

# Testimony for Subcommittee on Forests and Forest Health

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**Members of the committee, thank you for inviting me to be here today.**

## AT THE CROSSROADS

The Forest Service (FS) and the communities of which they are part find themselves at a crossroads. My purpose is to make observations and suggestions, based on hard-earned 44 years of natural resources experience, for possible modifications in the *status quo* that might smooth the transition of FS associated communities into the 21<sup>st</sup> century.

## A SAD STATE OF AFFAIRS

The present state of affairs is, in my opinion, a sad one - that, in the long run, will prove intolerable. How did this situation come to be? What can or should be done to alter the present state of affairs?

## TOO MANY LAWS AND TOO LITTLE COMMON SENSE

There are too many applicable laws with their pursuant regulations which do not mesh well - or at all - and these laws and regulations seem to be meshing less and less well as time passes and circumstances change.

When I entered the Chief's job, my political overseers assured me that there were no insurmountable problems inherent in the simultaneous compliance with all applicable laws and regulations while carrying out the agenda of the Administration. The accumulating frustrations from the past were blamed on the unwillingness of prior Administrations to comply with applicable laws. I thought that was wrong. But, what did I know?

By the time I left the job, I knew, for certain, that there were roadblocks to management that were intractable and related to laws and regulations. Included are conflicts between laws; regulations issued pursuant to those laws; legal interpretations (i.e., case law); ever changing budgets; power struggles between agencies; warring constituencies; internal strife within agencies; continuing declaration of threatened or endangered species; and political maneuvers to satisfy one constituency or another.

If we were to examine each of those myriad laws in isolation, I dare say that we would not find even one with which to disagree - not one. Then, consider those laws in their totality and the array of empowered agencies who wrote the regulations pursuant to the separate laws. Now consider that the regulations were developed to assure achievement of the objectives of the law and, not coincidentally, maximize the discretion and power of the agency drafting the regulations.

Then, consider that the laws are applied and/or enforced by an array of Departments (and Agencies embedded within those Departments). Each entity has its own cadre of skilled and accomplished personnel dedicated to the achievement of *their* individual unit's missions - and the simultaneous enhancement of their agency's power and authority. If that were not enough, the situation is further complicated by the structure of Committees and Sub-Committees in the Senate and House, who, likewise, fiercely guard "their" agencies and programs. Therein lies maximization of individual and collective power of the members of Congress.

On top of that, Administrations come and go at four to eight year intervals. They, or their minions, set the policies. Departments and Agencies, in turn, execute those policies through the budget, administrative actions, swaying Congress, and marshalling public opinion and political actions.

In the case of land management agencies, this adds up to a disaster for affected communities waiting for a time and place to occur. This disaster is upon us as significant land management actions on the Federal estate grind to a halt.

## **TWO APPROACHES TO ETHICAL CORRECTNESS**

There are two approaches to judging the ethical correctness of outcomes of human endeavor. The first, which described federal land management of the past, is the teleological wherein the moral value of an action is a function of its consequences - i.e., the ends justify the means. The second, which describes the present circumstance, is the deontological wherein an act or behavior is judged right or wrong according to its nature - regardless of outcome. I.e., the process is everything and the end result insignificant.

If process is paramount and the outcome of little consequence, the likely result is "analysis paralysis" wherein ongoing processes lead to little or no management action. That is where we are today.

## **THE THREE-LEGGED STOOL THAT SUPPORTS THE FS - LEG 1**

The FS, over decades of effort, carefully constructed a three-legged stool upon which to stand to do its work.

The Organic Act of 1897, which defined the purposes of the forest reserves (the national forests after 1905), states: "No national forest shall be established except to improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber...." When the FS was increasingly challenged by transfers of national forests to national parks, it sought a broadened mission through the Multiple-Use Sustained Yield Act of 1960 (MUSY). MUSY was an amendment to the Organic Act, which mandated the addition of recreation, fish and wildlife, and range management to the agency's portfolio.

## **THE THREE-LEGGED STOOL - LEG 2**

The purpose of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) was to attain the authority and responsibility for the FS to carry out periodic assessments of the conditions of the renewable natural resources of the United States. But, particular attention was directed to assessment of the resources of the national forests and proposed programs of the FS to manage those resources for the benefit of the American people. Further, programs were to be developed and assessed on which to base FS actions to assist in private forest land management and a research organization to serve the needs of both the federal and private forest sectors. These assessments were to be produced every five years. The clear intent was to

mandate FS programs and provide a means to influence budgets.

### **THE THREE-LEGGED STOOL - LEG 3**

The FS now desired to develop comprehensive plans for each of the national forests. This led to the development and passage of the National Forest Management Act of 1976 (NFMA). After World War II, the FS increasingly relied on a program of even-aged timber management in spite of the instructions in the Organic Act of 1897 to cut only individually marked trees. A landmark judicial decision in 1975, the "Monongahela Decision," brought clear-cutting to a halt. The reaction was the passage of the NFMA which defined provisions under which clear-cutting could proceed and, more significantly, provided the FS with a mandate for planning management for each national forest.

### **A MASTER STROKE THAT MISSED THE MARK**

There it was - a sturdy stool with three legs -- what to do, how to do it, and how to fund needed action. By any measure it seemed a masterstroke, a reflection of bureaucratic skill and ability to maneuver through the labyrinth of the political process.

### **THE THREE-LEGGED STOOL IN COLLAPSE**

Then, slowly but surely, the stool wobbled and collapsed under the stresses of compliance with subsequent laws and shifts in public perceptions and demands. Let us examine that collapse - one leg at a time.

Leg 1. MUSY collapsed as more and more land was zoned for special purposes - Wilderness, Wild and Scenic Rivers, National Recreation Areas, and reserves of various kinds (riparian protection zones, habitat for threatened or endangered species, municipal watersheds, habitat for featured species, protection of biodiversity, protection of aesthetic values, protection of rare and special stands such as old-growth, roadless areas, and others). Then, when multiple-use demands were applied to land that was left, the costs of meeting process requirements of the National Environmental Policy Act (NEPA) and regulations issued pursuant to the NFMA proved to be so high that instituting any management action approached or exceeded the economic break-even point. Costs associated with appeals and court cases more and more often produced costs that exceeded benefits. Not only was multiple-use essentially dead, or at least badly wounded, long-standing concepts of "sustainability" having any relationship to predictability of resource outputs vanished.

Leg 2 - The RPA failed to provide the FS any significant leverage over the result of the outcome of the budget process. Neither the Administration (operating through the Office of Management and Budget) nor the Appropriations Committees in the House and Senate proved willing to accept the "guidance" or embrace the "opportunities" that emerged from RPA assessments.

Leg 3 - The NFMA also failed to achieve its objectives. The public could not be persuaded that even-aged timber management (i.e., clear-cutting) was an acceptable broad-scale practice. And, the national forest by national forest planning took much longer than anticipated and cost much more than forecast. Further, the process - which was assumed would engender public trust and bring about consensus - instead produced polarization and increased questioning of the agency's motivations. In fact, the agonizing process that evolved gave birth to a new industry - the conflict industry. That new industry, composed of coalitions of hard-core environmentalists and extracting industries, has been succored on the controversy. The conflict industry has prospered on a diet of conflict, division, and consternation.

I do not believe that any single national forest plan has been executed as planned. Why? New information came to bear faster than the process could absorb it. Abrupt alterations in land management plans were required when species were declared to be threatened or endangered, and which, in turn, forced the formulation of recovery plans by the regulatory agency(s) that were imposed over the top of extant plans.

This placed regulatory agencies such as the Fish and Wildlife Service and the National Marine Fisheries Service in the position of developing "recovery plans" for species for which they declared to be threatened or endangered - two authorities that seem to have enormous power over public land management. Further, they have veto power over management action proposed by land management agencies within areas determined, by them, to be critical habitat and/or not in keeping with a recovery plan. And, there has been - and likely will continue to be - a continuous drumbeat of new additions to the list of those species of plants and animals determined by the regulatory agencies to be threatened or endangered. With each addition of such species that occur on national forests, there is a resultant change of plans - oftentimes, dramatic changes.

Added to this ongoing turmoil is the continued failure of budgets to match the required actions spelled out in the plans in either their original or evolved forms. The overall result has been plans that change yearly and are so executed to comply with changing budgets without altered analysis. After a few years of such changes, there is quite commonly no longer any semblance of agreement between the original land-use plans and on-going activities.

The regulations issued pursuant to the NFMA which, early on, were demonstrated to be seriously flawed in terms of both technical capability of achievement and budgets required for execution, have remained in place for nearly 30 years despite repeated and very expensive attempts at increasingly needed revisions. The planning regulations, which were originally intended to be frequently and rather effortlessly amended to reflect increased scientific understanding and experience under the concept of "adaptive management," have evolved into a political icon.

New regulations, based on recommendations of a committee of scientists, emerged at the end of the Clinton era and were immediately rolled back for further consideration by the incoming Bush Administration. The basic sticking point continues to be that the regulations - both the old and those just pulled back for more assessment - likely stretch the mandate implied in the authorizing legislation.

The new regulations contain requirements that are, in my opinion, either technically impossible to achieve or so expensive that they would never be funded. The philosophy in their development seems to have become one of "require it and they will fund" rather than face cessation of management activities. That did not happen. As another Chief Emeritus observed, "The FS needed a life jacket and they were handed an anvil." It is critical, if any production of resources is expected from the national forests, that the regulations be more flexible. And, clearly, development of policy is best left to the Administration and legislation is best left to the Legislative Branch. Such have no place in regulations.

## **A NEW ROUND OF FOREST PLANNING**

Yet, the FS is now embarked on a new round of planning - national forest by national forest - while the question of new planning regulation remains "up in the air." It seems unlikely that, after spending additional billions of dollars and expending hundreds of thousands of hours of the time of planners, interested publics, and the conflict industry that much will change. It is well, at this point, to consider this definition of insanity: "Insanity can be defined as doing the same thing over and over and expecting to get a different

result." That, I think, is both true and something to be avoided. If the new round of forest planning proceeds, and no changes are made, there is no reason to expect a different outcome in terms of an active management program. That could be called insanity.

The problems described so far are magnified by the simultaneous application of other laws - most notably the National Environmental Policy Act -which, in its present highly evolved form, adds greatly to the burden and costs of producing voluminous, highly technical, and complex "bullet proof" assessments (I don't think that is what Congress had in mind). The Endangered Species Act (ESA), outside of bringing additional agencies into the land management equation, is actually less of a problem. The regulations (both current and those proposed by the Clinton Administration) issued pursuant to the NFMA are even more demanding than the ESA in requiring the maintenance of "viable populations of all native and desirable non-native species well-distributed within the planning area." It doesn't get any more demanding than that. Remember, the Court's shutdown of timber cutting on Federal lands in the Pacific Northwest was predicated on non-compliance with the FS's planning regulations, not on violations of the ESA.

## **POSSIBLE WAYS OUT OF THE IMPASSE - A PUBLIC LAND LAW REVIEW**

I think there may be three possible ways out of the current impasse. First, the concept of a Public Land Law Review Commission could be brought out of limbo and dusted off. The last effort, in 1969, was directed by a collection of big names that, basically, came up with nothing except the conclusion that things were badly screwed up. And, that, I remind you, was before the onslaught of environmental legislation of the 1970's.

### **OPTION 1**

But, now that federal land management is dramatically and even more seriously convoluted and becoming increasingly dysfunctional, it may be time to try that idea again. But, this time, the Commission should be composed of top level experienced natural resources professionals and legal assistants with the mission - to be accomplished within a time certain - of producing a report in the form of alternative legislative packages to be presented to Congress and the Administration for consideration and possible action. Uncoordinated piecemeal amendments of individual pieces of applicable legislation, if that were even possible, will likely produce even more confusion.

But, likely, neither the Congress nor the Administration has the stomach for a new Public Land Law Review Commission. Why? Examine the purpose of each of the laws in question. Who could disagree with the purpose of any one of those laws? And, clearly, no one of the laws is the culprit. Problems of compliance with myriad laws in public land management emerges from their interactions and in the tangle of multiple agencies and their mandates and authorities involved. And, each law has its champions who have hard-won experience in using those laws to achieve their individual objectives and in the Agencies who derive their powers - and even their reasons for existence - therefrom.

## **POSSIBLE WAYS OUT OF THE IMPASSE - REVISION OF REGULATIONS**

The "devil" is, oftentimes, in the details, or, in this case, in the regulations. Remember, the various regulations were developed by different agencies to afford them the best chance to carry out their missions as described by the authorizing laws and, simultaneously, to enhance their power and flexibility. These regulations were not promulgated with any discernable evidence of their fitting together with other regulations, or with any consideration of the impact of their enforcement on other agencies and their missions. Remember, some regulations trump other regulations and agency actions - and therein lies real

bureaucratic power and power for the constituencies of those agencies.

## OPTION 2

However, the Administration has authority, responsibility, and capability to revise regulations. The Administration could establish a "czar of regulations" related to public land management and task that person, and the heads of all involved agencies, to simultaneously revise agency regulations with the aim of coordination, simplification, and efficiency of public land management. This could be ordered achieved within a time certain with only the czar having authority to grant any extension of time lines.

This course of action is relatively more feasible than simultaneous revision of laws, as authority rests with one person - the President of the United States. Will it happen? Who knows? The Administration would have to think it over - and they have other things on their minds at the moment. The management of the public lands is not, at least discernibly, high on the Administration's agenda.

## POSSIBLE WAYS OUT OF THE IMPASSE - COLLABORATION (OPTION 3)

The third option, to a limited degree, is for people who live in communities involving national forests and are not content with the current state of affairs to exert some level of control over their destinies. Their war cry could be taken from the old movie *Network*, in which the central character became fed up with the *status quo* and began to scream, "I'm mad as hell and I'm not going to take it anymore!" Others took up the cry.

Being angry and feeling powerless make a bad combination that is hard on both digestive tracts and the human spirit. It is a mood that no vibrant community can endure for long without some deterioration. But, such can - if appropriately channeled - provide stimulus to reach out to others in the hope of producing something better.

Barring the revision of laws and/or regulations - which simply "ain't gonna happen" anytime soon - there is another approach to the public land management impasse that shows promise. That approach involves releasing fists into open hands and extending those hands to join with another and another and, then, yet another.

That reaching out takes place within is what some call a "community of place" which involves a defined landscape and the people therein. The place will be made up of many land classifications and ownerships (in this discussion, National Forests and what happens in those forests are of primary significance). The people in that community will share several things in common. First, they live there. Second, the place is, at least emotionally and spiritually, more theirs than those who live far away.

## HANGING TOGETHER OR SEPARATELY

Benjamin Franklin's observation, made on the occasion of the signing of the Declaration of Independence, has some applicability in this discussion. "We must all hang together, or assuredly, we shall all hang separately." Our communities prosper and suffer collectively. No one person can remain untouched by significant actions that touch his or her community(s) at large.

## PLANNING BEGINS - INVOLVEMENT OF FS PERSONNEL

Personnel of the National Forest system are beginning a new round of planning to guide management for the next decade. Believe me, most FS folks are as distressed at the current state of affairs as other members of the community. They are good and dedicated civil servants -the vast majority are good and caring people - charged with the care and tending of a most remarkable legacy of land that resides in the ownership of all the people of the United States. Most signed up to be part of something bigger than any individual. They truly want to "Care for the Land and Serve People." And, significantly, they know that word has come down from their current and past two Chiefs that "collaboration" with communities of interest shows promise and deserves support. They, by definition, are critical components of the communities where they live and work. And, they want to be part of and partners in those communities.

## **THE FOREST SERVICE AS FACILITATOR**

I hope, and think, that in this round of planning FS professionals will serve more as facilitators of the process than as purveyors of predetermined courses of action. Such will be something of a new approach and, quite likely, a bit "messier" than that which has gone before - but with more acceptable results.

I hope the process will be much less drawn out than last time around. If the process draws out too long, most of the initial participants will drop out and leave the playing field to a few dedicated individuals. Most of those present toward the end of the struggle are either truly committed with time and patience aplenty or zealots or "hired guns" from the ranks of the conflict industry.

## **UNSPOKEN RULES OF THE FOREST PLANNING GAME**

Two facts essential to our consideration are: "Decisions are made by those who show up" and "In a democracy, outcomes are determined by the majority of the minority who cares deeply about the issue in question." We see sound wisdom here.

Knowing this, old hands in the game, particularly those who have roots in the conflict industry, come to the game both experienced and well prepared. They know that the longer the process drags out, the more voluminous and less intelligible the written assessments become, the more revisions made, the more complex the process, the more likely that the playing field will be left at the critical culmination to the zealots and hired guns.

The lesson to be learned is this: set reasonable, but firm, deadlines. Do good thorough work based on experience from the last go-around in planning. Meet the deadlines and do not grant extensions except for the most valid of reasons. Routine granting of extensions and requests for more and more assessment and more and more review and extended opportunities for public comment may seem an easy means of political mollification. Such is not the case. Extensions are expensive in both time and money and in the public's confidence in the process. And, delay rarely makes much difference in either knowledge gained or the conclusions reached. If the desire is to turn the process - and ultimately the end result - over to the folks from the conflict industry all that is required is to allow the process to drag out.

In the end, it may be desirable to have the outcome of your collaborative efforts blessed in law. There are precedents for such actions - even involving required budgets. At the very least, the blessings of political leaders are helpful, for, as Former Speaker of the House Tip O'Neil observed, "all things are political and all politics are local." That too is sound wisdom.

## **AND, WHY SHOULD THINGS BE DIFFERENT THIS TIME?**

Why might this go-around with forest planning be different that the last? Because things have changed and, I don't believe, there is any going back. Twenty years ago, there was a pitched battle going on between warriors of the environmental persuasion and the old-line extractors of natural resources over the future of public lands in the West. The environmental warriors won, capitalizing on the spate of environmental laws passed in the 1970s, the collapse of timber extraction during the Reagan/Bush administration, and the eight years of a Clinton/Gore Administration sympathetic to their environmental constituencies.

Fierce in battle, many of the eco-warriors have been unable to come to grips with the consequences of victory and are now reduced to wandering about the old battlefields bayoneting the wounded. Their counterparts from the resource extraction community, likewise, cannot come to terms with defeat and hold "ghost dances" to bring back the good old days when they were undisputed Kings of the West.

In the meantime, other things changed. The population in countries near the national forests of the West have grown at twice the national rate and has not become philosophically in synchronization with the old days and old ways. The economic opportunities so dramatically exploited by the newcomers were not based on resource extraction and secondary manufacture but on other sources of jobs and economic opportunities. In addition, many of these newcomers were attracted by the aesthetics of the West, its quality of life, and its inherent life style.

The "old west," and its component land management and regulatory agencies reluctantly moved into the new age nudged by one court loss after another for failure to comply with the environmental laws of the 60s and 70s. The people whose ways of life were changing, and not by their choice, were moved to resistance - sometimes quite dramatically expressed. These acts of resistance made the news - for a few days - but changed nothing. They demonstrated, blustered and threatened, but frightened very few and not for very long.

In the aftermath of victory by "the greens" and the public acceptance of change that was wrought, it is past time for a "Marshall Plan," wherein the victors realize that the best means of maintaining their gains is by fostering a new spirit of cooperation, an appreciation of the desirable aspects of western culture, and the development of an institution of a "just peace." The general body politic is wearying of the continued bayoneting of the wounded. They, increasingly, hunger for a just peace. Some scholars believe that this can only be achieved by stepping back from the "one size fits all" approach. Over the long haul fostering "local" or regional solutions to suit local or regional conditions - economic, social, and ecological - is likely best. Many politicians, perhaps in desperation, agree that this is an acceptable and needed change.

And, with the disaster of September 11<sup>th</sup>, a new national mood is apt to persist to some degree for some time into the future. That mood is one of national unity with a focus on the general welfare and a renewed trust of government and its institutions. For example, within ten days of that event, the President of the Sierra Club announced a change in strategy away from personal attacks and inflammatory rhetoric. Part of that statement was "Now is the time for rallying together as a nation; the public will judge very harshly any groups whom they view as violating the need for unity."

Just maybe, there has been a change in attitude that requires more gentility, courtesy, and respect in the process of making decisions in land-use planning and management.

Over the past decade, the Forest Service has moved progressively, toward a new management paradigm known as "ecosystem management." In that approach there are several underlying principles: broader and



more appropriate scales of landscapes considered; the inclusion of more variables including ecological, economic, legal, and social; and the full consideration of people's needs and desires. Implicit in that approach is the concept of collaboration within appropriate communities of interest.

This round of forest planning is the best extant chance to take a step - even a baby step - in that direction. I say, seize the opportunity.

## **COMMUNITY-FRIENDLY RESULTS? IT'S UP TO YOU**

I believe the results from these renewed planning efforts can be more, much more, community compatible" or "community friendly" than what emerged in the last go-around. The key to that result is the effective participation of the community itself.

Those involved must unclench their fists, make them into open hands. Extend those hands to your neighbors. Reflect on the symbolism - open hand, open mind, open heart. In that simple gesture lies the best extant opportunity to bolster the well being of involved communities.

Perhaps now, after two decades of acrimony and frustration, weakened and fractured communities are ready to heed the age-old plea made in the throes of discord - "Come, let us reason together." That recurrent refrain, without doubt, is the best wisdom of all.

Will that insure success? Perhaps. Perhaps not. It is well to reflect on a line often quoted by General George Washington during the American Revolution when was torn between possibilities of success and defeat, "We cannot assure success, but we can deserve it."