE PARTICULAR APPRAISER

- a. The USFS appraiser **Melvin E. McLaury** lacked the necessary extensive appraisal training and experience.
- b. The private appraisers **Walter F. Willmette**, M.A.I. and **Noble T. Murray**, I.F.A. had the necessary extensive appraisal training and experience [which was attached to their appraisals as part of their documentation].
- c. Dill concluded that since McLaury lacked both the experience and the training it follows that a faulty analysis by the Forest Service was bound to occur resulting in erroneous values of the Echo Lake lots that were too high.

1970. F. d. 7. (cont.)

d. Dill further noted

(1) that the Forest Service admitted that their appraisal was not made by a real estate valuation expert; and

(2) that **Irwin E. Bosworth** (Forest Supervisor) in a letter to **Douglas R. Leisz** (Regional Forester) dated Sept. 12, 1969 stated “I chose Willmette’s appraisal because it was done by a professional and therefore should be more valid”. Evidently, Leisz proceeded to ignore the remark (advice) of Bosworth and chose the evaluation of the inexperienced and untrained **Melvin E.**

**McLaury**. In other words, the Forest Service could not internally agree on what constitutes a fair and equitable appraisal.

e. The following table lists the lake front foot values for the various lake side tracts and compares these with corresponding foot values at Donner Lake:

<b>Tract</b>	<b>Foot-value (\$/ft)</b>
North Shore	\$108
Mermaid Cove	\$150
South Shore	\$155
Hemlock	\$138
Channel	\$145
Donner	\$121 - \$150

The values are equivalent in spite of the facts that Donner had(has):

- (1) year round use
- (2) additional amenities and characteristics

f. Dill then went on to state “the weight or merit of an appraiser’s opinion mainly depends on the reasons or bases for such opinion.

***“It is a general and common sense rule that an opinion is worth no more than the reasons upon which it is based.”***

His principle has long been accepted by both Federal and State judicial decisions dealing with land appraisals:

Long Beach, etc. Dist. vs. Stewart, 30 Cal 2d 763, 773

People vs. McReynolds, 31 C.A. 2d 219, 227

People vs. LaMacchia, 41 Cal. 2d 738

U.S. vs. Johnson, 285 Fed 2d. 35

State of Washington vs. U.S. 214 Fed. 2d 33, 43

5 Nichols, Eminent Domain, 18.42 (1) pg. 240

1970. F. d. 7. (cont.)

g. Dill then produced a chart comparing the appraisals of **Murray, Willmette and McLaury**

TRACT	APPRAISAL		
	USFS I McLaury	USFS II Willmette, M.A.I.	ELA Murray, I.F.A.
Mermaid Cove			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800
North Shore			
Frontage	\$17,800	\$7,000	\$8,700
Non-frontage	-	-	-
Hemlock			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800
South Shore			
Frontage	\$12,500	\$6,000	\$8,500
Non-frontage	\$7,500	\$2,000	\$3,600
Island	\$20,000	\$8,000	\$10,500
Channel			
Frontage	\$15,000	\$6,000	\$8,700
Non-frontage	\$7,500	\$2,000	\$3,800

h. Comparable leases of privately owned lands located at mountain lakes or mountain recreational reservoirs

LESSEE	LOCATION	YEARLY LEASE FEE
PGE	BUCKS LAKE, PLUMAS CO.	\$125
	SILVER LAKE, AMADOR CO.	\$75
	PHILLBRICK RESERVOIR, BUTTE CO.	\$75 to \$100
So. PACIFIC	BEAR CREEK, ALPINE MEADOWS, PLACER CO.	\$120 - \$135

**1970. F.** e. Dill finished with the following conclusions and requests:

**CONCLUSIONS**

1. The McLaury USFS appraisal are incorrect.
2. In cases where no private sales of comparable property in the same locality exist, the training, qualifications and experience of the appraiser becomes vital. Based on this last, Dill suggested that the opinions of Murray and Willmette be used instead of McLaury.

**REQUESTS**

1. An oral hearing be granted
2. The ELA be kept informed in all matters by the Dept. of Agriculture
3. The annual permit fees be determined at a rate of no greater than 5% on the values contained in the appraisal of **Noble T. Murray**, I.F.A.; or
4. lower fees based upon the **Walter F. Willmette**, M.A.I. appraisal and the Pacific Gas & Electric Company and Southern Pacific leases.

1971

**1971. A.** Letter from HAMILTON & KING to Franklin A. Dill **Jan. 5, 1971**

- a. provided Dill with copies of California Regional Water Quality Control Board, Lahontan Region Order No. 6-70-48 [not available to this analysis]
- b. informed Dill that the Echo Lakes area permittees were (and continue to be) adversely effected by the ruling:

1. Cabins on the Lake without road access:

- a. Owners must transport all human sewage and all household wastes across the Lakes and out of the Tahoe Basin.
- b. Owners may allow non-human waste (shower and sink waste) to leach into appropriate soils.
- c. ***Owners must limit use of cabins to summertime.***

2. Cabins on Echo Road and Echo Summit (on eastern watershed).

- a. Owners must transport all human waste and household waste, solid and liquid, out of the Tahoe Basin.
- b. ***Owners must limit use of cabins to summertime.***

3. HAMILTON & KING commented that “this latest development ... further reduces the value of the concerned property”.

**1971. B.** Letter FRANKLIN A. DILL to HEARING CLERK **April 3, 1971**

**F. S. Docket No. 226** UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE BOARD OF FOREST APPEALS

- a. Appellants: ECHO LAKES ASSOCIATION  
STAN FREEBORN  
NORMAN F. BROWN  
VERNON L. GOODIN  
RUSSELL LaBELLE  
MARJORIE W. BOYNTON

- b. The appraisals and resultant fees were determined to be “excessive” for the following nine reasons:

1. The USFS appraisals do not meet the proper standards of determining ***Land value***; to wit
  - a. the USFS appraisers do not have the extensive experience , training, and background in appraisal and valuation matters . . .
  - b. the USFS appraisers did not make as extensive an investigation as the appellants’ appraiser. . .
  - c. the USFS appraiser did not follow correct appraisal procedures.
  - d. the USFS appraisals did not take into consideration AS THEY SHOULD HAVE certain sales relied upon by Appellants

- 1971. B.**      b.      2. The value of the subject lots and fees charged are directly contrary to the opinion of **Walter F. Willmette**, M.A.I. (USFS employed)  
The USFS set up a standard to apply and then did not follow their own standard; to wit,

*Bulletin of the U.S. Department of Agriculture*

“Fees for Recreation Residence Sites on National Forest System Lands”  
*Paragraph 5*

“Lot values are appraised following principles and approaches recognized by professional organizations such as the American Institute of Real Estate Appraisers (AIREA). **AND ONLY APPRAISERS SPECIALLY TRAINED IN THESE PRINCIPLES AND APPROACHES ARE USED.**”

The primary (INITIAL) appraiser used by the USFS was **not a member** of the AIREA. (This was **Melvin E. McLaury**)

The secondary appraiser, **Walter F. Willmette**, M.A.I., used by the USFS was a member of AIREA and **his appraisal was rejected** by the USFS

3. The fees are illegal and greatly in excess of the amount that may be properly charged per

**PUBLIC LAW 137 - AUGUST 31, 1951. TITLE V**, to wit

“Such fee shall be **fair and equitable**, taking into consideration direct and indirect cost to the government, value to the recipient . . . “

The USFS bases their fees on a technical hypothesis that the appellants theoretically could use their cabins 365 days of the year, when in fact

(a.) weather conditions preclude such usage;

[(b.) the USFS prohibits such usage;

(c.) the Lahontan water district prohibits such usage; and

(d.) the water authority (then PGE; now EID) prevents such usage.

[Usage is restricted, by **mandated authority**, to 3 months per year.]

4. The fees are illegal and excessive and violate and did not comply with **Regulation 36 CFR 251.3 (U-12)** (See FSM 2715)

5. The fees are excessive in that they are based upon an arbitrary percentage rate of 5%. (Sec. 2715.11 of the USFS FSM sets this 5% rate without any basis or justification.) The Forest Service Manual (FSM) is **not a law** nor a **regulation binding on appellants**.

1971. B. b. 6. By rejecting the appraisal of **Walter F. Willmette**, M.A.I. the USFS violated their own manual, to wit **Sec. 2721.23e paragraph 2**.

7. [Furthermore!] **Sec. 2721.23e paragraph 2** of the USFS FSM violates and does not comply with **Public Law 137 - August 31, 1951** (See 3., above)

8. The fees violate the *terms of the permits* since they are based on the **assumed usage of 365 day** specifically prohibited by the USFS, [Lahontan,] and the physical location of the lots and lack of access and utilities

The **permits** expressly provide that the

**Charges (fees) are to be on a basis commensurate with the value of USE authorized by such permit**  
**[NOT LAND VALUE]**

9. The fees charged by the USFS were based on the incorrect premise that the Appellants had **unlimited tenure in the lots they occupied**. Since the USFS (1) RENEW PERMITS; AND (2) ALLOWS SALES ON OCCASION, Appellants do not have unlimited tenure.

A value based on such practices on the landlord, the USFS, does not form a part of the “value to the recipient [the permittee]”

U.S. Supreme Court United States v. Petty Motor Co., 327 U.S. 372 at page 380:

“Changeable intentions are not an interest in land, and although no doubt such intentions may have added practically to the value of the petitioner’s holding, they could not be taken into account in determining what the respondent should pay. They added nothing to the tenant’s legal rights, and **legal rights are all that must be paid for. . . .**”

10. The appraisal. . . relied on by Appellants demonstrates the fees fixed by the USFS to be **unfair, excessive, and illegal**.

11. The decisions are not supported by the USFS appraisal data . . .

12. Appellants were improperly denied the right to personally appear and present oral valuation testimony in support of their claims. . .

**1972. A. Judgement of the Hearing Board, December 11, 1972**

- a. The board was composed of the following five individuals:
  1. Paul H. Rapp, Alternate Chairman
  2. Ralph Harvey Member
  3. Wingate E. Underhill, Member
  4. J. Edgar Chenoweth, Member
  5. Melvin L. Cotner, Member
  
- b. All five members signed off on the following three recommendations:
 

The Chief of the Forest Service shall remand this matter to the Regional Forester [**Douglas R. Leisz**, Regional Forester, San Francisco, CA] for preparation of a **new appraisal report by a qualified appraiser** [emphasis added, ed.]

The new appraisal should:

  1. Explain all adjustments to sale price of comparable private sales due to appreciation of land values from date of sale to date used for the appraisal, and any adjustments to sale price due to the fact that the sale is not all cash but subject to financing arrangements; contain a well reasoned analysis as to **size** and **frontage** of a typical lot in a tract or subdivision of a tract; and explain why a **front foot** or an **acreage** basis is appropriate.
  2. Explain why comparable private sales selected for consideration are **deemed appropriate** and **comparable** – and why private sale [Donner Lake] suggested by appellants were not used or considered, . . .
  3. Contain **market rental data** for relevant **market areas**, so that the Forest Service can make a well-informed decision to the appropriateness of use of the 5 percent formula or **whether a different percentage should be used for mountain lake properties here involved.**
  
- c. Chenoweth then adds his own view:
  1. In my opinion, these proposed increases in annual fees are **unrealistic, excessive and unfair.** It is obvious the Forest Service should reconsider these increases and adopt some system of fees that will be less drastic and precipitous. **It is my belief that the 5 percent formula, or any other similar fixed, arbitrary amount, cannot be applied with fairness in all cases.**