

PROCESS GRIDLOCK ON THE NATIONAL FORESTS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND
FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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OVERSIGHT HEARING ON PROCESS GRIDLOCK ON THE NATIONAL FORESTS

**Wednesday, June 12, 2002
U.S. House of Representatives
Subcommittee on Forests and Forest Health
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to call, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Scott McInnis [Chairman of the Subcommittee] presiding.

Mr. HANSEN. [presiding.] The Committee will come to order. I am hesitant to start this meeting as the Chairman of the full Committee, but we understand that Mr. McInnis, the Subcommittee Chair, is coming down from Bethesda right now and is hurrying down here. Possibly if the colleagues on the Committee wouldn't mind if it would be a good time to give our opening statements before we turn to Chief Bosworth, and with that in mind I turn to the Ranking Member, Mr. Inslee from Washington.

STATEMENT OF THE HONORABLE JAY INSLEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. INSLEE. Thank you, Mr. Chair. Thanks for joining us Chief. We are always glad to have you here. Mr. McInnis has been very involved in the fire efforts in Colorado, too. He has been a busy guy recently. We hope that your agency is doing the best possible in that regard and good luck in that regard. I may parenthetically, I think there is some bad news out there for future fires with the global warming prospect that we face. There is a new report out about the potential droughts that we face in the west. I am afraid that we might be in for a few decades of this until we get a handle on global warming.

I look forward to your testimony today. I would just make a couple comments briefly about it. One of the things that strikes me on this topic of management and efficiency and decisionmaking in the Forest Service, if you step back from it, it looks to me like one of the things that has driven this issue is that essentially, we have had a bit of change of mission in the Forest Service in the last couple of decades and that we have been going through a culture shift, both nationally and in the Forest Service that are associated with our laws, and that is a transition from looking at our forests

predominantly for resource extraction industries to now valuing and representing and using the other good assets and resources of the forests for recreation and good quality water and open space and habitat for wildlife.

And it strikes me that this shift we are still in the process of doing that to reach a new balance in our forests. And in that process, I don't think it is surprising that we have had controversy in that regard, that there has been questions about the right decision-making and that there has been litigation when the Forest Service is not, at least according to some citizens view, following the law. I don't think it is surprising that we have had controversy about the decisionmaking in the Forest Service as we have gone through this cultural shift.

Second thing I want to say, I think there are a lot of things, and I look forward to your testimony that the Forest Service can be doing, even absent legislation to ease this decisionmaking, because I really believe, and I have seen it up in the northwest where if the Forest Service decides to listen to the public and listen to the values the local public has been advocating, they can avoid a lot of controversy.

Let me give you an example. By moving away from some of the controversial old growth proposed timber sales in the northwest, down the lower slopes of newer growth thinning operations where we can have cuts that are noncontroversial. It is a management decision, I think the Forest Service can and should be making, and we look forward to talking with you about how to do that, and perhaps even from a legislative standpoint about how to make those type of transitions. I look forward to your thoughts about how we move in those directions. But bottom line is, I think we will come out of this hearing with a finding that listening to the public will help us get over a lot of these problems, and of course, that is something we will be talking about the roadless rule with you too in that regard. Thank you, Chief, and thank you Mr. Chair.

Mr. HANSEN. Gentleman from Colorado, Mr. Tancredo.

STATEMENT OF THE HONORABLE THOMAS G. TANCREDO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. TANCREDO. Thank you, Mr. Chairman. There is little that can actually focus one's attention on this kind of a problem like an 80,000 acre blaze going on in one State as we sit here and speak today. People perhaps don't understand exactly what that really means putting it in perspective for people who live out here. 87,000 acres, which is what we have now is twice—is actually 135.9 square miles, which is about twice the area of Washington, D.C. That is what is involved in one blaze so far in Colorado, and there are, of course, several others that are ongoing. This is an incredibly tragic situation, caused, we believe, by a careless campfire being unattended. Out of every single tragedy, there is something that we can hope for in the way of a positive development.

In this particular case, I think it is perhaps going to be helpful—this congregation is going to be helpful in getting people to the table and understanding that there are ways in which these kinds of fires can be dealt with, can be minimized. We will always, of

course, have and should, of course, have fires. They are healthy part of the ecosystem. But these kinds of fires, fires we are talking about here, the ones we had just in the recent past, Hi Meadow, Buffalo Creek, Snaking Fire, these are not healthy fires. These are fires that do far more damage to the ground and the surrounding ecology than would have been the case if it had been able to be a fire burning in more of a natural surrounding, that is to say, in a less densely forested area.

And the way in which that better management policy can be developed, better management of forests can be developed is through cooperative effort on your part and ours what we can do to help you overcome the inertia that exists within the agency.

That is what I want to hear today, and I am hoping that you are going to be able to help us figure out what we can do to move away some of the obstacles that prevent the analysis paralysis that we have heard so much about. I think the concept of charter forests is one way to attack that problem, greater flexibility to the forests management idea and operation.

But I am interested in knowing what you will tell us about that. And it is fascinating, I have a picture here of the High Meadow fire and where it burned and where it stopped in Colorado, and something I am going to pass along here to my colleagues. If anybody is still questioning whether or not management, forest management can work in order to minimize the destructiveness of these kinds of fires, this is, I think, proof positive that it can be done. Where the forests had been thinned, where we had been working, we saw the fire line stop almost immediately. You know the fire came out of the tree tops, burned lower to the ground and eventually put itself out.

We know it can happen. We know we can do it and that is the most disconcerting thing. We know how to manage forests a lot better. The problem is that extreme environmentalists on one side and bureaucratic inertia on the other have prevented us from doing so. That is just my observation at this time. And I would sincerely appreciate, and I am certainly glad you are here today to give us your observation.

And the last thing that I would like you to comment on is the proposal I introduced last night to increase fines for people who do, in fact, start campfires in areas where they should not. Believe this or not, the first night of the Hayman fire when helicopters were taking water into the fire, they overflew seven other camp fires in the same area. When some of these people were contacted, they were willing to sort of chip in the five bucks a piece to pay the 25 dollar fine. So I would like to hear your comments on that too.

Mr. MCINNIS. [presiding.] I will keep it real tight on the opening statements because I want you to have an opportunity.

STATEMENT OF THE HONORABLE TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman. Let me, first of all, just say that to my colleagues in Colorado that I know what you are experiencing. We had the Cerro Grande fire and a number of fires in New Mexico in 2000. As your fires rage right now, we have thousands and thousands of acres also burning. So

we are once again in a fire situation that is out of control on this. And as the Chief knows, these catastrophic fires are a different kind of fire. I mean, you talk to the incident commanders and they say they haven't seen fires rage like this. They have their own weather conditions and they burn in a way that is out of control and it is something we really need to tackle.

And I guess my message to you, Chief, and you know this, but to the public, is this is a long-term situation. We need to commit the resources over the long term to make sure this is done. We are not going to get out of the conditions that my colleague from Colorado talked about in a couple of years. I mean, we have gotten into this situation over 100 years and it is going to take us quite awhile to get out of it, so we need to have that long-term commitment. And once again, my sympathies to Colorado and what you all are going through.

Mr. MCINNIS. Thank you.

Mr. Hayworth?

STATEMENT OF THE HONORABLE J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. HAYWORTH. I thank you, Mr. Chairman, and my colleagues and Chief, we welcome you today and we thank you for coming down to visit with us during the course of this hearing. Mr. Chairman, my colleagues, it strikes me that someone may join us via television. Aside from the obvious anguish of the fires that we see in the west might be worth going into some background just to point out that so much of the land in the west belongs to the Federal Government.

So, for example, Gila County, Arizona, 97 percent of the county owned by some governmental entity, not all the Federal Government, but still, when you consider that roughly 3 percent of the county is private property, it is problematic because when you are dealing with questions of what might be called in an urban setting, zoning or property management, in the western United States, the landlord in many cases is the Federal Government.

And I would second the comments of my colleagues today as we are dealing and confronting with the fire danger. Chief, we pointed out and as fires rage in southern Arizona, perhaps not as dramatic, but certainly as devastating in our own way what we are seeing right now in Colorado, I think it is important to reiterate that we have seen what has been characterized here as a rather elegant politically scientific term of bureaucratic inertia. And translate it to everyday language, that is, folks in government service choosing through delaying tactics not to carry out the will of the people and constitutional officers and sometimes by delay, subverting the law of the land.

The challenge we confront on the fires is obviously one that in terms of public policy triage is front and center. But there are other issues that emerge, Mr. Chairman, and I think next week we will hold a hearing to go more in-depth on the New Education Land Grant Act, which we passed unanimously through this House, which was passed by the Senate and signed into law by President Clinton on December 28 of the year 2000.

And I think Mr. Chairman, in my opening statement, I would be remiss if I didn't point out a perfect example of the type of bureaucratic inertia and the type of change in culture we need to see in the Forest Service that is long overdue. We put together a conference in Phoenix in the fall of last year for Arizona school districts that were interested in applying for land conveyances under the New Education Land Grant Act to convey nonenvironmentally sensitive public land at a low cost to these districts.

I have to report to this Committee, and again, I will go more in-depth next week in the hearing, the conference was met with major resistance from the Forest Service. In fact, although Forest Service officials had initially confirmed that they would participate in the conference and certainly they have a key role in providing information to school districts, they apparently decided to sabotage the event by not showing up at the conference without giving notice to me or any member of my staff save a last minute message on a staffer's cell phone on the voice mail.

Finally, upon my personal demand that they do so, two officials did make an appearance at the conference and proceeded to outline various hoops the school districts must jump through and pay for in order to qualify for a land conveyance. As it turns out, local Forest Service personnel had a presentation complete with power point slides ready to go for the conference, but they were told at the last minute by bureaucrats in Washington not to attend the conference presumably because implementation procedures were still unclear. The reluctance by the Forest Service to implement the law aside from efforts of the Forest Service to make conveyances more costly for school districts can only be interpreted as an effort to frustrate the obvious intent of the law. This is a prime example of bureaucratic inertia. Now to be fair for purposes of full disclosure, I am hardened by the fact that in Georgia, the Chattahoochee-Oconee National Forest, the first land grant will be completed under this Act next month. But right now in Arizona, we have a couple of applications that they are just sitting as victims of bureaucratic inertia.

I say this, Chief, because we want to work with you and there needs to be a culture shift and if it must begin in the Forest Service, let it begin now to implement the law of the land and to put an end to the unelected deciding what laws they will follow and what laws they will ignore. I look forward to your testimony and I thank the Chairman for the time.

Mr. MCINNIS. Mr. Otter?

STATEMENT OF THE HONORABLE C.L. "BUTCH" OTTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. OTTER. Thank you, Mr. Chairman, and welcome Chief. I as you know just walked in and I only got to hear my colleague from New Mexico and my colleague from Colorado and now Arizona and it is extremely frustrating I am sure in the short time in your office you already know that. And we have all got our ideas on how to probably break down gridlock. Unfortunately for some gridlock it is exactly what they want. But for others, those who lost their jobs and for the school districts that have closed down in Idaho and the 888,000 acres that burned up 2 years ago and now lays waste and

is devastating our fisheries and is devastating our water shed and really creating quite a bit of havoc in those water sheds, those of us that live on the land out there and for the most part try to represent what is good for the land, we want gridlock over with. And I am not exactly sure—I wish I had the magic wand I could wave. My Lord didn't grant me with the wisdom to come up with the solutions to all these ideas. But I would hope that most of your energies would be directed toward overcoming gridlock. If we have to bring everybody to the table, however we have to do it, I think we ought to set a time line and say by this date, it is going to be over with because I think unless we set ourselves a drop-dead date on when we are going to have processes that will allow us to defend ourselves from hazards that we would not allow to exist anyplace else, potential devastation to water sheds and fisheries and communities and jobs and those sort of things, we would not allow that to happen anywhere else.

If that same disastrous overgrowth, if that same disastrous hazard existed in Washington, D.C., we would marshal every forest—we would deploy every talent and every piece of equipment at our disposal in order to eradicate that potential disaster.

And so I am frustrated, as I am sure you can hear that frustration in my colleagues. Whatever we do, let us get it over with. Gridlock is actually serving the intentions of a lot of folks. To do nothing is exactly what they want. But it is also devastating communities and it is ruining lives. It is ruining water sheds. The very thing we seek to protect is now being devastated.

So I look forward to hearing your comments, but I really look forward to hearing the date or the time or the years or the months that you are prepared to set and say by this time, we are going to have this thing behind us and we are going to go forward. Thank you, Mr. Chairman. And once again, Chief, thanks for being here.

Mr. McINNIS. My apologies to the Chairman, I should have called on you first. Chairman, opening remarks?

**STATEMENT OF THE HONORABLE JAMES V. HANSEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. HANSEN. Thank you very much, Mr. Chairman. Let me just say if you go back and read the charter of the Forest Service from 1905 up to today, much of it is predicated on one word and it is called "manage." and we give these folks the tremendous responsibility to manage the Forest Service of America. As I—and I have known Dale Bosworth for a long time and I feel comfortable with him as Chief. I know how capable he is. He worked in areas of Ogden, Utah, an extremely capable man and I don't think we can do better. I also know in BLM, if I may talk about that for a just a second, Kathy Clark is also a very competent young lady and has a very good knowledge of things; and between the two of them, we worked some of this out.

But we are talking about the frustrations we have and we all got them. There is a lot of frustrations out there right now. You know, I would challenge members of the Committee to go on the next break to take half a day and go to your local forester and have him show you the forests. You are going to find more fuel load than we probably ever had in the history of the forests. I am not trying to

place any blame on anyone, but some folks remind that we don't clean the forests, we don't thin the forests and don't have prescribed fires.

And as you know, we are going to have a hearing in the full Committee which will talk about the amount of lawsuits that have been filed against the Forest Service and the BLM and how it has bogged them down. And I am sure Chief Bosworth will be at that meeting. I think you are going to be amazed of what these people tell you. Right now they spend 40 to 60 percent of their time filling out charts with NEPA trying to take care of that. So a lot of that rests here in Congress. We probably have made such a fudge factory for a lot of these folks to go through that we got to start straightening up some of these things so they can do what they were asked to do in 1905, which worked then and will work today, and that is, manage the grounds of America.

When you got that many people working on NEPA problems—and now add to that and I am sure the Chief will give us better information at our next hearing, there is 5,000 legal actions pending against the Forest Service right now as of May 2002. I was talking to Kathy Clark, and I said how much of your budget do you spend on litigation? She said just a tad over 50 percent. So we are going to give all this money to the BLM and they are spending it on litigation.

No disrespect for the American trial attorneys have found anything besides tobacco and asbestos to go after and to file one lawsuit on top of another, which really are predicated on some of our extreme environmental groups. Let us say to our managers of the public land, let us let them have the opportunity to manage the forests. Let us see them clean the forests.

Remember back, and boy, this will really get you if you remember this, but there used to be something called the CCC boys, and they went in and they thinned the forests and cleaned the forests and the forests looked pretty good. And now we have dead fall and fuel load like you can't believe. Of course we are going to have fires. We have a very fine forest supervisor retire not long ago in the State of Utah, and his name is Hugh Thompson, and is now working for natural resources. Hugh had the Dixie Forest.

Dixie Forest years ago, when the first pioneers came in the valley, there was nothing. And they started planning. The Forest Service went in and created one of the most beautiful forests there is in America called the Dixie Forest in southern Utah. And then up by Cedar Breaks they had an infestation of something called the pine beetle, and Hugh wanted to go in and cut out about 17,000 acres. No, got a lawsuit just like that. Stopped him. The trouble is those little beetles just kept eating away and finally got through the first one, another lawsuit. Now I would just challenge any of you, and as an old pilot and I go down there occasionally and fly over it and you know what you got? You got dead sticks. It looks like dead toothpicks all over the place.

And I started thinking about the time we had a really great forester here in the 1980's, and we are talking about the Uintah Mountains, and there was a fellow from one of the extreme environmental groups, and he said don't touch it, leave it alone. Don't even come close. And this forester said I don't have a dog in this

fight, but let me tell you what is going to happen. If we don't go in and clean out that infestation of pine beetles, you are going to have a dead forest and I will guarantee you will have a fire. He said I can guarantee you will have a fire and that beautiful green carpet that you don't want touched will be an ugly dirty mess.

And his next comment was, and I think you can guarantee you will have a flood. And if you are going to do it nature's way that we keep hearing around here, it will take 100 years before you will see that forest back to what it was. This gentleman doesn't have the option of just letting it go. He has to take care of the forests as the BLM has to do. I just say to my friends here this is an extremely important issue that we have in front of us today, but I wanted to add the dimension of we, Congress, have created a lot of this fudge factory ourselves. And one thing we could move into would be rule 28 of the civil procedure on how these lawsuits are filed, and I would urge the Committee to do it.

Mr. MCINNIS. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hansen follows:]

**Statement of The Honorable James V. Hansen, Chairman,
Committee on Resources**

A little over a month ago, the Resources Committee held a hearing on the future of the Forest Service. Secretary Veneman and Chief Bosworth told us about their vision for the Forest Service and what changes would have to take place to keep the agency working to protect and enhance our National Forests.

One of the most important issues that surfaced in that hearing was the excessive gridlock, or "analysis paralysis," and the hampering effect it has on the Forest Service's ability to manage the nation's 192 million acres of National Forests for all Americans. I look forward to hearing more about Chief Bosworth's report today that details this problem.

I've worked closely with the Forest Service for many years, and have a good relationship with many of the people who make it run. I worked with Chief Bosworth when he was the Regional Forester in Ogden, Utah, and know that he is very capable of leading this organization. I've been impressed by the outstanding men and women that are the regional foresters, forest supervisors and district rangers. I know they're great leaders and managers, and that they have only the best of intentions for the nation's forests.

But today, the Forest Service leaders can't lead and the managers can't manage. This has nothing to do with their abilities as leaders or managers, but has a lot to do with the way that we do business here. Often, this Body passes laws that begin with good intentions. By the time these laws are interpreted and put into place, they end up only making things worse. Over the years, more and more restrictions have been placed on managers, and their ability to make management decisions has slowly diminished.

If that isn't bad enough, add frivolous appeals and years of confusing and contradictory court interpretations, and the result is gridlock. Instead of being able to make and implement good management decisions, the Forest Service spends 40% to 60% of their management time preparing NEPA documents, meeting other statutory and regulatory requirements, and preparing agency decisions to withstand possible appeals and litigation. This does not include time spent defending those decisions in the courtroom. Just as a side note, in May 2002, about 5,000 legal actions were pending against the Forest Service.

The result of this gridlock is poor management, or no management at all in some cases. For example, regardless of the urgency, a 34-cent stamp can hold up a badly needed timber sale for years. Take the case of the Dixie National Forest in Southern Utah. For more than a decade the spruce forests in the Dixie have been under siege from bark beetles. When the epidemic began, the Forest Service began to offer timber sales in an attempt to contain the bark beetles. However, although these timber sales would likely have improved the health of the forest by reducing the spread of the beetle and the number of dead and dying trees, the timber sale decision in 1994 was appealed. As was the timber sale decision in 1995. And the sale decisions in 1996, 1997, 1998, 2000, 2001, and 2002. The result? Fat beetles and dead trees. Like a slow moving wildfire, these beetles destroyed every spruce in the area, and

left them standing. Anyone that has driven through the Dixie National Forest in the last ten years will attest to the decimation of this once beautiful forest.

Sadly, the ramifications of this tragedy extend past the dead trees. Adjacent landowners now face an extreme fire hazard. Wildlife habitat has been destroyed, including potential habitat for the goshawk and spotted owl. Hikers must find another place to recreate. Passers-by are left with a dreary visions of a standing forest of dead trees. And the beetles have now spread into the Cedar Breaks National Monument.

The point is that gridlock doesn't only affect projects to improve the health of the forest or just timber sales. It affects the Forest Service's ability to manage endangered species habitat, grasslands and ranges, watersheds, trails, campgrounds, minerals, roads, and a host of other important multiple uses that occur on our public lands.

The Forest Service was once known for the local managers' ability to manage the forests. Let's let them do it again. We have the right people on the ground. We have great leaders and managers. But they need to be allowed to lead and manage. I look forward to hearing Chief Bosworth's report and his recommendations.

Mr. MCINNIS. Members, we keep having members come in, so I am going to allow two more opening statements on your side, two more on this side and I am closing off opening statements and you can submit it for the record. We take all this time we are not going to get to hear from the Chief and that is who we want to hear from. We all hear from each other all the time. So Mr. Inslee, I will go in the order of how they are seated. Mr. Udall, you came in next and I will go in the order you showed up.

STATEMENT OF THE HONORABLE MARK UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. UDALL OF COLORADO. Thank you, Mr. Chairman. I will make my comments very brief. I did want to echo the concerns of my colleagues from Colorado, particularly Mr. Tancredo and Mr. McInnis, when it comes to the Hayman fire and the situation we now face in Colorado. And, Chief, I am looking forward to hearing your comments. I also support what my colleague, Mr. Tancredo, has proposed when it comes to increasing the fines for campfires that shouldn't have been set in the first place, and the incredible damage they can cause.

All of us in the Colorado delegation have worked on the fire plan and fuel reduction efforts over the last couple of years. And I want to emphasize again that we need to get those resources into the urban wildland interface, the so-called red zone. And I am eager to do all I can to help the Forest Service and work with my colleagues to see if that is the case. This is a long term problem. We are in it on a marathon basis. This has been developing certainly for 100 years. We have more to learn about the forest ecosystems and the best way to manage those forests. But if we can pull together and find our common ground, I am optimistic we can reduce these hazards and return our forests to a healthier condition. I thank the Chief for coming up to the Hill today.

Mr. MCINNIS. Mr. Udall, if you don't mind, I will let you yield your 3 minutes and 45 seconds to Mr. Holt.

Mr. UDALL OF COLORADO. I would be happy to yield my time to my colleague from New Jersey, Mr. Holt.

Mr. HOLT. No. I yield. You can yield your time to another.

Mr. MCINNIS. Go ahead, Ms. McCollum, you may proceed. Do you have an opening statement?

Ms. MCCOLLUM. No, I don't, Mr. Chairman.

STATEMENT OF THE HONORABLE SCOTT McINNIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. MCINNIS. I will wrap it up, first of all, Chief, I want you to know we just finished the White River National Forest Plan. And the regulations, the comment period and the things—I mean, we have asked for public input in our democracy of 200 years, frankly, I think has saddled your agency with regulations and input. And everybody that I have talked to thinks they know how to run that forest better than your people do.

Unfortunately, I think your agency has been somewhat bashful or timid about saying hey, why don't we let the experts in and instead, we are taking more and more public comment, and I will give you an idea. I, as you know, in the White River National Forest, was appalled by the alternative that they came up with which for the first time in forest planning set human use as a lower priority than ecological or biological—any ecological or biological use that took priority over any human use. So I submitted my own forest plan, which was a very thick complicated, detailed document prepared by scientists.

That was the science. When I went into your office in Glenwood Springs, one of the Forest Service employees wouldn't even shake my hand. It is embarrassing for me. I put my hand out and he said I am not going to shake the hand of someone like you. And I am wondering what was happening there.

Now fortunately, Martha Cattell and Rick Cables and some of those people responded. But we also heard that despite the fact that the Chairman of the Forest Committee, the fact a congressional representative of this district got elected by the people of this district, and the fact that his report was done with experts, including the former supervisor of the White River National Forest, which was my expert who primarily authored the report, so to speak, combined with the others, this should—some of these people say this comment should have the same as somebody off the street who sends a one-sentence comment to your agency that says that I either oppose the White River alternative or I support it.

And that is bureaucracy. I know you know this. You came into this. You inherited this. On top of that, I have just come as you know, all the major—or most major fires including the big one right now started in my district in Colorado. Saturday night I was interrupted at a dinner to be told that my parents home of 60 years had been burned to the ground. That was incorrect, but the fire was on all sides of them.

By the time I got to Glenwood Springs, they said we had 150 homes in flames. I actually went in and did my own damage assessment because, obviously, having lived there I know it like the back of my hand. The actual damage was perhaps 30 homes. That said, I want to tell you your Forest Service out there with that fire and with every fire we have had so far in my district, which are the major fires we have had out there, your agency has been splen-

did and been there, with their air tankers, their people are first class and seems to me that last year when we gave you these resources, we hired additional fire men and equipment, we are clearly seeing a difference now with this fire season over what we saw last fire season.

So if we can see that kind of improvement in the other parts of the agency that we deal with as we have seen in my opinion, the dramatic improvement in our fire management that I witnessed firsthand and spent the entire weekend with your people out there, I think we can make some real progress.

So it is clear from the comments made by this Subcommittee, and fortunately everybody on this Committee has a deep and intense experience with Forest Service property all in our own ways. In my district, for example, 119 out of the approximately 120 communities are completely surrounded by public lands. So these are experienced voices.

But you are an experienced leader and I think we can see some results. So I look forward to your testimony. And Chief, the time is yours. You are not going to be limited to 5 minutes. We want to hear your discussions and then we will open it for two-way discussion.

[The prepared statement of Mr. McInnis follows:]

**Statement of The Honorable Scott McInnis, Chairman,
Subcommittee on Forests and Forest Health**

Today, the Subcommittee on Forests and Forest Health will hear testimony from the Chief of the United States Forest Service, Dale Bosworth, who will present the findings of a widely anticipated report on the decision-making process that guides the management and use of our national forests. This Subcommittee and many others have been eagerly anticipating the findings of this report for several months, and we appreciate the Chief coming here today to present the results of this analysis.

It is altogether fitting that we are having this conversation at a time when catastrophic wildfire is quite literally laying waste to forests and communities throughout the West. If we're ever going to slow this fiery march across the West, we've got to start managing our forests. Unfortunately, mortal flaws in the Forest Service's decision-making process makes widespread and meaningful treatment of our national forests a virtual impossibility. The Forest Service estimates that 50 million acres of our public forestlands are at high risk to catastrophic fire. And yet, because of the cumbersome process impediments described in the Chief's report, the Forest Service this year will be hard pressed to treat one million acres of those high risk areas. Clearly, this glacial pace is unacceptable in the face of such a massive threat. Effective management of our forests, then, necessitates a substantial overhaul of the way the Forest Service makes and implements management decisions. That process, I hope and trust, begins with our consideration of the Chief's report today.

The laws and regulations that govern the national forests are the result of more than 200 years of American democracy. Unfortunately, as this body of law has evolved and expanded over the decades, policy makers and the Forest Service have failed to assimilate the sea of relevant statutes, regulations and court decisions into a workable whole. We've piled procedure on top of procedure, process on top of process, and analysis on top of analysis. The result is a mountain of congressional mandates, administrative directives and court decisions that rival the federal tax code in their complexity and convoluted. Jack Ward Thomas, the former Chief of the Forest Service, accurately refers to this nightmarish bureaucratic heap as "the blob".

As I have said previously, the vast majority of the laws and regulations that we're talking about were established with good motives and for sound public objectives. Cumulatively, however, this incoherent maze of mandates has crippled the Forest Service. The statutory mission of the Forest Service is to "care for the land and serve the people." Paralyzed by process, shackled by gratuitous bureaucracy, today the Forest Service is incapable of living up to that charge.

So what does all this mean on the ground, in the real world? For the answer, look no farther than what's going on in Colorado right now. All of us have seen the images of the Hayman Fire on the news, the massive wildland fire just outside of Denver that has made scorched earth of nearly 100,000 acres in the Pike/San Isabel National Forest.

For those living in communities like Bailey, Decker, Woodland Park and Pine, these images aren't new at all. They saw the same ominous images from their back-patios and front-lawns when fire ravished much of the same country in 1996 and 2000. Those fires burned 23,000 acres, destroyed nearly 100 homes and other structures, dumped several tons of sediment into Denver's primary source of drinking water, and filled our Rocky Mountain skies with black smoke and soot.

As bad as these fires were, though, the Forest Service and others in these communities new it could get worse. They knew that, as often as not, second and third burn-overs are more catastrophic than the initial fire. So in August of 1999, they set out to do something about it. In collaboration with a broad array of federal, state and local officials, the Forest Service set in motion the South Platte Watershed Protection, which was focused on protecting adjacent communities and Denver's drinking water from another major fire by reducing excess forest fuels in the treatment area.

Like so many other efforts like it, though, this project was strangled-out by red tape and inane bureaucracy. Thanks to an 800 step decision-making process (according to Forest Service figures), two appeals by environmental groups, and a retaliatory appeal by the forest products industry who wanted to make sure it had a seat at the table when the Forest Service negotiated an agreement with the environmental community—the Upper South Platte Restoration Project is almost entirely unimplemented nearly 3 years after it was first proposed. Today, the area slated for treatment under the plan is on fire, 6 thousand homes in the area have been evacuated at last count, old-growth stands in Inventoried Roadless Areas have been reduced to ash, tons of sediment are once more being dumped into Denver's drinking water, and our blue skies have once again been made black with smoke.

In my opinion, Colleagues, the Hayman fire is the face of process gridlock on our national forests. The Forest Service's fundamentally flawed decision-making process didn't start the fire; it appears that that was the doing of an illegal campfire. But the unmistakable reality is that the Forest Service's inability to make and implement a management decision on the South Platte turned a complicated situation into a regional crisis.

Clearly, Mr. Bosworth, the time for reforming this framework is past due. Your predecessor Jack Ward Thomas has said that, the General Accounting Office in a 1997 report said that, and now with this report you have said that. Your challenge—a challenge which we substantially share in—is to parlay these words into long-past-due action.

It is with this that I thank the Chief for being with us here today and I look forward to this important dialogue.

Mr. McINNIS. And thank you, Chief. You may proceed. Rick Cables, by the way, if there were some medal I could give him, he was wonderful out there. So my compliments to them and I hope you pass that on.

STATEMENT OF DALE BOSWORTH, CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. BOSWORTH. Thank you, Mr. Chairman. I will pass those comments on, and I appreciate hearing those and I know the folks in the field will appreciate hearing that as well. Mr. Chairman and members of the Subcommittee, I really do want to thank you for the opportunity to continue the discussion that we started several months ago regarding the processes that Forest Service line officers face in trying to make decisions on the land and in trying to comply with a myriad of laws, regulations and standards that end up being imposed. About 6 months ago, I told you that I would ask the team to update former Chief Jack Ward Thomas' study on the Forest Service's legal and the regulatory framework, and to take into con-

sideration any kind of new laws or new regulations, new court decisions that had happened in the intervening years. That report has been completed.

And I am happy to provide that report to you. I would like to talk today about the report and I would like to talk some about how I expect and how I begin to intend to try to unravel the procedural knot in which the Forest Service is bound at this time. The report I am giving you today doesn't set out to propose solutions, and I want to be clear about this. At this point in the report, we didn't want to talk about solutions. We want to develop consensus on the problem so we can search for the right solution. My big fear would be we would come up with solutions in search of a problem and I think we need to do it the other way around. And as you see the report, we will find out whether or not there is any agreement that we have identified the right problem, that it is a problem, and then I think together we can move forward to start correcting that.

Environmental laws and regulations, I don't believe, are in conflict. I think the fundamental problem is that the legal and the procedural requirements that the Forest Service has to comply with haven't been systematically developed or systematically constructed over time. They really evolved over probably 30 years in response to laws, agency regulations, court decisions, public expectations, scientific understanding. They don't have very much coordination, little or no coordination. So that resulted in three general problems. The first I will talk about is excessive analysis. We have created a short-term risk-adverse atmosphere, which most of the time doesn't properly weigh the more significant long-term considerations or long-term consequences of only thinking about the short-term.

The procedural requirements imposed by regulatory agencies and the courts just never stop. They just continue to pile on, to pile on. And that means you have increased analysis and documentation which is costly, it is complex, it is time-consuming, and often doesn't result in timely decisions. And I think Congress and the public has every right to ask at the end of the day is the result a better decision.

I can't think of a better example that illustrates this point than a report that is called the Beschta report. It is a commentary that was authored in 1995 by eight university and government scientists. The paper has never been published in any scientific or professional journal, never been subject to any formal peer review, but in four cases now, courts have concluded the project decisions violate NEPA because the associated NEPA documents didn't adequately document the agency's consideration of the Beschta report.

I think it is a good but definitely not the only example of an incentive that our line officers feel to fill, overstuff NEPA documents with excessive amounts of information, excessive amounts of analysis and documentation. It is time consuming and costly, but it doesn't really contribute very much in the end to the quality of public involvement and land management. The question is, Is that what Congress wants? Is that what the public wants? Another area is unproductive public involvement.

A lot of our critics say that we would avoid a lot of our problems, if we would only include the public earlier in our project planning.

I think the reality is that I really don't believe there is another Federal agency that provides more opportunities for public review and comment on proposed plans and projects than the Forest Service does. We try to do it early in the process at the very beginning. We involve the public all the way through the process through multiple meetings, field trips often to make sure we understand what people are thinking.

We encourage competing interests to sit down and reason together to try to find ways to accommodate their various viewpoints and various objectives. The theory behind the approach is that it will lead to more informed decisions and those more informed decisions will have more broader public support. It can—I don't think it can be reasonably expected to mean that the Forest Service has to have unanimous support, unanimous support for every aspect of a project if we are going to move forward.

Ultimately, Forest Service officials have to end up making a decision based upon a lot of different factors, some of which may not be represented. However, the benefits of this dialog with the public too often frustrates the public, just like it does the Forest Service. Now my testimony that I submitted talks about the efforts of the Hiawatha National Forest to remove an existing concrete bridge across a creek called North Light Creek, that is within the Grand Island Research Natural Area.

This bridge was breaking apart, chunks of concrete falling into the creek. The forest closed the bridge in 1995 and started scoping on a replacement bridge. There was a fair amount of public support. A lot of public support in the initial scoping period and in the environmental assessment comment period there was substantial, but not unanimous, support by local residents, recreation interests, and environmental groups for the project. One individual who had participated earlier in the process but who had not opposed the project appealed it.

Although the appeal wasn't based on agency's consideration of alternatives, the regional office review then found the document, at least the documentation of some other alternatives, was lacking so the ranger had to withdraw the decision several months later. It was subsequently decided to consider the bridge project in the context of revisions to the research natural area record of the establishment record. And the forest's plan amendment took about a year-and-a-half to complete, and that one wasn't appealed.

So now here we are, we are scoping now again for the bridge replacement project which began last June. We figure the construction of the replacement bridge could begin in 2005, so we end up with a single appellant that really overrode broad public support for the project when it was proposed in early 1995 and has placed the bridge replacement back 10 years.

Again, small bridge, safety issue, environmental issue and the question is, Is this what Congress wants? Is this what the public wants?

The third problem is really us, the Forest Service. When I testified before the Subcommittee last year, I admitted that we are part of the problem. In the work that our folks did to develop the report, the team also found that agency leadership and management in planning and decision-making needs to be improved.

I have asked our Deputy Chief for national forest systems, Tom Thompson, to take a comprehensive reengineering of our processes internally to address those parts of the report that we can correct internally as an agency.

Mr. Chairman, I want to close today with pretty much the same message I had last year. We are frustrated with the status quo. Forest Service employees are committed to protecting and improving the quality of the land, the water, wildlife and air and with the goals with protecting and preserving this Nation's precious historical and cultural resources.

But I want to be clear that I am not coming here to dump the problem in your laps and say this is your problem. I am really more here to deliver a promise. We are going to work hard and we are going to get this fixed. We will go as far as we can. But we will go a lot further and a lot faster if we can get your help, your advice and support.

And I want to be clear that this isn't about going backward to the past. This is really a new time. You know the public is at a different place today than when a lot of our environmental laws were enacted. The science wouldn't let us go back to the old ways even if we wanted to. We know more today than we did when these laws were passed. But I don't believe when it passed these important laws, that Congress really had in mind unnecessary and unproductive procedures.

I don't think that we expected the process to produce absolute certainty, and that is what we seem to be in the quest of, absolute certainty for every decision. So I am dedicated to revising and not just reviewing Forest Service processes to provide the best tools and training for our line officers and staff. And we will do a better job of managing our processes. But I don't want the Forest Service to just get a whole lot better at a bad process. I want us to fix the process and to be good at managing a good process. We have been consulting closely with the counsel on environmental quality.

This report has their stamp of approval. We have been consulting closely with other Federal agencies and departments such as Commerce and Interior. They share our desire to improve the effectiveness and the efficiency of our processes.

So today I am asking the members of the Subcommittee to look at this report with an open mind and give me a chance to work with you to find a way to make Forest Service land management decisions in an effective, efficient, and timely manner that doesn't compromise protection of natural resources that people expect us to manage carefully.

With that, I am ready to answer questions and thank you again for the opportunity to be here.

Mr. MCINNIS. Thank you, Chief, for the presentation.

[The prepared statement of Mr. Bosworth follows:]

**Statement of Dale Bosworth, Chief, Forest Service,
U.S. Department of Agriculture**

Mr. Chairman:

Thank you for this opportunity to continue the dialogue we started late last year on the difficult, costly, confusing and lengthy processes that Forest Service line officers must follow to comply with the laws enacted by Congress, implementing

regulations and procedures put in place by the Forest Service and other agencies, and standards imposed by the courts.

Six months ago, I told you I had tasked a team to update former Chief Jack Ward Thomas' study on the Forest Service's legal and regulatory framework to take into consideration new laws, regulations, and court decisions since the study was prepared in 1995. That report has been completed.

Today I want to discuss the report and how I intend to begin to unravel the procedural knot in which the Forest Service is bound. As I have said before, I need the Subcommittee's help if I am to be successful. This knot is no less tightly tied than the Gordian Knot of ancient Greek mythology. And unlike Alexander the Great, I cannot simply draw my sword and cut it.

By design, the report I'm giving you today does not contain specific recommendations for changes in Forest Service policy or guidance, the regulations or policies of other Federal agencies, or laws. Frankly, I felt that doing so would distract all of us from the more immediate task at hand: fully appreciating and agreeing on the existing legal, regulatory, and management framework under which the Forest Service must labor to get work accomplished.

Before we can begin to agree on solutions, we need to have general agreement that the current framework is not conducive to this agency getting the work that the Congress and public expects done, in a reasonable amount of time and at a reasonable cost. I believe that report makes a persuasive case that the existing framework is an impediment to those ends. Unless we can change the existing framework, it is only going to go from difficult to impossible to get work accomplished on the national forests and grasslands.

The Team concluded, correctly I believe, that the difficulty of complying with the laws, regulations, and management procedures are not primarily the result of conflict between the laws. Rather they arise from the piecemeal imposition of regulations, court decisions, and internal agency process requirements over time. Over the several months that the team conducted its review and analysis, it generally agreed with the 1995 Task Force Report's findings that the legal and procedural requirements the Forest Service must comply with have not been systematically constructed. Rather, they have evolved over time, in response to laws, agency regulations, court decisions, public expectations and scientific understanding with little or no coordination. That circumstance results in three general problems.

1. Excessive Analysis

Regulatory agencies take very seriously their obligations to enforcing the statutes under their jurisdiction and they are properly reluctant to allow projects to proceed absent documentation of the anticipated impacts. Courts also demand a high level of analysis and documentation from the agency's decision documents.

This has led to lengthy consultation and a short-term, risk averse environment, frequently at the expense of far more significant long-term benefits. That means increased analysis and documentation, which is costly, complex and time consuming. The procedural requirements imposed by regulatory agencies and courts never seem to abate—they just continue to pile on.

Congress and the public have every right to ask, "At the end of the day, is the result a better decision?" I don't think so.

I can't think of a better example to illustrate this than the so-called "Beschta Report," a commentary authored in 1995 by eight university and government scientists. Many members of the Subcommittee may not be familiar with this report.

The authors prepared the paper at the request of the Pacific Rivers Council. It offers 21 "principles and recommendations" regarding a wide range of topics. The topics include: erosion, soil impacts, noxious weeds, sensitive areas, effects of road building, reseeding, and fire management policies. The paper generally recommends against any active management of post-fire areas other than removal of existing roads. The paper has never been published in any scientific or professional journal, nor has it been subject to any formal peer review.

Nonetheless, interest groups have filed numerous lawsuits challenging post-fire recovery projects in part on the grounds that the associated NEPA documents fail to adequately document the agency's consideration of the "Beschta Report." I have been told that information on how to use the report to write comments on proposed projects and appeals of project decision documents is available on more than 100 Web sites. To date, there have been judicial opinions on the "Beschta Report" in six cases.

In four of these cases, the Courts have concluded that project decisions violated NEPA because the associated NEPA documents did not adequately document the agency's consideration of Beschta. In two other recent cases, Federal District Courts have ruled in favor of the Forest Service. In one case, *Native Ecosystem Council v.*

U.S. Forest Service (D. Mont.) (Maudlow–Toston, Helena NF), the Court found that the EIS complied with NEPA even though the plaintiffs strenuously argued that failure to adequately consider the “Beschta Report” violated NEPA. In the other case, *Center for Biological Diversity v. Andre* (D. N.M.) (Corner Mountain Fire Salvage, Gila NF), the Court found that the EA adequately considered the issues in the “Beschta Report,” even though the EA did not reference the “Beschta Report.”

Hitting .333 is very good in baseball. It’s not much of an average in natural resource case law. As a result of these 4 decisions, land managers wishing to reduce the risk that their decision will be reversed in Federal Court should feel compelled to thoroughly document their consideration of the “Beschta Report” even though the underlying land management issues are already addressed. This includes documenting why some elements of the “Beschta Report” are not relevant to the specific proposed project.

The judicial opinions against the agency have inspired some interest groups to demand that the agency consider numerous other papers and articles that they assert are relevant to the some proposed actions. Sometimes the list of references exceeds 100 articles and papers. To minimize the risk of adverse judicial opinions, land managers are advised to fully document within the body of the NEPA document their detailed consideration of each and every paper or article.

So, when critics assert that the Forest Service is its own worst enemy by spending so much time preparing large NEPA documents, I ask that you remember the “Beschta Report”—an unpublished document of questionable science proposed for an advocacy group that has never been peer-reviewed—but whose consideration now must be documented in several if not all judicial districts in order to build a defensible NEPA document.

It’s a powerful example of the incentive for land managers to fill, or overstuff, NEPA documents with excessive amounts of information—even if the information is of questionable relevance and does not illuminate the reasons for the decision—all in an effort to protect their decisions from charges they failed to adequately consider some piece of information. As a result of these efforts to increase the legal defensibility of decisions, project analysis and documentation processes are very time consuming and costly, but the additional documentation contributes little to the quality of public involvement or land management.

Consider the following from the article, “*Toward a Smarter NEPA: Monitoring and Managing Government’s Environmental Performance*,” by Bradley C. Karkkainen that was published in the *Columbia Law Journal* (May 2002).

“...The upshot is that agencies have an incentive to overstuff the EIS with information from every available source, regardless of its quality, so as to achieve a protective layer of redundancy or “overkill” while at the same time inoculating themselves against the charge that they overlooked relevant information. Eighty-three critical comments from NGOs, academic experts, EPA or other federal agencies at the scoping and draft EIS stages quickly translate into an even more bloated final document, as agency managers seek to incorporate, recharacterize, or rebut relevant details of the critiques. If high quality information is included, it may be diluted or simply lost under the avalanche of lesser quality information, vague case-specific analysis, marginally germane off-the-shelf studies, reports and data sets and boilerplate cribbed from previous EAs.”

Is that what Congress wants? Is that what the public wants?

If not, it is something I would like to change for the Forest Service.

2. *Unproductive Public Involvement*

As the Subcommittee has stated previously (for example, in the November 29, 2001, letter co-signed by the Chairman and Mr. Udall (NM), the public is vitally interested in community-based land management approaches that bridge ideological differences and focus on results. Your letter suggested an opportunity to translate that interest into legislation authorizing a pilot to implement and monitor innovative approaches to land management drawn from communities. The Administration’s Fiscal Year 2003 Budget included a similar proposal to establish pilot forests administered outside the normal Forest Service structure. The details of that proposal have not been finalized. The idea has merit.

There is no federal agency that provides more specific opportunities for public review and comment on its proposed plans and projects than does the Forest Service. These opportunities occur at multiple planning levels and include: Federal, state, local and Tribal agencies; advocacy groups; user groups; and private citizens. A district ranger who wants to seek consensus advice from a range of opinion leaders in the community must be extremely careful to avoid any technical violation of the Federal Advisory Committee Act and that’s not easy to do.

We encourage competing interests to sit down and reason together to find ways to accommodate their diverse objectives. We try to do it early in planning a project. While the decision still rests with the agency, the theory behind this approach is that it will lead to more informed decisions that have broad public support. It cannot reasonably be expected to mean that there is unanimous support for every aspect of a project. Ultimately, Forest Service officials must render decisions based on a wide range of factors, some of which may not be represented.

However, the benefits of this dialogue is too often not as productive as one would hope. Consider the efforts of the Hiawatha National Forest to remove an existing concrete bridge across North Light Creek within the Grand Island Research Natural Area that was breaking apart and falling into the creek. Although it's signed "closed," snowmobilers and other non-motorized traffic still use the bridge. Visitors not using the bridge cross the creek by scrambling down banks, causing bank erosion. The Forest wants to replace the bridge with a single-span, 6-foot wide, treated glue laminated arch bridge with railings at the existing crossing. The scoping on the project started in early-1995.

There was considerable public support to replace the bridge. At the initial scoping period and EA comment period, island residents, recreation interests, and local environmental groups all supported the project, without exception. The Decision Notice to replace the bridge was signed in mid-1998. One individual, who had participated earlier in the process, but who had not opposed the project, appealed. Although the appeal was not based on the agency's consideration of alternatives, the Regional Office review found that the documentation of other alternatives was lacking, so the District Ranger withdrew the decision several months later.

The Forest Service subsequently decided to consider the bridge project in the context of revisions to the RNA Establishment Area. Revision of the Establishment Record and the Forest Plan Amendment took 1.5 years to complete and was not appealed.

New scoping for the bridge replacement project began in last June. The new EA is underway. Construction of the replacement bridge could begin in 2005. So, a single appellant overrode broad public support for the project when it was proposed in early 1995 and has pushed bridge replacement back almost 10 years.

Is this what Congress wants? Is this what the public wants?
It is something I would like to change for the Forest Service.

3. *Management Inefficiencies*

When I testified before the Subcommittee last year, I admitted that we were part of the problem:

"I want to address this problem head on, not engage in finger pointing, or blaming everybody but us for the current problem. In written reports and hearing testimony, the General Accounting Office and others have detailed their views on the underlying causes of inefficiency and ineffectiveness in the Forest Service's decision-making. No question—we share responsibility for the problem. But we cannot fix the current problem by ourselves."

In its work, the Team also found that agency leadership and management in planning and decision-making needed to be improved. The case studies in the report we are submitting illustrate situations where process management decisions cost the Forest Service. Sometimes distracted managers and line officers have hurt us. There is a clear need for us to better train and inform our line officers so that they, in turn, can clarify the scope of decisions being made, undertake the appropriate analyses required to make an informed decision, and adequately document decisions in a timely and cost-effective manner.

The Forest Service is currently engaged in a number of efforts to make the decision process more efficient, including the work done by this Team. Others include: revising the planning regulations under the National Forest Management Act, updating the agency's categorical exclusions under NEPA, a developing an array of tools for assisting with NEPA compliance.

We need to make a substantial investment in technology. Consider what I said about the many Web pages that provide information on how to use the "Beschta Report" to challenge proposed projects. There is no reason that the agency can't use the same technology to assist our line officers in responding to those challenges, and whatever new ones arise at some point down the road. We are doing that. We need to do more. We will.

I have asked Tom Thompson, Deputy Chief, National Forest System, to undertake a comprehensive re-engineering of our processes to address those parts of the report that we can correct as an agency.

Mr. Chairman, I'll close today with much the same message as last year.

We are extremely frustrated with the status quo. Forest Service employees are committed to the goals of protecting and improving the quality of our land, our water, our wildlife, and our air and with the goals of protecting and preserving this nation's precious historic and cultural resources. But, we find ourselves too often unable to do the work that we know needs to be done, the work that Congress and the public expect us to do because of unnecessary and unproductive process and procedure.

I believe the report I am providing you today makes the case for change. At the least, it makes it hard, if not impossible, to argue that current environmental laws and regulations couldn't be implemented more efficiently and effectively. Who would argue the laws and regulations shouldn't be implemented as efficiently and effectively as possible?

I am dedicated to revising, not just reviewing, Forest Service processes to provide the best tools and training for our line officers and staff. We will do a better job of managing our processes. But I do not want us to just get better at playing a bad game. I want to fix the game.

I expect our endeavors to resolve analysis paralysis will take significant effort and a great deal of time and will generate opposition. At the end of the day, those who are determined to keep projects from going forward, the merits notwithstanding, are afforded a considerable advantage by the dysfunction of the our decision making process. They will not cede that advantage without a struggle.

The Council on Environmental Quality, which, as you know, is responsible for the NEPA regulations that apply to all federal agencies, and the other federal agencies and departments with whom we closely work, such as the Department of Commerce, the Department of the Interior, and the Environmental Protection Agency, share our desire to improve the effectiveness and efficiency of our processes. I know we can count on their support as we undertake this task.

Today, I ask you and the other Members of this subcommittee to look at this report with an open mind and give me a chance to work with you to find a way to make Forest Service land management decisions in an effective, efficient and timely manner that do not compromise protection of the natural resources we are entrusted to manage for the American people.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions from you and the other Members of the Subcommittee.

Mr. MCINNIS. I have a couple of points and then we will move on for the balance of the Committee. One thing I think would be helpful is education at the local management level within the agency, kind of advice on you know frivolous lawsuits. I know that every time the local forest service and the number of forests that I have make a decision, somebody always says they are going to sue them. And frankly, I am a little concerned that having been a lawyer, I am a little concerned that our employees out there are becoming gun shy about that. That just throwing that threat at them causes them to retreat or reconsider. Most of the threats of lawsuits are not sustainable in the courts.

Now anybody has a right to file a lawsuit, but whether or not they win in the end, only a small, small percentage would prevail, and only a small percentage of those threats would be filed. So I think that is important and I would like your comment on that.

The second thing, if you would just—we have been talking about a very broad picture, can you point out what you would think would be the most significant factor contributing to the gridlock and the stalemate that we are running into today? If you would help me with those two and then we will move on.

Mr. BOSWORTH. OK. Your question about, or comment about forest service people backing off or being afraid to move forward because of the threat of lawsuits, that does affect Forest Service people when someone says we are going to file a lawsuit. But my experience has been that our folks are not backing off, but they are spending a lot of time trying to make sure that if they do get sued,

that they are going to be able to withstand that lawsuit. So the backing off may be to do some additional analysis to make sure that your documentation is carefully done to try to resolve the issue with people that are considering the lawsuit.

And as I mentioned in my testimony, there are things like the Beschta report that will pop and then we will go back to all of our other projects and make sure we documented the consideration of the Beschta report and there may be another report.

So our folks tend to add a lot of stuff into these documents to make sure they can withstand a challenge if they are unable to resolve it through a collaborative approach. I don't think they are afraid to move forward; they are afraid to move forward without strong recommendation and without strong feeling that they will be able to withstand the challenge.

In terms of the most significant factors that result in some of the gridlock, I think it is very difficult, to try to identify one thing that is a big problem. It is an overlapping number of things. That is why it is going to be difficult and challenging to try to deal with it because there are so many things. You cut one string but there are still a million other strings you need to cut. You have to figure out what things will give us the greatest benefit for the time and effort we take to straighten out. The thing that probably frustrates me the most would be an analysis that needs to be done simply to overcome a challenge as opposed to adding good value to a decision.

I support analysis that is going to help make a better decision.

But I really get frustrated with doing work that doesn't seem to add to the value of the decision. I think our whole climate of being adverse to any kind of risk is also a problem and particularly when we talk about short-term risk versus long-term. And I think that is partly there because of the regulations that have evolved. We don't want—we don't want to take short-term risk, but in the end, we end up with lots of long-term risks in some of these ecosystems and you can see examples of that in the fires that are burning right now.

Mr. McINNIS. Thank you, Chief. One point I probably should have made in my opening statement, I mentioned about the fact that the Forest Service employee that I ran into, I want you to know that was not one of your management or senior people. It was lower level. My relationship with your supervisory personnel at every forest at every level even though we have not agreed has always been professional. I should note that.

Mr. Inslee?

Mr. INSLEE. Thank you, Chief. I want to ask you about the extent of litigation related to the decisions by the Forest Service. I got to do some digging and I found a GAO report that said in 2001, out of 1671 hazardous fuel reduction projects there were a grand total of 20 projects or about 1 percent had been appealed and none had been litigated. Zero had been litigated. And then I looked at this issue that Mr. Hansen brought up and he said there were 5,000 pending lawsuits at the Forest Service, and I went to take a look at what those were about and I found that the Forest Service documents said that even though you have probably 5 to 7,000 environmental assessments on various projects a year, you

only have 119 cases pending regarding NEPA and 91 regarding the National Forest Management Act and a lot of those overlap.

A lot of those have both NEPA and the Forest Act both in them of course. You have got somewhere from one to 2 percent that appears to me at most of cases that end up in litigation where you have had some environmental assessment. Are those numbers from the GAO and the Forest Service about in the ballpark or what information could you provide us?

Mr. BOSWORTH. I would be happy to check those out carefully. I was just listening, I don't think they would be out of the ballpark. They sounded realistic to me, but I need to check that specifically.

Mr. INSLEE. Given the fact that you know you have competing constituencies interested in the forests, if you are in a 1 to 2 percent level of controversy that ends up in a court system, does that really strike you as unusual or not to be expected when particularly when you are trying to do cuts in old growth forests?

Mr. BOSWORTH. Well, we are going to have lawsuits. That is not my concern. My concern is the evolution of the process, the length of time that it takes for us to work our way through all the process and, in some cases, ends up by itself eliminating the project where we never made a conscious decision to move forward with the project, but just the fact that it took us so long to work our way through and we had the challenges whether appeals or lawsuits really end up—the decision ends up being made by default rather than having conscious decisions made to do the right things. And in many cases, people don't recognize that there are environmental consequences, adverse environmental consequences to no action.

Mr. BOSWORTH. And when decisions are made by default, that is not what the people expect from us.

Mr. MCINNIS. I want to ask you about a way to try to reduce that controversy, if you will, taking the Northwest as an example. Many of us out in the Northwest feel that we have an opportunity to reduce the controversy by trying to move timber harvest activities away from the old growth and mature forests down to the younger forests where we can do thinning, which can allow both resource extraction—in fact, it has been estimated that we can get 600,000,000 more feet out a year in some of those lower, younger forests through thinning, commercial thinning, and at the same time making it more likely that these younger forests will develop quicker into old forest or late successional reverse characteristics for habitat purposes. And we think this would be good not only for the environment, but would be good for reducing a lot of the controversy in the Northwest, where people would rather see less cutting in the old growth and more in the young growth, if you will. Is that something that the Forest Service is considering, is willing to talk with us about? What are your thoughts in that regard?

Mr. BOSWORTH. Well, I am willing to talk—at any time—about solutions that will achieve a broad base of public support that will meet the needs of all sides. I also feel that what we thought we had achieved with the Northwest plan 8 years ago was the balance that had the support of a broad base of folks. It was the plan that was going to move us forward and meet the needs of all sides, significantly reduce the amount of harvest that was being done, which was fine, and also protect the spotted owl and the other species;

and yet, that lasted about 2 years before it became controversial. And that is part of the frustration some of our folks have in trying to work our way through in these kinds of things.

Mr. MCINNIS. Thank you, Chief.

Chief, before I go on, I just want to point out that one of those 1 or 2 percent that is on appeal is currently on fire in Colorado.

Mr. Tancredo?

Mr. TANCREDO. Yeah. That is really—we can talk about the actual numbers, how many or how much of your process is being impeded by the appeal and/or litigation process, but let's just go through one specific example, the Upper South Platte Watershed Restoration Project. 1996 to 2000, we have the Buffalo Creek/Hi Meadow fires. They burned a big chunk of 23,000 acres in Pike and San Isabel National Forest, destroying 100 homes and other structures; watershed damage estimated in excess of \$10 million.

In August 1999, the Forest Service begins to develop a fire management plan for thinning in the roadless and roaded areas of the Pike National Forest. It goes from 1999 to 2001. 2001, in September, environmentalist groups appealed the plan. November 2001 to January 2002, the Forest Service negotiates a scaled-back management plan with the environmentalist groups. March 4th, 2002, on the final day to appeal the plan, that the environmentalist groups who helped negotiate the plan to begin with appealed it.

The Regional Forester rejected their appeals on April 2001. Of course, there is nothing really now—we anticipated at that point in time litigation would be filed, litigation would be undertaken by these same groups, because that is their next step after all this, all these obstacles that they put in the way; finally, they want to litigate. Well, now there is nothing really to litigate because the whole damn forest is burning down. So there really isn't a reason for them to go to court at this present time, but this is one example of how it works.

And I don't know how many others are out there, but this is one too many, and we want to do something about this. We have to do something about this. We have to relieve you of the burden at the point that we can interject ourselves into this. I think that is our responsibility.

I would like you to comment on the concept of charter forests as they may be able to affect—to actually affect the decisionmaking process. I know that it really is nothing more than a concept. I have a bill; I am not asking you to address that bill—you haven't even seen it, we just dropped it yesterday—but it is just one idea. Our bill is just one way of looking at the whole concept of charter forests. I would like you to just tell me what you think about the general idea of giving greater flexibility to people on the ground, to people in the area to manage that forest, relieving you of some of the regulatory burden that is there initially, and whether you think this is a way for us to go conceptually, not any specific bill or anything like that.

Mr. BOSWORTH. Well, first I would like to thank you for talking about the South Platte watershed, because I was going to talk about it at some point in here through a question, if I could, because I think it is an extremely good example.

Mr. TANCREDO. You may. Go right ahead.

Mr. BOSWORTH. It is an extremely good example of the problem that faces us. If we had been doing field treatment for the last 8 or 10 years in there, we would still have a fire. That fire would be burning entirely differently than what is burning now, and it would be one that wouldn't be threatening homes, in my view, if we had been doing the work.

I have said that we spent \$40 million in fire suppression costs on the Buffalo Creek fire and High Meadows fire. Do you know what we can do with \$40 million in terms of trying to treat the land? Especially if we didn't spend half of it on planning, we would be able to get a lot of work done out on the ground that would help communities from catastrophic wildfire and help protect municipal watersheds.

So, I mean—the South Platte is a great example. It is on fire right now. You are right, there is no need for us to proceed now with fuel treatment because the fuel is gone.

As far as charter forests, I think that the notion of charter forests has a fair amount of potential. I mean, the idea of—it is a sort of skeleton idea that we are still trying to put some flesh on the bones to really get—and we are looking for ideas on how that might work, and I think this Subcommittee held a hearing on some of those ideas. And any time that we think we can get greater flexibility for our line officers in the field, in my opinion, that is good. I believe we have good line officers out there that work with the public, and so the more flexibility we can give them, I think that is good.

My only concern about charter forests would be I don't want us to sit back and wait until we have identified charter forests and then 10 years later learn from them before we try to fix the process problems that we have right now. So I think we need to continue to have the dialog about charter forests, about whether it will work, how we might put them together, how we might want to do it, but at the same time try to move forward with fixing the processes that we have that are very difficult to work our way through right now.

Mr. TANCREDO. Thank you.

Mr. MCINNIS. Thank you, Chief. I might also point out further in that fire that we are experiencing today, which is now about 100,000 acres, that also includes acreage that was not designated to be thinned, but would have been protected had the designated acreage had been thinned—would have been thinned. So now we have a pile of ash of areas that we thought were in good shape and didn't need to go in there and were almost of a wilderness-type setting, and they are gone. And I would guess that the youngest person in here—for example, from my parents' home, the mountain that they viewed for all of their life, that the youngest person in this room may be lucky at the later stages of their life to see that same vegetation come back.

So, let's see. Mr. Udall?

Mr. TOM UDALL. Thank you, Mr. Chairman.

Chief, you mentioned, when you were asked about gridlock problems, what was it that was causing them, and one of the things you said was doing work that doesn't improve the decision, that you don't—you don't like to do that additional work and the costs that

it entails. And that seems to me to be a really fine balance in terms of the management of your agency and your people that are on the front line as to how much you do, how much public involvement, and those kinds of things. I mean, I don't really see that as subject to a law that, unless we were doing something collaborative—as you are aware of, there are collaborative—that we are discussing the idea of collaborative legislation. And I would invite my colleague, Mr. Tancredo from Colorado, to join me and Mr. Simpson and Mr. Otter and others that are—and my cousin here that are discussing collaborative ways.

But it seems to me when you talk about doing work that doesn't improve the decision, it is hard for us to pass a law that says, you know, don't do work that doesn't improve the decision. That seems to be a management issue within the Forest Service. Could you comment on that? I mean, you know, people—go ahead, see if you can.

Mr. BOSWORTH. OK. Well, first I would like—let me just—in terms of the problem, you know, there are lots of parts of the problem, but essentially to me the problem is—is that we have stone age rules we are working with, and we are in a dot.com world today. The rules that we are dealing with were developed 30 years ago in a lot of cases. When I think back of what was going on 30 years ago, you know, I was using a slide ruler, for crying out loud. You know, we didn't have things like the Internet. We didn't have GPS or GIS. We didn't have the capabilities that we have today. And we have a huge amount of information today because of the technology changes that we didn't have years ago, but yet we still are trying to—we are trying to gather all that data, all that information we have the capability of gathering, and make decisions using everything because we can or because it is there.

I don't believe that it is Congress's job or responsibility, or I have no expectations that Congress solve that problem for us. All I want from you is some support and some advice on where we might be able to help with some of the analysis that is excessive. And, again, a lot of that is evolved because of case law, because we lose a lawsuit that said we need to go out and gather more data or more information. So then on all of our future projects we go out and gather that data or do that analysis, and then we lose a lawsuit somewhere else that says, well, you didn't consider the Beschta Report. And so now we go back, and now all of our documents consider the Beschta Report. Then we have a lawsuit that says, you need to go gather soil samples in every drainage even if you get a log with a helicopter, so we go do that on all of them.

And so it is the continuous piling on of additional requirements that we put on ourselves in some cases, or that we have evolved to through case law in some cases.

But, no, I don't expect Congress to pass a law to say that this is the limit of your analysis.

Mr. TOM UDALL. Chief, the other thing you mentioned was adversity to risk. And I presume you are talking about employees within the Forest Service, the way you discussed it, who aren't willing to take the risk; and they are worried about the short-term, and then that has a long-term impact. I—once again, that seems to be an internal management issue. I mean, you need to empower

your Forest Service supervisors and people on the front line to take those risks that need to be taken to get the forest healthy, to prevent the kinds of things that are happening in Colorado and New Mexico today. And I don't—I don't see a specific law there either, you know, passing a law saying employees take more risks.

I mean—and I would be willing to admit, I think Congress is part of the problem, because when some of your supervisors are courageous and are bold and step out there and do something creative, Members of Congress go and get them fired. So, you know, it is a—as you move up the Agency and you do those kinds of things, it is a tough thing.

Do you want to comment on that?

Mr. BOSWORTH. Well, yeah. I think our organization, like any organization, has quite a variety of different views. You know, 35,000 employees we have, we pretty much reflect, I think, what is out in the general populace.

I believe that most of our employees are willing to take risks, but we put a lot of processes in place that require them to do some things that would be risk-adverse. An example would be that if we can't predict almost 100 percent what the consequence of a decision will be, we are very vulnerable to losing a case in court.

It is impossible to predict 100 percent, and I am not sure that it is a smart thing to do, to spend all of our money trying to be 100 percent sure of what the consequences are going to be. It would make more sense to me to spend a lot less money on that, monitor carefully, and make adjustments as you go.

Our processes really don't allow for that. I think things like the Endangered Species Act, for example, or at least the implementing regulations in our processes really require very little short-term risk. In other words, you can't do some things that are going to—or may have an effect, or you have to be very, very, very careful if you are going to do something that may have an effect even if what you are trying to do is going to be of a long-term benefit to that particular species.

So I don't want to throw it all on the fact that the Forest Service folks aren't willing to take risks. I think many of our folks are willing to take risks, but we have put a lot of disincentives in their way to be able to take the appropriate kinds of risk.

Mr. TOM UDALL. Thank you, Chief.

Thank you, Mr. Chairman.

Mr. MCINNIS. Mr. Udall, with all due respect, I am not aware of any case where a Congressman called up and got a Federal forest employee fired. I don't think that —

Mr. TOM UDALL. Oh, there are numerous instances.

Mr. MCINNIS. Chief, do you—

Mr. TOM UDALL. Mr. Bosworth—

Mr. MCINNIS. Let me ask you, Chief—

Mr. TOM UDALL. That puts him in a tough political situation.

Mr. MCINNIS. Mr. Udall, I have the floor. I have the floor. Now, it is a sensitive point with me.

Chief, let me ask you this: If any Member of Congress called you up, and on the merits of that complaint alone—not on other merits that may necessitate the firing—although, I don't think very many

Federal employees ever get fired. Chief, would you terminate somebody based on a phone call from the Congressman?

Mr. BOSWORTH. Would I? No, I wouldn't.

Mr. MCINNIS. Are you aware if these terminations have taken place while you have been in the Administration—

Mr. BOSWORTH. I have never been called—

Mr. MCINNIS. —because of a call of a Congressman?

Mr. BOSWORTH. I have never been asked to fire a Forest Service employee by a Congressman. I have been asked to move a Forest Service employee or two.

Mr. MCINNIS. Well, that is appropriate. I mean, there are some times where you—

Mr. TOM UDALL. Oh.

Mr. MCINNIS. And let me clarify that.

Mr. BOSWORTH. Nobody really understands the—

Mr. MCINNIS. Sure. And let me clarify that, Mr. Udall. If you have a—for example, in our community, in the community that I grew up in, if we have got a forest—and a lot of times our forest—our regional forest supervisor is brought in from out of the area, and if they have a difficult time with the community, and the community is upset, I feel an obligation to relay that message to the Chief. But I think that the Civil Service System and others give protections out there. So I don't want this fear laid out there that all we do is pick up a phone and call, and the Chief terminates somebody.

Mr. BOSWORTH. And if I may, I would also —

Mr. MCINNIS. Go ahead, and then we will go on to Mr. Hayworth.

Mr. BOSWORTH. I would also like to say that while I have been called and asked to move somebody, I have never moved anybody based upon a request from a Congressman. Not that I don't respect your advice a lot, but —

Mr. TOM UDALL. That is good. Hang in there and keep doing it.

Mr. MCINNIS. Well, now, to clarify that, he has not gotten a call from me to move anybody either.

So, Mr. Hayworth.

Mr. HAYWORTH. I thank you, Mr. Chairman.

And, Chief, I don't know, maybe some of those calls will be coming in in the days ahead.

To get this out of personalities and the employment situation, it seems to me we have an essential problem here. Does the process gridlock you have described limit your ability as the Forest Service to protect communities, watersheds, and old growth forests from the forces of catastrophic fire?

Mr. BOSWORTH. I believe they do. I believe that—I think that the example in Colorado right now is a good example. If our processes were more simplified, we were able to make more decisions more timely and be able to get a larger percentage of the dollars that are appropriated to us on the ground and less in the office doing analysis, I believe we would have many situations where a fire would not burn through the area in the catastrophic way like it does, and that it would be the kind of fire that is much more light on the land. So I think there are numerous situations where that would be the case.

Mr. HAYWORTH. Chief, I want to thank you again not only for coming down to visit with us today, but the chance we had to visit informally in the past on some issues. And, again, I commend the Chairman of the Subcommittee for next week's hearings on the new Education Land Grant Act, and I just want to return to that briefly in the time allotted to me.

Let me congratulate you. I understand that Chattahoochee-Oconee National Forest in Georgia will complete the first grant under the act, passed unanimously by this House and by the Senate, and signed by President Clinton in his final few days in office. And what is gratifying, at least in terms of this Georgia experience, is that the entire process from the school district application to the conveyance of the land has taken less than a year. And so I think we have an example of how things were envisioned as working, certainly as the author of the legislation. There is no gridlock there.

And we have spoken informally, and indeed I have been honored this morning to talk to the Under Secretary for Natural Resources at the Ag Department, Mack Gray, about what has transpired in Arizona. School districts have applied I think specifically about the Grand Canyon District. The applications have had no action taken on them, and there is a prime example of the gridlock and inertia that we are talking about.

Chief, from your perspective, and the gridlock—and you said cause No. 3 is the Forest Service itself, Forest Service culture. Could you explain why the similar projects with similar intent and identical processes receive such disparate treatment?

Mr. BOSWORTH. My understanding is—is that the project on the Chattahoochee-Oconee actually started—the EA actually started 5 years ago under—and I believe they were trying to do this under the Township Act. And when the legislation was passed, they thought that would be a better tool to accomplish it with, and so they moved forward with trying to do it under the more recent legislation. But the work the EA—the work I complain about the amount of analysis and some of these kind of things, that actually started 5 years ago in Georgia, if my information is correct.

Mr. HAYWORTH. Chief, do you see a difference as well? Some of us ran for this job because of what was perceived to be a war on the West in an effort to so restrict the use of the forest so as to disallow just about every human involvement, it would seem, at some juncture. And you mentioned earlier litigation. Is there—has there just grown up, in terms of the risk-averse behavior, especially in forests in the West—has there been a kind of, I guess, a group thing that has gone on that says, well, gee, we have to deal so much with the litigation, we have to deal with fire danger. Boy, this education thing, it is nice, but it is not urgent; therefore, its importance drops further down the list in terms of, for lack of a better term, public policy triage or priorities?

Mr. BOSWORTH. Well, I would have to speculate, because I haven't sat down specifically with the folks, our Forest Service folks, in, say, the Tonto National Forest to find out where they have that in their priority list. I know that when those folks on the Tonto National Forest are trying to sort through with several million visitors a year that are coming onto the national forest, they are trying to be good hosts, too, and try to deal with the fire situa-

tions like they are dealing with, that something like that may not be as high priority in their mind. And then, frankly, our funding levels sometimes don't allow for some of those lands projects, lands-type issues. That is one of the areas we are historically underfunded in.

So that may be part of the problem, it hasn't been a higher priority. And we have heard you are concerned about it, and we are making sure that the folks out there understand that concern that we move forward. I think we can work our way through and make that work well.

Mr. HAYWORTH. Thank you, Chief.

Thank you, Chairman.

Mr. TANCREDO. But you have to call and get somebody fired there.

Mr. MCINNIS. Mr. Udall.

Mr. MARK UDALL. Thank you, Mr. Chairman.

Chief, I wanted to move, after preliminary remarks, to the overall report. But I do just want to say that those of us from Colorado, I think, feel today particularly sadness and despair in the sense of helplessness when it comes to this fire in Colorado. As we look to understand the causes of it and then to look toward problem-solving for the future, it is only human to begin to look at places to point fingers and place some blame.

I think there is probably a lot of blame to go around, but I think we could also put some of the responsibility on Mother Nature for what is happening in Colorado. We are in the throes of a 4-year drought cycle. The old-timers say it is the fiercest drought we have seen in over 100 years, and we have had very dry, hot and windy weather, which has compounded the process.

So my appeal to all of us is to continue to work together to find ways to return our forests to a healthier condition and prevent, hopefully, these kinds of fires over the long term. I think there are a lot of really great ideas to move us in that direction, but if we face off and put different groups and stakeholders in the corners of the ring, and we have four or five different stakeholders in different corners of the ring, I don't know that we are going to be able to move in the direction you have suggested we can move.

We just received the report in the last, I think, 24 hours. I haven't had a chance to fully digest it. I look forward to looking it over. But in your comments you said that you were going to begin to act, not just to review things. And what do you consider that you would do next along the lines of bringing action to the table?

Mr. BOSWORTH. Before I answer that, I would like to go back to the first part of your comment.

Mr. MARK UDALL. Sure.

Mr. BOSWORTH. I don't want and I don't think it is valuable to sit back and try to point fingers at somebody that might be at fault for this or that. I want it to be clearly understood that I believe the environmental laws are good laws, and I also believe that most people that question our decisions do it with a lot of concern and care about how the land is being managed. So when people are questioning our decisions through appeals or through litigation, that is part of our democratic process.

Mr. MARK UDALL. Yes.

Mr. BOSWORTH. But we don't have to have our processes internally so bound up that we can't do those things faster and do them with more thought for the future. We—that is why I would like to have us take a hard look at these processes so that we can make timely decisions and that people will have their day in court if they really want to have their day in court.

I also believe that our processes are disincentives for people coming to the table to collaborate. You know, there are places around the country that—the community groups that are popping up all over the country, community-based forestry groups that really want to work together, and they are made up of people from the environmental side, from industry, from business, from NGOs that really want to work together for the betterment of their community and for the lands that surround their community. Yet our processes are very frustrating for them, because they will work together and come up with a proposal and work hard to do that, and then it takes us 2 years or 2-1/2 years to go through the stuff. You know, they don't want to come back and work every night or 1 night a week for the next year when it takes us 2 or 3 more years to implement it on the ground. So we have got to make some changes that will allow those things to happen in a more timely way, to encourage that kind of community-based collaboration that results in decisions that I believe are more satisfactory for a broader range of people.

Mr. MARK UDALL. If I might interrupt you, I think that is in part what my cousin, Mr. Udall from New Mexico, mentioned in regards to conversations he is having with Congressman Otter and others about how we value everybody's input, but create that collaborative environment and everybody pull together once the decision was made.

Mr. BOSWORTH. In some cases if people can get everything they want without coming to the table and working in a collaborative way, then there is not a whole lot of incentive to come to the table. And there are situations where these groups will work together, and some will be involved, and then we will get the appeals and the lawsuits that will delay the activity.

And so we need to look, and we will look, at ways that we can make the community-based collaborative forestry approach work better and to have more incentives.

In terms of steps that I want to take, there are a number of things that we need to move forward with very quickly, I think. One is that we have got to—as I said in my testimony, I want to have our Deputy Chief get a team together to start looking at our internal processes. There are some training kinds of things that we need to do. Our folks need to be better at project management. How do you deliver a project within time, within budget? We need to put some training into our folks along those lines. I think that we have a person that is located at the Council of Environmental Quality right now, one of our Forest Service folks, to work as a liaison between us and CEQ to see what things can take place within our Forest Service regulations that will help, and then what things that maybe CEQ could look at within their regulations.

I met with the Director of Fish and Wildlife Service within the last 2 days to talk about opportunities that we might have to do

to look at our regulations that we live with and the Fish and Wildlife Service has responsibility for that will also try to see if there is some ways that we can make the process work more effectively.

So those are some of the things that we need to do right away.

Mr. MARK UDALL. Excellent. That is helpful to me, and I look forward to hearing more about those steps you are going to take and working with the Committee to support you in that process.

Thank you, Mr. Chairman.

Mr. MCINNIS. Mr. Otter.

Mr. OTTER. Thank you, Mr. Chairman.

Chief, once again, thanks for being here, and I certainly appreciate your responses thus far to both sides. I was told some time back, in fact I think it was a year, maybe 2 years ago, of an incident that happened down in northern California, and it seems as though there was a process that the Forest Service had gone through to design a program cut, put it out for bid. Everything went through the process, and it was either—maybe it was a disease, or perhaps it was a salvage, and I apologize for not knowing the whole story firsthand, but at one point—and I guess it must have been a burn, because we know that we have got about an 18- to 24-month window. When we burn through a forest, we either get in and get it out in 18 to 24 months, or it is gone. Is that not correct?

Mr. BOSWORTH. That is generally correct. Yeah.

Mr. OTTER. Anyway, there was a drop-dead date on it when it wasn't going to be any good.

Anyway, as the process moved forward, and the bid had been let, and the cut was to begin, then a group came in and stayed the beginning of the cut, the beginning of the salvage, and said, for whatever reasons, maybe not all the rules and regulations were followed to their satisfaction. But it went before this judge—and this is what was intriguing to me—and the judge says, well—he says, you know, you may well be right. Perhaps this report is a bit deficient, and you have a good reason to delay this, but I just want to tell you this. You—this intervening group—are going to put up a \$900,000 bond in order—just in case we find out that it is not true, and just in case that we actually lose what value is there, just in case there is an economic damage. And so if you are going to enter this as an aggrieved person and delay this process, which Mother Nature is going to take her toll within a 24-month—18- to 24-month period, then you are going to have to put up a bond.

Do you think that perhaps something like that—that we could codify something like that and so some of these—Mr. Inslee is right, and I never, ever thought I would hear anybody in Congress talk about there is not enough lawsuits. I was kind of shocked at that whole process that we went through that we need more lawsuits, and 1 percent isn't enough. It is not doing enough damage to the process already.

But anyway, I am wondering out loud here if there can be some kind of a sharing of the pain and a sharing of the burden for those who would bring lawsuits and then just to delay the process, get them to the front door, settle the lawsuit after we have gone through all that process. In fact, I one time was thinking of introducing a bill in Idaho that said that the lawyer that brought the

lawsuit, if the plaintiff couldn't pay it off, the lawyer had to pay it off, and that didn't get very far. We had too many lawyers.

Anyway, back to my codification. Could we codify some kind of that rendering the process more fair or more reasonable?

Mr. BOSWORTH. You know, I have given some thought to something like this some in the past, although I haven't—I am certainly not an expert on the ramifications of something like that. I will admit that I am somewhat uneasy of doing anything that doesn't allow people to have an equal access to justice, although right now it feels to me to some degree like there is one side that—you know, there are some people that have an interest in national forests that don't have access to the courts over some of the decisions that we make, and anything that we can do to level that would probably be good.

I don't know if that is the right solution that you are proposing or not. I would be more than happy to give it some thought and maybe get back with you and talk with you. I believe that anything that we can do, or most anything that we can do, that will encourage or create incentives for people to come to the table and—or, better yet, come to the woods together, with differing positions and points of view, and try to search for solutions and collaborate I think is good. If something like that would help as an incentive to get people to come to the woods and collaborate, then I think that is something that should be thought about, because right now there are just too many incentives to not come to the table or come to the woods and try to sort through what the choices might be.

Mr. OTTER. Well, I think in your earlier statement you made it very clear and it was very profound that you are not always going to satisfy all sides. And many times folks that are engaged in the process, when they didn't get 100 percent of what they wanted, and they only got a percent of what they wanted, then they still engage in the legal—in trying to get a legal decision rendered on the process that their negotiation failed at and their collaboration failed at.

I would just be—my main concern is no matter what we come up with to engage in collaboration, no matter how hard we extend ourselves across the table, as Messrs. Udall and myself and Mr. Simpson and Ms. McCollum and a few others have done, no matter how hard we try, there still is going to be one group out there by the name Alf or Elf or something that can still file the lawsuit and still stop the process.

And so if it were truly good, well-intended, reasonable people meeting, trying to come to a common-sense solution, and if we could count on that, I wouldn't have a problem. But I hope that in your process of looking these things over, you will look at what we can tweak legally to make those who would endanger the entire collaborative process simply by bringing lawsuits pay for the punishment that they are delivering to us.

Mr. BOSWORTH. I would be happy to look at that and to work with you on that. Again, the frustration is that when we try to bring people together and try to come up with solutions, and then we come up with a solution that all people have bought into, and then there are folks that are way outside of that that can stop the projects or significantly slow them down to where, you know, the

decisions are made by default, that isn't working, and that is just simply not good government, in my viewpoint.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. MCINNIS. Thank you.

Chief, if you don't mind, we would like to take—we will adjourn this in about 15 or 20 minutes. Is that all right if we go another 15 or 20 minutes?

Mr. BOSWORTH. That is just fine. I could talk about this all day.

Mr. MCINNIS. Very well. I know you have got a lot of priorities, and I know you want to pay some attention to what is going out there with those fires, but that will give us a few more minutes.

And, Mr. Inslee, you said you would like to make some more comments?

Mr. INSLEE. Thank you, Mr. Chairman.

Just before I ask a question, I want to correct a misinterpretation my friend Mr. Otter suggested, that we needed more lawsuits. I think actually it is the reverse. In heaven there are no lawsuits, and we would like to bring heaven to Earth.

But we have seen in the Northwest repeated instances where citizens had to go to court to get the Forest Service to follow the law. And this Beschta case that you have alluded to—the Chief has alluded to, I think, is one example of that where four district courts—it took four judges to tell the Forest Service on four separate occasions to follow the law. And now I am pleased to hear that the Chief—that you are incorporating that new science in your assessment, but it took four judges to tell the Forest Service to finally follow the law, and I think that is unfortunate.

I want to ask about the Colorado fire, because there has been reference to the Upper South Platte Project, and it has been suggested that somehow this cataclysmic fire which is causing such devastation in Colorado right now is somehow due to your failure, Chief, or Congress's failure. And my understanding, in Colorado—although I haven't been there during the fires—this is the worst drought in over 100 years. There has been absolutely a terrible combination of wind and lack of moisture. The fire has jumped the Colorado River and a four-lane interstate. It is a huge cataclysmic event, and that the South Platte Project, two-thirds of it could have started last September. There was an appeal of a third of it last September. But at minimum it would have taken 5 to 8 years to implement, in any event, and then it appears clear this project would not have been done by the time this fire blew up.

I want to make sure I understand your testimony. You are not telling us that if this appeal hadn't have been filed, that we wouldn't have a big fire in Colorado, are you?

Mr. BOSWORTH. No, not at all. In fact, I think I said if we would have been actively managing that 10 years ago and accomplished fuels treatment in a broad landscape way for the last 10 years, we could have made a difference.

Mr. INSLEE. Right, if we would have started 10 years ago. And I think it is important to note that the reason for the need for fuel suppression is because the Forest Service and Congress and Republicans and Democrats, you know, we didn't understand the science, and we put out fires for decades and decades and decades, which allowed this fuel to buildup on the forest floor, which created these

huge dynamitelike conditions because we didn't follow the science, and we made rash judgments without thinking about the science. And I think one of the frustrations we all have in decisionmaking right now is that following the science sometimes can be a pain. It is just a pain to have to follow the science. But we didn't follow the science for 30 years, and now we are in this situation where these forests are blowing up. And I just want to make that kind of editorial comment.

I want to ask you one more thing, if I can, and that is about the drought in Colorado. According to the report that the White House issued about 2 weeks—a week ago or 2 weeks ago about global warming, they concluded that, in the best scientific minds of the Federal Government—concluded that global warming is happening; that it is caused by a large— significant amounts by human activities; that global warming will cause significant climactic changes in the United States, and among those will be repeated and more severe droughts in the Western United States that will have not only the result of reducing our irrigation supplies due to lack of snowmelt, but would also, as I understand the report—would expose our forests to much more cataclysmic fires, as we are experiencing in Colorado right now, because of the very low moisture levels in the forest. And yet, to the Nation's chagrin, the President of the United States said he wasn't going to do anything about it. He decided that we just had to get used to it. He decided that we just had to have a strategy of adaptation rather than facing this, what I consider an imminent threat to our forest ecosystems and a lot of things we hold dear in this country.

But I would like to ask you what the Forest Service is doing in its decisionmaking to deal with global climate change, what you think are the challenges it poses to you, and basically what your advice has been to the President in this regard, who, as far as I can tell, has just decided to ignore the problem. I would like your thoughts in that regard.

Mr. BOSWORTH. OK. I would be happy to do that.

I would first like to go back to your comments about the Beschta Report, because I see the world maybe a little bit differently than that.

First, there were four court cases. Two were decided in the Forest Service's favor; two were decided in the other way. And the two said that it was needed, you know, that need to be referenced, and two said that it wasn't. There is a difference of opinion when you go to different courts, and, to me, it is not as clear as simply whether we are following the law. The law isn't very specific about whether you are going to follow the Beschta Report. Our folks, they do the analysis, but, again, we end up adding on and adding on and adding on. And I believe that makes my point about where we are headed in terms of some of these situations.

And I also would say, as I said in my testimony, the Beschta Report was not a peer-reviewed document, it wasn't published in a journal, in a scientific journal, it was just an opinion piece by some very good scientists, but it was an opinion piece. It wasn't peer-reviewed. And yet now we have to make sure that we analyze that and consider that and document that and put it in the EIS. So I just wanted to clear that up.

Mr. INSLEE. Chief, can I interrupt you just for a moment?

I am sorry, Mr. Chair. Go ahead. I am sorry. I will come back.

Mr. BOSWORTH. I was just going to go to the global warming discussion. So—

Mr. MCINNIS. Gentlemen, Mr. Hayworth would also like a few minutes; so, if we can wrap up this exchange in about the next 3 or 4 minutes, that would be great.

Mr. BOSWORTH. Let me just finish on the global warming question. We do have research going on in our Forest Service research and development program that ties in with global warming, but to me one of the most urgent things that we can do is make sure that the way we are managing the national forests will be managed in a way that will be able to take into consideration climate changes.

If you have—if you had the situation of the national forest 100 years ago, there were much fewer trees on the land. You know, a lot of these drier pine types we have around the interior West may have had 20, 30, 40 trees per acre; now some of them have 500, 600, 1,000 trees per acre. When you do have drought conditions and you have that many trees sucking up the moisture, those trees get weakened. They are more susceptible to insects and diseases. They die. You end up with a much increased fuel situation.

And so our job then makes sense that we do the thinning from below that needs to be done, that we put fire back in a controlled manner, that we keep more of the fuel loading down so that when you have the inevitable fires, they are going to burn in a different way and not in the catastrophic way that many of these fires are burning right now.

Mr. INSLEE. Thank you. We are hoping the President at some point will join us in an effort to stop global warming instead of just trying to clean up the forest.

But just one more comment, if I can, Chief, and this is a small point, but I need to make it. Where I got the issue— the information about Beschta was your testimony, which says, quote, in four of these cases, the courts have concluded that project decisions violated NEPA because the associated NEPA documents did not adequately document the Agency's consideration of Beschta, close quote. I just want to point that out, and I am sorry if I misinterpreted your comment.

Mr. BOSWORTH. That is correct. Four went one way, and two went the other way. That is the actual facts.

Mr. INSLEE. Thanks, Chief. I appreciate it.

Mr. MCINNIS. Thank you, Chief.

And Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman. I am so glad we are not playing politics here at this hearing and are all working together.

Let me just make sure I understand, Chief, and maybe this is somewhat the chicken or the egg argument. Whatever one's dispensation on global warning, if I understood your comments just a second ago, to deal with reducing the risk of catastrophic fire, if we were to rank how to deal with the challenges we confront, effective forest management would probably have more to do with alleviating some of the challenges we confront than theories in terms of global temperature at this juncture.

Mr. BOSWORTH. Well, there is no question in my mind that the best way for us to be dealing with the potential for catastrophic fire around communities is active forest management, which primarily would be removing some of the material, mostly smaller-diameter material, from below and reintroducing fire in a controlled manner.

Mr. HAYWORTH. You know, it is interesting to me, when I was—and before coming here, as a private citizen I recall reading accounts of testimony before this very Committee in a Congress where control just happened to be on the other side, where folks came here and testified that a fire corridor was developing from Idaho to our border with Mexico because of our failure to effectively deal with the fuel situation and effective thinning and effective management. And I think the key distinction perhaps upon which we can all agree, whatever disagreements may be the vagaries of being 150 days out from the midterm or something to that effect—but who is counting—is the fact that sound science should always be utilized. And I know it doesn't happen on your watch, but the Chairman and others have made points, and we have seen sadly in Washington State the planting and false reporting of Lynx Air, in Fish and Wildlife situations by Fish and Wildlife biologists.

When politics overtakes sound science, no matter the number of lawsuits, no matter how close in proximity we may be to another political campaign, when we substitute a motion for sound science, we sacrifice the well-being and the intent of what should transpire, and we see the results in catastrophic ways.

I yield back.

Mr. MCINNIS. Mr. Hayworth, I might point out that those employees involved in that Lynx thing were not terminated, despite any request by Congress; in fact, they got a pay raise and a bonus—bonus and a promotion. So I thought I would just point it out.

Chief, let me mention a couple things. I would like to get a little more information on the carbon sequestration program. I know we don't have time today, but that deals with some of the global warming. We got into this global warming issue here, and we could have a hearing all on that alone. It is very interesting on both sides of that issue, and at some point I hope we get to discuss it in the future.

I want to mention one thing, and that is if you have some specific things you think Congress can do to assist you in solving the process gridlock—I can assure you that I see as much gridlock in Congress as I do in some of these agencies, so we are not speaking with clean hands in regards to that. But that is kind of the political nature we have. We don't—it is kind of tough, but I appreciate that. And, again, I just—I just want to tell you, I mean, I was there. I was on Storm King. I have been on a number of your situations, your fires out there. And you guys, boy, when the siren goes off, you heed the call, you have heeded it well, and I just want to compliment you and the community.

And you know what is neat? We had mutual aid. So until we were able to get your type on and your professionals in there, our local professionals from several different communities came, and it was—I guess we were still a little gun-shy from Storm King. And

for those of you in the audience, that is where we had 14 of our firefighters die on the mountain.

So, anyway, Chief, kudos to you for what you are doing out there, and Godspeed for your men and women out there fighting that fire. It is a dangerous thing, and we appreciate very much your time today. Appreciate the time of the Committee. The Committee now stands in adjournment.

Mr. BOSWORTH. Thank you.

[Whereupon, at 11:47 a.m., the Subcommittee was adjourned.]

[The U.S. Forest Service Report, "The Process Predicament," submitted for the record follows:]

The Process Predicament

How Statutory, Regulatory, and Administrative Factors Affect National Forest Management



June 2002

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EXECUTIVE SUMMARY

Despite a century of devotion to conservationism, the Forest Service today faces a forest health crisis of tremendous proportions:

- 73 million acres of national forests are at risk from severe wildland fires that threaten human safety and ecosystem integrity.
- Tens of millions of acres in all ownerships are threatened by dozens of different insects and diseases.
- Invasive species are spreading at an accelerated rate, degrading an increasing proportion of forests, rangelands, and riparian habitats.

Unfortunately, the Forest Service operates within a statutory, regulatory, and administrative framework that has kept the agency from effectively addressing rapid declines in forest health. This same framework impedes nearly every other aspect of multiple-use management as well. Three problem areas stand out:

1. Excessive analysis—confusion, delays, costs, and risk management associated with the required consultations and studies;
2. Ineffective public involvement—procedural requirements that create disincentives to collaboration in national forest management; and
3. Management inefficiencies—poor planning and decision-making, a deteriorating skills base, and inflexible funding rules, problems that are compounded by the sheer volume of the required paperwork and the associated proliferation of opportunities to misinterpret or misapply required procedures

These factors frequently place line officers in a costly procedural quagmire, where a single project can take years to move forward and where planning costs alone can exceed \$1 million. Even noncontroversial projects often proceed at a snail's pace.

Forest Service officials have estimated that planning and assessment consume 40 percent of total direct work at the national forest level. That would represent an expenditure of more than \$250 million per year. Although some planning is obviously necessary, Forest Service officials have estimated that improving administrative procedures could shift up to \$100 million a year from unnecessary planning to actual project work to restore ecosystems and deliver services on the ground.

The Forest Service is deeply committed to the principles of sound public land management in a democracy—long-term planning on an ecosystem basis, extensive public involvement, interagency consultation and collaboration, and ample opportunities for public redress. In the 21st century, Americans have the tools and techniques they need to work together to stop invasive species, reduce the danger of catastrophic fire, restore ailing watersheds to health, and enjoy their national forests. Permitted to use the tools and apply the techniques of modern management, Americans can look forward to a future of healthy, resilient ecosystems all across their national forests and grasslands.

It is time to tailor the Forest Service's statutory, regulatory, and administrative framework to the new era of public land management. Part of the solution will be internal. However, the problem goes far beyond the range of control of any single agency, or a single branch of the government. The Forest Service will need to work with partners, both in and out of government, to establish a modern management framework. By working together with partners to create and operate within such a framework, the Forest Service can focus more of its resources on responsible stewardship and thereby improve public trust and confidence in the agency's ability to care for the land and serve people.

THE PROCESS PREDICAMENT

 HOW STATUTORY, REGULATORY, AND ADMINISTRATIVE FACTORS AFFECT NATIONAL FOREST MANAGEMENT

In December 1995, a severe winter storm left nearly 35,000 acres of windthrown trees on the Six Rivers National Forest in California. The storm's effects created catastrophic wildland fire conditions, with the fuel loading reaching an estimated 300 to 400 tons per acre—ten times the manageable level of 30 to 40 tons per acre.

The forest's management team proposed a salvage and restoration project to remove excessive fuels and conduct a series of prescribed burns to mitigate the threat to the watershed. From 1996 through the summer of 1999, the forest wrestled its way through analytical and procedural requirements, managing to treat only 1,600 acres.

By September 1999, nature would no longer wait. The Megram and Fawn Fires consumed the untreated area, plus another 90,000 acres. Afterward, the forest was required to perform a new analysis of the watershed, because postfire conditions were now very different. A new round of processes began, repeating the steps taken from 1996 to 1999.

Seven years after the original blowdown, the Megram project was appealed, litigated, and ultimately enjoined by a federal district court. The plan to address the effects of the firestorm—a direct result of the windstorm—remains in limbo.

THE PROBLEM

Caught in a Bind

The Megram case example,¹ encapsulated above, illustrates the process predicament faced by Forest Service decision-makers at all levels. As many Forest Service employees see it, they are caught in a bind, where the very procedures they need to follow to get them to their goal are keeping them from getting there.

Too often, the Forest Service is so busy meeting procedural requirements, such as preparing voluminous plans, studies, and associated documentation, that it has trouble fulfilling its historic mission: to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations. Too frequently, the paralysis results in catastrophe.

Inspired by conservationism, the Forest Service has, throughout its history, been dedicated to protecting and restoring our nation's forests and rangelands. Notwithstanding this devotion, today the agency faces a land health crisis of tremendous proportions:

- 73 million acres of national forests are at risk from severe wildland fires that threaten human safety and ecosystem integrity.²
- Tens of millions of acres in all ownerships are threatened by dozens of different insects and diseases. In 1999, for example, the southern pine beetle infested forests on about 6.2 million acres in the South, including many national forest lands.³
- The roads maintenance backlog is enormous, with more than a thousand bridges classified as deficient in 2000 and more than a thousand miles of road becoming unusable on average each year from 1990 to 1998.⁴
- The rate of introduction of new invasive weeds has been on the rise since the 1960s; once introduced, invasives such as cheatgrass and leafy spurge spread at exponential rates. Today, more than 3.5 million acres of national forest land are infested.⁵
- In the West, more than half of the rangeland riparian areas on the National Forest System do not meet standards for healthy watersheds. Moreover, almost one in ten acres in the Pacific states and one in six acres in the Rocky Mountains and Plains states is making no progress toward improvement.⁶

The Forest Service has taken a number of important steps to address these rapid declines in forest health. For example, the agency recently completed the implementation plan for the 10-Year Comprehensive Strategy for Reducing Wildland Fire Risks to Communities and the Environment, in cooperation with the Western Governors Association and a host of collaborators from professional organizations, counties, tribes, resource users, and environmental interests. The agency also has vigorous pest management and watershed restoration programs, often in collaboration with federal, state, and private partners.

Notwithstanding the importance of such cooperative efforts, the Forest Service will ultimately fail to reverse rapid declines in forest health and increasing wildland fire risks unless the agency is able to more quickly achieve results on the ground. And the problem does not end with forest health. Issuing permits, improving rec-

¹See Six Rivers National Forest, "Megram Fire Recovery Plan," appendix C, pp. C-23-28.

²USDA Forest Service, "Historical Fire Regimes by Current Condition Classes," (Washington, D.C.: USDA Forest Service, February 2001), Website <<http://fs.fed.us/fire/fuelman/data—summary—tables.pdf>>.

³USDA Forest Service, Forest Insect and Disease Conditions in the United States: 1999 (Washington, D.C.: USDA Forest Service, Forest Health Protection, December 2000), Website <<http://fs.fed.us/fire/fuelman/data—summary—tables.pdf>>.

⁴USDA Forest Service, "Public Forest Service Roads: "Seamless Transportation" (Washington, D.C.: USDA Forest Service, April 2000).

⁵USDA Forest Service, Rangeland Resource Trends in the United States: A Technical Document Supporting the 2000 USDA Forest Service RPA Assessment (Washington, D.C.: USDA Forest Service, 2000), pp. 47-54.

⁶USDA Forest Service, Rangeland Resource Trends, pp. 40-43.

reational opportunities, addressing deferred maintenance needs, and a host of other management responsibilities all require timely, effective decision-making.

Forest Service professionals are deeply committed to the principles of sound public land management and the existing framework of environmental laws. They support long-term planning on an ecosystem basis, extensive public involvement, inter-agency consultation and collaboration, and ample opportunities for public redress. They work long and hard to hammer out agreements that everyone can live with.

But all too often, the regulatory and administrative framework the Forest Service is bound by keeps the agreements from going into effect. Time, effort, and resources poured into a project might ultimately yield nothing but paperwork, competent studies and documentation, but no results on the ground. In the Megram case example, after initial setbacks, the appeals process resulted in sound documentation for the proposed action; yet the project resulted in only 1,600 acres of fuels treatments before the 1999 Megram Fire severely burned much of the project area.⁷ It is not just a matter of delivering more outputs (see the sidebar below); it is about getting anything done at all.

The essential question is this: Does the Forest Service have the statutory, regulatory, and administrative framework needed to cope with the land health crisis and otherwise manage the National Forest System? Or will process delays keep the Forest Service from reducing hazards and addressing emergencies, thereby putting forest ecosystems and nearby communities at ever-greater risk—and ultimately preventing the agency from fulfilling its core mission?

IT'S ABOUT GOOD GOVERNMENT

The Coconino National Forest in Arizona is home to the northern goshawk. In 1996, the forest proposed thinning trees near a goshawk nest, partly to protect the bird from fire hazards. The project was stopped because environmentalists protested. That year, a catastrophic fire destroyed the forest, including the tree with the goshawk nest. "There was not a green tree left," said a Forest Service biologist. "What the scientists said could happen, did happen, right in front of my eyes."^{*}

If process keeps projects from restoring the land, the land ultimately suffers. At stake are wildlife habitat and all of the other values that the Forest Service is charged with protecting and delivering on the national forests and grasslands. By streamlining procedures, the agency can reduce costs and increase its ability to do more on the ground for healthy, resilient ecosystems.

Many values might or might not flow out of that, such as recreation, wildlife habitat, and timber. But the particular values are incidental to the core purpose—good government. It's about reducing waste and mismanagement. It's about efficient, effective service delivery.

* Tom Knudson, "Playing With Fire: Spin on Science Puts National Treasure at Risk," *Sacramento Bee*, 25 April 2001.

Purpose of This Report

In 2001, shortly after being named to lead the Forest Service, Chief Dale Bosworth appointed a team of Forest Service employees to explore whether national forest management is indeed mired in process. The team reviewed the statutory and regulatory framework for national forest management and examined the agency's own internal processes for forest planning and decision-making, based on:

- past reports by internal agency task groups and the General Accounting Office (GAO);
- relevant past and ongoing studies, particularly a 1995 draft report under Forest Service Chief Jack Ward Thomas (appendix A) and an ongoing business process analysis of a Forest project (appendix B); and
- case examples from Forest Service field personnel (some of which are in appendix C).

In February 2002, the team presented its findings to Chief Bosworth. This report is based on those findings. It makes no recommendations. Its purpose is simply to set forth the problem: Statutory, regulatory, and administrative requirements impede the efficient, effective management of the National Forest System. As long as they do, the Forest Service's ability to achieve healthy, resilient ecosystems and otherwise meet its multiple-use mission will remain in doubt, undermining public confidence in the agency.

⁷ Six Rivers NF, appendix C, appendix C, p. C-23.

The scope of this report is limited. Important questions remain. How can barriers to efficient, effective national forest management be removed without violating the principles of sound public land management in a democracy? Who should remove the barriers, and how? At least part of the problem is internal; how much of it can be solved through internal agency reforms alone? Should interagency processes or even statutes be improved? These are questions for the Forest Service's leaders and, perhaps, our nation's democratic process to decide. This report makes a start by simply identifying the problem.

Finally, this report is not a conclusive treatise on resolving land management processes. Nor does it fault any particular entity involved in forest planning and land management. Rather, it offers facts and examines past practices and ensuing results. The Forest Service, over its hundred-year history, has earned a reputation for conservation leadership and innovation. This report opens a dialogue between the agency and interested publics to improve management efficiency while managing our natural resources within the spirit of the law.

BACKGROUND

Origins of the Problem

The original purpose of the forest reserves, embodied in the Organic Act of 1897, was "to improve and protect the forest within the reservation"⁸ in order to conserve watersheds and timber reserves for the nation to call on when needed. The timber reserves were needed after World War II. Other timber supplies were exhausted, and there was a huge postwar demand for timber to help realize the American dream of owning a single-family home. The national forests helped fill the gap. From 1960 to 1985, the national forests met about 25 percent of U.S. softwood timber needs.

In the 1950s, some people began to question the Forest Service's emphasis on timber production. They argued that other uses of the national forests, such as recreation, should have equal standing. The Multiple Use-Sustained Yield Act of 1960 provided a framework for balancing multiple uses, but it failed to quell growing controversy over national forest management.

At the time, federal land managers and many others believed that professional expertise should guide decision-making on public lands. The Forest Service took local opinion into account, but its philosophy was to "inform and educate" the public on what was best for the land, in the expectation that people would ultimately "see the light."⁹ However, the appeal to professional authority failed to satisfy growing numbers of Americans. As one study put it, the traditional Forest Service approach "did not provide a way to surface differences, much less work through them."¹⁰ Increasingly, the public turned for relief to the courts and to Congress.

In the 1960s and 1970s, Congress passed many new laws and amendments to old laws affecting national forest management, including the National Environmental Policy Act (NEPA), the Federal Advisory Committee Act (FACA), the Endangered Species Act (ESA), the Clean Water and Clean Air Acts, and the National Forest Management Act (NFMA). Congress understood what was at stake. In the national forest debate, social values were at issue; the underlying conflicts were often political. By facilitating public participation in national forest management, Congress sought to create mechanisms for conflict resolution, thereby obviating the need for direct congressional intervention to resolve disputes. To some degree, Congress seems to have favored a complex public process over other, more efficient management models.

Each new law or amendment was driven by sound intentions. Each contained provisions that enjoyed broad public support. Some mandated integrated management approaches that are widely accepted today as the foundation for ecosystem-based management; others encouraged ordinary citizens to engage in Forest Service decision-making; still others placed more emphasis on individual values, such as undisturbed natural settings and native fish, wildlife, and plants.¹¹

⁸Organic Administration Act (16 U.S.C. 475), as quoted in USDA Forest Service, *The Principle Laws Relating to Forest Service Activities* (Washington, D.C.: USDA Forest Service, 1993), p. 6.

⁹Personal communication with Gerald W. Williams, National Historian for the USDA Forest Service, Washington Office, Washington, D.C.

¹⁰M. Hummel and B. Fleet, "Collaborative Processes for Improving Land Stewardship and Sustainability," in *Ecological Stewardship*, vol. III, p. 99.

¹¹A relatively recent public survey suggests strong public support for noncommercial values on the national forests and grasslands. Deborah J. Shields, Ingrid M. Martin, Wade E. Martin, and Michelle A. Haefele, "Results from a Survey of the American Public's Values, Objectives,

Continued

Each law was intended to strengthen the Forest Service's ability to discharge its obligation to care for the land and serve people. In response, the Forest Service reformulated its mission, goals, and objectives.¹² Today, the agency focuses on the long-term health of the land, in accordance with the principle that conditions we leave on the land are more important than what we take away.¹³

In the 1970s, the Forest Service began to change its approach to public participation in national forest management. In accordance with statutory requirements for more public involvement, the agency's new approach was to "inform and involve."¹⁴ In practice, however, "inform and involve" often continued the tradition of "educating" the public and arbitrating disputes among resource users based on professional expertise. It failed to stop an intensification of the debate over resource use on federal lands.

As the conflict heated up in the 1980s, line officers began to seek alternative means of conflict resolution. By the early 1990s, the old model was giving way to new collaborative approaches.¹⁵ Today, the Forest Service increasingly sees itself as a partner in natural resource management. It works within collaborative groups with members who openly discuss their differences while seeking agreement based on mutually shared values and goals.

The environmental laws thus helped to end one era of land management and inaugurate another. What one study calls "the period of retention and management of public lands" is yielding to a new era marked by "integrated, ecosystem-based management that transcends traditional jurisdictional boundaries."¹⁶ In the new era, opportunities abound for new, more flexible approaches to public land management. New scientific insights are paving the way for adaptive management on an ecosystem basis, and new developments in information technology are making it easier to share information and collaborate across jurisdictions on a landscape level.

Yet, the Forest Service's decision-making process is failing to keep pace with these developments. The environmental laws spawned thousands of pages of regulations and administrative rules, making national forest management far more complex and cumbersome at a time when flexibility and agility in public land management are needed to capitalize on new opportunities. The requirements include a stream of predecisional consultations and analyses, often followed by postdecisional appeals and litigation. Line officers often find themselves in a costly procedural quagmire, where a single project can take years to move forward and where planning costs alone can exceed \$1 million.¹⁷ Even noncontroversial projects can proceed at a snail's pace.¹⁸

Thomas Report

This problem has long been recognized. In April 1995, during his Senate confirmation hearing, Secretary of Agriculture Dan Glickman pledged to work with Congress

Beliefs, and Attitudes Regarding Forests and Rangelands" (Fort Collins, Colo.: USDA Forest Service, Rocky Mountain Research Station, March 2001).

¹² A process finalized with publication of the USDA Forest Service Strategic Plan (2000 Revision) (Washington, D.C.: USDA Forest Service, December 2000).

¹³ A principle often cited by Forest Service Chief Dale Bosworth. See, for example, Chief Bosworth's speech at the Forest Policy Summit in Grand Rapids, S.D., 15 August 2001 (online at <<http://www.fs.fed.us/intro/speech/2001/2001aug15-Blackfinl.htm>>).

¹⁴ Personal communication with Gerald W. Williams, National Historian for the USDA Forest Service, Washington Office. The first extensive experience with public involvement came following the Wilderness Act of 1964, with about a quarter million public comments on the Forest Service's proposed wilderness regulations. The Roadless Area Review and Evaluation in 1973 generated the next big surge of public involvement—about 300 public meetings and more than 50,000 written and oral comments. In 1979, the new forest plans under NFMA generated hundreds of thousands of responses (such as letters) with millions of comments. For example, the forest plan for Oregon's Umpqua National Forest alone inspired 15,458 responses containing 215,680 comments.

¹⁵ Hummel and Fleet, pp. 99–100. Arguably, the new approaches could draw on the Forest Service tradition of informal consultations with local communities.

¹⁶ R.B. Keiter, T. Boling, and L. Milkman, "Legal Perspectives on Ecosystem Management: Legitimizing a New Federal Land Management Policy," in *Ecological Stewardship*, vol. III, p. 12.

¹⁷ For example, procedural costs for individual projects exceeded \$1 million in both the Bitterroot and Santa Fe case examples. See Bitterroot National Forest, "Bitterroot Burned Area Recovery Project," appendix C, p. C–10; and Santa Fe National Forest, "Santa Fe Municipal Watershed Project," appendix C, p. C–19.

¹⁸ For example, the planning process in the Morgan Falls case example took about 20 months (from August 1999 to April 2001), even though it was noncontroversial and there were no appeals. According to the line officer, "The process is frustrating for many local publics and employees due to the amount of time it takes to put an action in place." See Chequamegon–Nicolet National Forest, "Morgan Falls Trail Reroute Project," appendix C, p. C–41.

to streamline the Forest Service's statutory framework.¹⁹ Subsequently, Forest Service Chief Jack Ward Thomas appointed a task force to review the laws and regulations that guide management of the National Forest System. The review was to form the basis for a report to Congress. The task force drafted a report on how key laws relate to one another and affect national forest management (appendix A). The report was not delivered.²⁰

The Thomas Report found two widely held yet disparate views. One view is that the various statutes and regulations complement each other. The other view is that the statutes and regulations form a "crazy quilt" with unintended adverse consequences.²¹ Although the task force "did not find strong oppositional conflict between statutory mandates," it did find that the legal and regulatory framework had "some negative effects" on "the effectiveness of the Forest Service as a land-managing agency."²² The report identified the following adverse effects:

- diminished output predictability;²³
- disincentives for predecisional dialogue because citizens have opportunities for administrative appeals and judicial review;²⁴
- legal constraints on using professional expertise and consensual group recommendations;²⁵
- uncertainty in Forest Service decision-making, given the vague or undefined parameters of judicial review;²⁶
- process duplication and management inefficiencies;²⁷ and
- inefficient cycles of forest plan and project-level consultation and documentation.²⁸

The Thomas Task Force also reported escalating costs connected with forest planning and management due to the need for voluminous documents to meet potential court challenges.

Business Process Analysis

Years of experience in project preparation have primed agency managers to accept overlapping and occasionally competing processes. It has become second nature for a forest's management team to allocate the time and resources needed solely for project process. Yet, beyond informal discussion and examination, no attempt to quantify the required processes had occurred.

¹⁹ U.S. General Accounting Office, "Forest Service Decision-Making: A Framework for Improving Performance" (Report to Congressional Requesters; GAO/RCED-97-71; April 1997), p. 102.

²⁰ According to GAO, "[Clinton] Administration officials have said that they are hesitant to suggest changes to the procedural requirements of planning and environmental laws because they believe that the Congress may also make substantive changes to the laws with which they would disagree." GAO, "Forest Service Decision-Making," p. 102.

²¹ Judge Lawrence K. Karlton characterized the situation as follows: "With the growth of the environmental movement, the tension between the power of the Secretary [of Agriculture] to administer the surface of the national forests and the right to prospect and mine in the national forests became evident. With the passage of the Multiple Use Act and other statutes and amendments to pre-existing statutes, the unresolved tension has been incorporated into law. Indeed, the crazy quilt of apparently mutually incompatible statutory directives are enough to drive any Secretary of Agriculture interested in discharging his lawful duties to drink. Congress, can, of course lead a Secretary to booze, but Congress cannot force the Secretary to drink. Thus the Secretary by nature of his rulemaking powers, has the opportunity to bring order out of chaos." *United States v. Brunskill*, Civil No. 5-82-666 LKK (E.D. Cal. 1984), unpublished opinion, aff'd, 792 F.2d 938 (9th Circuit 1985).

²² Thomas Task Force, "Review of the Forest Service Legal and Regulatory Framework" (draft report) (Washington, D.C.: USDA Forest Service, 1995), appendix A, p. A-3.

²³ For example, "ESA requires the re-evaluation of on-going projects whenever new listings are made, critical habitat is designated, or other new information comes to light," which can change output projections. Thomas Task Force, appendix A, pp. A-11-12.

²⁴ For example, the Flathead National Forest faced litigation when its forest plan decision was announced in 1986, even though the Forest Service conducted additional analysis and hired a mediator to facilitate negotiations. Thomas Task Force, appendix A-14.

²⁵ Under FACA regulations, "where the Forest Service does not have the professional expertise or the necessary information, but knows that the expertise or information exists, it can be difficult to get the information and recommendations." Thomas Task Force, appendix A, pp. A-14-15.

²⁶ For example, under a 1994 decision on the northern spotted owl, the court "identified several circumstances that may cause a need to reconsider the ROD [record of decision]." Thomas Task Force, appendix A, p. A-16.

²⁷ For example, the responsibilities of state agencies to oversee water and air quality overlap with corresponding Forest Service responsibilities. Thomas Task Force, appendix A, p. A-18.

²⁸ For example, regulatory agencies "are generally unwilling to allow projects that comply with forest plan consultation to proceed without further review at the project level." Thomas Task Force, appendix A, p. A-18.

In early 2001, the Forest Service decided to see how procedural requirements translate into concrete activities at the project level by applying a business process model validated by agency personnel with field experience. The agency chose to analyze all requirements potentially applicable to one phase of a timber sale, drawing on the perspectives of employees who worked on the South Platte Watershed Project in Colorado, one of 15 large-scale watershed restoration projects nationwide. The Forest Service's Inventory and Monitoring Institute hired a contractor to perform a business process analysis—a step-by-step breakdown of the activities involved.

The initial report delivered to the Forest Service (appendix B) summarizes results from the study. The study found that project-level decisions involve as many as 800 individual activities and more than 100 process interaction points.²⁹ The report concluded that “the intent of the Agency and governing laws is programmatically aligned,” but that “[p]rocess interaction between laws is extremely complex—[and the] project planning process is highly susceptible to recursion/interruption and even non-completion.”³⁰ In other words, the process appears to be so complex that it is fragile and prone to failure. The final report will show time and costs involved, which promise to be extensive; it will be based on a review by the agencies responsible for administering the relevant laws.

Case Examples

The Bosworth Team reviewed and analyzed several real-world case examples to help pinpoint some of the problems associated with national forest management. The case examples include two fire recovery projects, a fuels reduction project, a trail relocation project, and a watershed restoration project. Drafted in the field, they reflect the views of local line officers; appendix C contains summaries and lightly edited full text.

The case examples tell a complex story. Some of the problems described in the case examples were avoidable. One case example partly attributes project delays to mistakes made by managers, including a failure to change tactics in response to a changing situation.³¹ Another case example notes that the project could have been expedited had managers given it higher priority.³²

Nevertheless, a strong common theme runs through all five case examples and other materials reviewed by the team: Procedural constraints keep national forest management from being as efficient and effective as it should be. Specifically:

- multiple layers of interagency coordination, coupled with internal administrative requirements that have accumulated over time, are delaying time-sensitive projects;³³
- for some groups, postdecisional review opportunities (through appeals and litigation) are a disincentive to seriously engage in predecisional collaboration on a project;³⁴
- requirements for environmental analysis go well beyond what is required for fully informed decision-making,³⁵ partly because the Forest Service has locked itself into expectations for analysis and monitoring without fully considering the practical and scientific limitations involved;³⁶
- procedural requirements place enormous stress on employees at all organizational levels, leading to employee burnout;³⁷

²⁹Inventory and Monitoring Institute and BusinessGenetics, “Report Abstract: Reflecting Complexity and Impact of Laws on a USDA Forest Service Project” (preliminary report) (Fort Collins, CO: USDA Forest Service, 2001), appendix B, pp. B-7, B-17.

³⁰IMI and BusinessGenetics, appendix B, p. B-7.

³¹Six Rivers NF, appendix C, pp. C-25-26.

³²Santa Fe NF, appendix C, p. C-18.

³³In the Bitterroot case example, managers spent months reviewing roads policy and various environmental statutes and regulations “to provide the greatest chance of success in judicial review.” Meanwhile, fire-damaged timber proposed for salvage harvest was declining in value. See Bitterroot NF, appendix C, pp. C-7-8.

³⁴See, for example, Bitterroot NF, appendix C, p. C-10: “Given the obvious prospect of judicial review, there was little motivation for compromise among interests.”

³⁵See, for example, Bitterroot NF, appendix C, p. C-12: “However, much of the analysis and documentation prepared to minimize litigation risks did not substantially help the decision-maker.”

³⁶See, for example, Bitterroot NF, appendix C, p. C-8: “The Forest Service Manual prohibits management actions that lead to listings under the Endangered Species Act. There are 12 sensitive vertebrates and 27 sensitive plants on the BNF. Uncertainty about the population dynamics of most of these species makes the analysis of species viability problematic.”

³⁷See, for example, Bitterroot NF, appendix C, p. C-11: “Many employees would prefer to avoid such assignments because they perceive them as unrewarding exercises in paperwork, with a greater chance of frustration and failure than of success.”

- projects needed for ecological restoration and fuels treatment are not being implemented on the ground;³⁸
- continually evolving court interpretations of regulatory requirements create uncertainty for land managers;³⁹ and
- project analyses are frequently reworked at high cost.⁴⁰

NATURE OF THE PROBLEM

With the advent of the electronic age, the world has become a different place. Advances in science and technology have the potential to revolutionize public land management. Personal computers, the Internet, and telecommunications have created unprecedented opportunities for collaboration and flexible decision-making through teleconferences, virtual public meetings, and instantaneously shared information. Ecosystem-based approaches have opened possibilities for cross-jurisdictional management unheard of in the days of administering the land strictly within jurisdictional boundary lines. The science of adaptive management has the potential to replace traditional linear decision-making with flexible, holistic approaches based on feedback loops.

Unfortunately, the Forest Service operates within a statutory, regulatory, and administrative framework that has kept the agency from fully capitalizing on such opportunities. The Thomas Report, business process analysis, and case examples all illustrate the shortcomings of a cumbersome procedural framework inherited from the past. Three problem areas stand out in particular:

1. Excessive analysis—confusion, delays, costs, and risk management associated with the required consultations and studies;
2. Ineffective public involvement—procedural requirements that create disincentives to collaboration in national forest management; and
3. Management inefficiencies—poor planning and decision-making, a deteriorating skills base, and inflexible funding rules, problems that are compounded by the sheer volume of the required paperwork and the associated proliferation of opportunities to misinterpret or misapply required procedures.

Excessive Analysis

Interagency consultations and environmental studies are cornerstones in our nation's system of protecting federal lands. However, the associated procedures, as they have evolved over decades of experience and legal precedent, are now complex, often costly and time-consuming, and sometimes redundant. Ironically, the requirements can keep federal agencies from realizing the intent of the law to protect resources at risk.

Federal land management agencies (such as the Forest Service) and regulatory agencies (such as the Environmental Protection Agency, National Marine Fisheries Service, and U.S. Fish and Wildlife Service) play distinct yet overlapping roles in conserving and managing natural resources on federal lands. Decision-making is complicated by the extensive environmental analysis and public involvement procedures developed under NFMA, NEPA, ESA, FACA, and the Forest Service's appeals process. The ecosystem-based approach adopted by most federal agencies adds further layers of complexity.⁴¹ All of these factors, alone or in combination, can prevent or seriously delay work from getting done to protect species, improve water quality, or restore watersheds.

Short-Term Focus

Forest and rangeland management can, in many respects, be compared to a sporting event. Forest Service employees constitute the team. Forest plans are like game

³⁸ See, for example, Six Rivers NF, appendix C, pp. C-23-28.

³⁹ In the Megram case example, a court threw out the environmental impact statement based on its interpretation of regulatory requirements. See Six Rivers NF, appendix C, p. C-25.

⁴⁰ In the Megram case example, the remanded EA was reworked based on a wildlife survey that cost \$28,350 for 1,134 acres (about \$25 per acre). See Six Rivers NF, appendix C, p. C-26.

⁴¹ The Council on Environmental Quality has named additional factors that keep federal agencies from embracing "policies, procedures, and activities that would enhance the conservation of biological diversity," including the disparity between administrative and ecological boundaries; institutional infrastructure (separate jurisdictions, differing missions); and the absence of regional ecosystem plans and strategies that provide specific biodiversity goals and objectives against which the impacts of proposed activities can be assessed. CEQ concluded—the challenges and obstacles discussed here do not preclude serious consideration of biodiversity in NEPA analysis within existing institutional arrangements and with presently available information. CEQ, "Incorporating Biodiversity Consideration Into Environmental Impact Analysis Under the National Environmental Policy Act" (Washington, D.C.: CEQ, January 1993), p. 22.

plans, designed to help the team achieve the desired outcome of maintaining healthy ecosystems in the long term. Projects are like individual plays in the game. If executed properly, they propel the team to victory.

Regulatory agencies, on the other hand, are like referees. They are responsible for enforcing the various environmental statutes, such as ESA and the Clean Water and Air Acts, that constitute the rules of the game. The primary focus of regulatory agencies is not on long-term outcomes (winning the game). They rightly leave that up to the land management agency. Rather, they focus on the immediate risks to a particular resource, such as a threatened or endangered species or the quality of the air on any given day, that is governed by the rules they enforce.

Understandably, the regulatory agencies often seek to avoid any risk to the individual resources they oversee. “Regulatory agencies, given their missions,” former Forest Service Chief Jack Ward Thomas has declared in testimony before Congress, “will always opt to accept as little short-term risk as possible and be relatively indifferent to long-term dynamic changes in the ecosystem in question.”⁴² By contrast, said Thomas, “[m]ultiple-use oriented agencies, given their missions, will usually opt for greater short-term risk with a longer-term view.”

Thomas noted that “[t]he regulatory agencies’ cards trump those of the land management agencies.” Before the game can start, the referees must inspect and approve the game plan (forest plan). That might take awhile, particularly if the pool of referees is small and over-worked, overly cautious, or subject to multiple levels of review. Then the game can begin, but it is constantly interrupted before each play (project) so the referees can inspect and approve the play in advance. Again, that might take awhile.

And, to further complicate matters, each referee uses a different rulebook (different laws and different requirements for particular resources, such as air quality or individual species). Adjustments made to satisfy one referee might violate the rules of another. If every referee can be satisfied—which can be difficult—then the play is allowed to proceed; but it might no longer do what it was supposed to do: help the team win the game.

In other words, the regulatory agencies can use their “trump cards” to change the focus of land management from landscape-level conditions desired far into the future to the short-term welfare of single resources. As one study has noted, the short-term, single-resource focus defies ecological insights established decades ago by Aldo Leopold.⁴³ “From my observation,” noted Chief Thomas, “it seems that each time there was a decision to make, it was made on the conservative (low immediate risk) side. These cautious decisions, piled one on top of the other, finally accumulated to slow management to a crawl headed for a stop.”⁴⁴

Two types of examples illustrate the problem:

- Thinning and controlled burning can have adverse short-term impacts on water and air quality. However, if consultation stops such projects, the adverse long-term impacts can be much greater, including enormous fires; watershed damage; widespread loss of biodiversity and wildlife habitat; and massive, uncontrolled smoke emissions.⁴⁵
- Roads decommissioning and in-stream restoration (such as culvert removal) can adversely affect water quality in the short term, although the long-term benefits for waters and lands are obvious. Often, such activities are folded into large projects with multiple objectives to achieve greater efficiencies. If consultation delays or prevents such projects from going forward, managers have a perverse incentive not to decommission roads or restore streams, but rather to eliminate those components from the project just to get the rest of the work done.⁴⁶

Management Uncertainty

Many environmental laws contain provisions that tailor judicial review to particular purposes. However, agency actions under NEPA and NFMA are reviewed under the “arbitrary and capricious” standard of the Administrative Procedures Act. Under this standard, evolving case law has increased the costs for national forest planning and decision-making. Part of the increase comes from the Forest Service’s

⁴² Jack Ward Thomas, Testimony prepared for a hearing on the Northwest Forest Plan, scheduled for October 24, 2001, before the Senate Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

⁴³ Keiter and others, p. 12.

⁴⁴ Thomas, congressional testimony on the Northwest Forest Plan.

⁴⁵ The focus on short-term effects on forest resources such as water quality and fisheries is illustrated by the adverse ruling in *Pacific Coast Federation of Fisherman’s Association v. NMFS*, 253 F.3d 1137 (9th Cir. 2001).

⁴⁶ Memorandum from the forest fisheries biologist to the acting forest supervisor, Gifford Pinchot National Forest, 1 July 1999.

efforts to supply data and information requested by internal and external interests. However, much of the increase is related to management uncertainty—the desire to cover multiple eventualities, particularly if a case goes to court.

Since 1969, when NEPA was enacted, the courts have established a body of case law. NEPA regulations formulated by the Council on Environmental Quality (CEQ) have their basis in early NEPA case law; the regulations have had only one substantial change since 1978. Each federal agency is responsible for developing NEPA procedures for its own particular environmental issues and decision-making processes. Forest Service NEPA procedures established in 1992 address some of the problems, but many areas of uncertainty remain unaddressed.

For example, the range of alternatives required for environmental assessment and the appropriate way to incorporate adaptive management are still ambiguous. Line officers can never be sure when documentation is enough (see the sidebar below). They must constantly assess the risk of failure in the courts based on case law interpretations. They are left with the choice of either spending more time and money on analysis to cover a variety of potential court interpretations, or withdrawing project proposals for fear of adverse court decisions.

In the Santa Fe case example, where severe fire hazards in a municipal watershed urgently demanded action, project withdrawal was not an option. As a result, the forest spent almost 5 years and more than \$1 million on planning and public involvement, including collecting and analyzing extensive information of dubious value.⁴⁷ “We needed really good NEPA in order to have a defensible process,” noted the project planner. “We expected legal challenge.”⁴⁸

BESCHTA REPORT—WHEN IS ENOUGH ENOUGH?

An excellent illustration of excessive analysis due to management uncertainty is the Beschta Report. Commissioned by the Pacific Rivers Council in 1995, eight scientists drafted a paper, “Wildfire and Salvage Logging,” commonly known as the Beschta Report.

The paper has never been published in any scientific or professional journal, nor has it ever been subject to any formal peer review. In 1995, Forest Service scientists and managers expressed strong reservations about the report, which contains many unsubstantiated statements and assumptions. Nevertheless, the courts have sometimes shown support.

Groups have challenged postfire recovery projects on the grounds that the Forest Service has failed to consider the Beschta Report. In four cases, the courts have ruled that Forest Service decisions violated NEPA because the associated records did not adequately document the agency’s consideration of the Beschta Report. In two other cases, courts have ruled in favor of the Forest Service on this issue.

In view of the court record, forest planners might feel compelled to thoroughly document their consideration of the Beschta Report’s principles and recommendations, even though the underlying land management issues are already addressed in the record. That includes documenting why some elements of the Beschta Report are not relevant to the specific proposed project.

The court record has inspired some groups to demand that the Forest Service consider other papers and articles supposedly relevant to proposed actions. Sometimes the proffered list of references exceeds 100 entries. To minimize the risk of adverse judicial opinions, land managers might feel constrained to fully document within the body of the NEPA document their detailed consideration of each and every paper or article.

Information Levels

In the past, land managers have made mistakes because they did not adequately understand natural systems.⁴⁹ Sound land management decisions must be based on enough information to sufficiently assess the environmental effects. NEPA incorporates that insight. NEPA requires federal land managers to conduct environmental analyses in order to evaluate the short- and long-term implications of pro-

⁴⁷ See Santa Fe NF, appendix C, p. C-11: “ID Team members often believe that much of their work is ‘for the courts’ and not particularly useful for line officers who make decisions.”

⁴⁸ Santa Fe NF, appendix C, pp. C-17-18.

⁴⁹ In Oregon’s Blue Mountains, for example, “[i]n their haste to fix what was wrong with industrial logging, the [early Forest Service] foresters created other problems that proved much more difficult to mend.” Nancy Langston, *Forest Dreams, Forest Nightmares* (Seattle: University of Washington Press, 1995), p. 135.

posed actions, to the extent that such implications are known or reasonably ascertainable.⁵⁰

Unfortunately, the courts have increasingly directed Forest Service managers to obtain information beyond the agency's own view of what is reasonable. Requirements to reopen analysis and rework project plans can delay even very small projects (see the sidebar on the next page). Natural systems are so inherently complex that they might never be fully understood in all of their workings. "For not only are ecosystems more complex than we think," Chief Jack Ward Thomas has observed, "they are more complex than we can think."⁵¹ Environmental analysis is necessarily based on incomplete data and our less-than-perfect understanding of natural processes. The question is this: How much information is enough?⁵²

Opinions differ. For reasonably foreseeable adverse effects, CEQ NEPA regulations require only that an environmental impact statement (EIS) disclose the fact of incomplete or unavailable information regarding the effects, acquisition of that information if reasonably possible, and evaluation of the effects based on available approaches. An EIS need not discuss remote and highly speculative consequences. In *Alaska v. Andrus*, the court ruled that federal agencies have a responsibility to "predict the environmental effects of a proposed action before the action is taken and those effects are fully known," but that "agencies may not be precluded from proceeding with particular projects merely because the environmental effects of that project remain to some extent speculative."⁵³

However, some have demanded very high standards of certainty, threatening otherwise to appeal or litigate. "When land-use decisions are to be made that have large-scale economic, social, and political impacts," noted Jack Ward Thomas, "individuals who stand to lose from those decisions typically demand unreasonable degrees of certainty in the information on which those decisions are based."⁵⁴ These demands are often supported by references to existing case law. In response, the Forest Service has spent growing amounts of time and money on increasingly elaborate predecisional speculation about the environmental effects of proposed actions.

MORGAN CUT: A CASE OF ANALYSIS PARALYSIS*

A good example of what some call "analysis paralysis" comes from the Wayah Ranger District on the Nantahala National Forest in North Carolina, where a stream of new developments has produced years of analysis and planning for a small pilot project:

- 1992: Public scoping begins for the Hickory Knob timber sale.
- 1994: The environmental assessment (EA) is released; the project area is found to contain cerulean warblers, listed in the forest plan as a sensitive species. The timber sale is dropped.
- April 1998: Part of the old timber sale becomes the Morgan Cut Reinvention Project, a stewardship pilot project to evaluate the use of commercial logging for vegetation management. Proposed are a regeneration harvest on 12 acres and thinning on 8 acres. The project area contains no cerulean warblers.
- February 1999: Coordination with the regional and national offices is completed to tailor the project to the stewardship pilot program. Additional analysis covers aquatic, wildlife, and plant resources.

⁵⁰NEPA sections 102(C)(ii) and (v) require proposals for "major Federal actions" to include "a detailed statement" on, respectively, "any adverse environmental effects which cannot be avoided should the proposal be implemented" and "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." Principle Laws, p. 456.

⁵¹Quoted in Michael J. Gippert, "Integration and Coordination of Environmental Laws and Federal Administrative Practice: Forest Service Experience" (Washington, D.C.: USDA Office of General Counsel; revised talking points, November 1996), p. 1. Thomas was paraphrasing the noted ecologist Frank Egler, who wrote: "Ecosystems are not only more complex than we think, they are more complex than we can think." Frank Egler, *The Nature of Vegetation: Its Management and Mismanagement* (Norfolk, Conn.: Aton Forest Publishers, 1977).

⁵²A question raised by the court in *Alaska v. Andrus*: "Predictions, however, by their very nature, can never be perfect; and the information available to an agency could always be augmented. The question in each case is, 'How much information is enough?'" 580 F.2d 465 (D.C. Cir. 1978), vacated in part as moot, 439 U.S. 922 (1978).

⁵³*Alaska v. Andrus*, 580 F.2d 465 (D.C. Cir. 1978), vacated in part as moot, 439 U.S. 922 (1978).

⁵⁴Jack Ward Thomas, in an article that appeared in *Forest Watch* (January/February 1992), quoted in Gippert, "Integration and Coordination of Environmental Laws," p. 8.

- February 1999: The district announces a decision based on a categorical exclusion (CE). The decision is appealed and withdrawn. A court subsequently eliminates use of CEs for similar small projects.
- June 1999: The district reinitiates scoping. An EA is released in November, but a decision is delayed pending analysis related to the endangered Indiana bat, discovered in an adjacent county.
- September 2000: A forest plan amendment and a biological opinion are released, both containing new requirements to protect habitat for the Indiana bat.
- September 2001: The forest completes a forestwide management indicator species report, in compliance with a recent court decision affecting several national forests in the South.
- February 2002: Additional surveys are completed for sensitive species. The project's biological evaluation and EA are reformatted to meet new regional standards. The decision notice is released.
- March 2002: The decision is appealed. The project is delayed pending outcome of the appeal.

New developments forced employees to rework plans for Morgan Cut, keeping the project in limbo for years. The EA currently stands at 65 pages, with an additional 81 pages of specialist reports and an appeals record 372 pages long—all for a 20-acre stewardship pilot project involving no new roads.

* Based on a report from the Wayah Ranger District, Nantahala National Forest, May 2002.

The Bitterroot Burned Area Recovery Project is a case in point. Despite the need to move swiftly—in part to recover the value of removed timber—line officers still had to “fully document their “hard look” at all the issues and their full compliance with every potentially applicable procedural requirement” in order to “withstand a federal court’s “searching inquiry” of whether the [national] forest “adequately considered all the relevant factors.”⁵⁵ The adjacent Sula State Forest, which suffered the same fire damage as the Bitterroot National Forest and proposed similar treatments, was able to get work done on the ground while the national forest was still collecting and analyzing information. In the end, opponents did litigate, so the national forest’s careful study and documentation were in part justified. But they came at a considerable cost and risked fatally delaying a time-sensitive project. The end result was a settlement that did not fully utilize the study and analysis.

Though necessary under the circumstances, such efforts are of questionable usefulness.⁵⁶ As Kai Lee has put it, “Conflict through the courts forced substantial change in the agencies’ decision-making. But there was little learning about the environment itself.—[W]hat remains is environmental analysis that is often usable, but few users and little cumulative ecological knowledge.”⁵⁷ Resources put to such dubious use cannot be applied to more productive tasks, such as monitoring, assessment, and adaptive management.

New Information

A related problem is the inherently incomplete nature of information on the environment. After analysis is done and work has started, new discoveries might be made or the situation might change; for example, an endangered species might be found or a fire or flood might occur. Under NEPA, if the agency makes “substantial changes in the proposed action that are relevant to environmental concerns—or if there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” then such new information can force a project to stop work, pending supplementation of environmental analysis.

And therein lies the rub. The agency interpretation of the terms “substantial” and “significant” are subject to judicial review, creating fertile ground for litigation. The problem is particularly vexing at higher levels of planning and coordination. Forest plans, for example, are intended to last 10 to 15 years, a period long enough for many changes to occur and much new knowledge to emerge. Another challenge is incorporating new information into the larger scales of planning and analysis required for eco-regional or cross-jurisdictional coordination and collaboration. New in-

⁵⁵ Bitterroot NF, appendix C, p. C-7.

⁵⁶ See Bitterroot NF, appendix C, p. C-11: “Uncertainty over what is a legally sufficient level of analysis for particular issues and policy directives often leads to levels of analysis and documentation greatly exceeding the amount line officers feel is needed to make an informed decision. This additional analysis and documentation is ‘for the courts,’ and is of little or no use to the general public or agency decision-makers.”

⁵⁷ Lee, *Compass and Gyroscope*, pp. 103–104.

formation at any scale can trigger delay or additional analysis at other scales (see the sidebar on the next page).

Most scientists and land managers agree that adaptive management is the answer.⁵⁸ Adaptive management is based on the premise that our understanding of ecosystems continually evolves and that unexpected events can and will occur. Uncertainty is normal; it need not grind decision-making to a halt. "Adaptive management is learning while doing," Kai Lee has noted. "Adaptive management does not postpone action until "enough" is known but acknowledges that time and resources are too short to defer some action."⁵⁹ ... Adaptive management means making decisions using the best information available, then monitoring the results, learning from experience, and adapting future management accordingly.

WOODPECKER PROJECT: A CASE OF OPEN-ENDED ANALYSIS*

A good example of open-ended analysis comes from Alaska's Mitkof Island, part of the Tongass National Forest. In 1995, a landscape analysis of the island identified a grouping of potential timber harvest opportunities. They came to be known as the Woodpecker Project, a proposal to remove 16.3 million board feet of timber and build 8.6 miles of new and temporary roads.

In the years that followed, new decisions, policies, and appeals required the Woodpecker plans and studies to be constantly reopened. Such new developments included:

- In 1997, the record of decision (ROD) for the Tongass Forest Plan;
- In 1999, the ROD for the revised forest plan;
- In January 2001, the new agency wide roadless rule and roads policy;
- In February 2001, again the new roads policy;
- In March 2001, a court decision to vacate the 1999 ROD;
- In March 2001, a court decision to enjoin timber sales pending a supplemental environmental impact statement;
- In May 2001, a court decision to lift the injunction, requiring documentation to be reworked to incorporate the latest legal and policy language;
- From June to December 2001, interim directives to protect roadless values;
- In December 2001, a decision by the regional forester to reverse the forest supervisor's decision to proceed with the project because the record appeared to include a data error that might be significant; and
- In February 2002, court hearings on whether to again enjoin timber sales.

Each new development forced employees to rework documentation for the Woodpecker Project. The future promises more of the same; litigation could follow, given the roadless issues involved.

* E-mail memorandum from Betsy Rickards, environmental coordinator, USDA Forest Service, Alaska Region, 25 April 2002.

However, current procedures can discourage adaptive management. The Forest Service takes the approach that complying with NEPA and ESA requires making decisions, completing projects, and determining effects within a clearly identifiable timeframe. Forest Service rules for public participation and administrative appeals are linear and inflexible. Without more flexible mechanisms, adaptive management will remain at best difficult to incorporate into national forest planning and decision-making.⁶⁰

New Listings

A special form of new information is the new listing of a threatened or endangered species. If a species is added to the endangered species list, then activities that might affect it must often stop, pending consultation with regulatory agen-

⁵⁸For a thorough discussion of the concept and application of adaptive management, see B.T. Borman, J.R. Martin, F.H. Wagner, W.W. Wood, J. Alegria, P.C. Cunningham, M.H. Brookes, P. Fiesema, J. Berg, and J.R. Henshaw, "Adaptive Management," in *Ecological Stewardship*, vol. III, pp. 505-533.

⁵⁹Kai N. Lee, "Appraising Adaptive Management," in *Conservation Ecology* 3(2) (online at <<http://www.consecol.org/vol3/iss2/art3>>).

⁶⁰For example, "[s]topping ongoing and new activities during the development or reconsideration of programmatic ecosystem strategies operates as a disincentive for federal agencies to practice adaptive management." Gippert, "Integration and Coordination of Environmental Laws," p. 18.

cies.⁶¹ That stands to reason; however, renewed consultation might be required for an entire forest plan, triggering a forest—or even regional suspension of projects.⁶²

The need for such blanket delays is questionable, particularly in the electronic age. With detailed databases quickly at their disposal, regulatory and management agencies should be able to focus on the projects that specifically affect a newly listed species. Other projects should be able to proceed without delay.

Administrative Rules

The Forest Service's own rules, many of which resulted from court decisions, require the agency to gather and analyze extensive data before a project can proceed. For example, forest planning regulations require line officers to maintain "viable populations of native and desired non-native species within the planning area."⁶³ By comparison, NFMA requires only that managers "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives"⁶⁴

The "viable populations" requirement is responsible for much of the time and expense that goes into project planning. It means analyzing potential project effects on many different species, as opposed to a far less time-consuming landscape-level analysis of habitat diversity, specifically checking for the needs of individual species. In the Bitterroot case example, the national forest evaluated the proposed project's impact on "viable populations" for 12 sensitive vertebrates and 27 sensitive plants, a daunting challenge: "Uncertainty about the population dynamics of most of these species makes the analysis of species viability problematic," the line officer observed.⁶⁵

Former Chief Jack Ward Thomas, currently Boone and Crockett Professor of Wildlife Conservation at the University of Montana, has questioned the rationale for such "unreasonable degrees of certainty" in project planning. "The biology of certain wildlife populations and habitat relationships is not conducive to precise estimates, no matter how much they are studied," he noted. "The precision of such estimates can become only marginally better regardless of how politically desirable that may be."⁶⁶

Another example of an administrative rule that seems to demand unreasonable degrees of certainty is the "Survey and Manage" requirement in the Northwest Forest Plan. Before a "ground-disturbing activity" can proceed within the 24.5 million acres of federal land covered by the plan, federal agencies must collect detailed data on numerous plants and animals in the project area.⁶⁷ For species such as mollusks, the knowledge of habitat needs can be extremely limited; there might be no more than a single expert worldwide. "Survey and Manage" can prevent fuels reduction if thinning or prescribed fire would temporarily affect suitable habitat or threaten individuals in surveyed species. Even more than consultation requirements, "Survey and Manage" tends to distract from long-term resource conservation by focusing management on short-term, single-resource protection.⁶⁸

Moreover, the scientific basis of "Survey and Manage" is questionable.⁶⁹ Jack Ward Thomas, who led landscape-level studies related to ecosystem management in the Pacific Northwest before serving as Forest Service Chief from 1993 to 1996, believes that the surveys under the protocol are not only exceedingly expensive, but

⁶¹ Pacific Rivers Council (PRC), 30 F.3d 1050 (9th Cir. 1994).

⁶² The Supreme Court's ruling regarding the justiciability of forest plans has raised questions about the viability of Pacific Rivers Council v. Thomas.

⁶³ 36 CFR 219.19.

⁶⁴ NFMA section 6(g)(3)(b). Principle Laws, p. 597. The "viable populations" requirement is also arguably more rigorous than any in provision in ESA.

⁶⁵ Bitterroot NF, appendix C, p. C-8.

⁶⁶ Jack Ward Thomas, in an article that appeared in *Forest Watch* (January/February 1992), quoted in Gippert, "Integration and Coordination of Environmental Laws," p. 8.

⁶⁷ Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (April 1994). Dozens or even hundreds of species might fall under "Survey and Manage" requirements for a project. "Under the Survey and Manage component of the NFP [Northwest Forest Plan], we have learned about the distribution of over 400 species about which little was known prior to 1994," said Deputy Regional Forester Nancy Graybeal in testimony before the Senate subcommittee on Forests and Public Land Management, 24 October 2001.

⁶⁸ See, for example, Six Rivers NF, appendix C, p. C-26: "In fact, "Survey and Manage" requirements are typically more inflexible than consultation requirements for endangered species."

⁶⁹ See, for example, Six Rivers NF, appendix C, p. C-27: "Data collection without a research design is usually a waste of time."

also of limited value because they do not provide statistically valid data on species occurrence.⁷⁰

Ineffective Public Involvement

Public participation is an essential part of public land management in a democracy. National forest management has always incorporated some form of public involvement. Over the years, however, the role of public involvement has changed. Since the 1960s, top-down approaches have gradually given way to bottom-up approaches based on partnerships.

Today, the Forest Service encourages competing interests to sit down and reason together. The final decision still rests with the agency, but a collaborative approach can yield better-informed decisions with broader public support than in the past. Collaboration takes time, but it can build constructive long-term relationships and dialogue, leading to decisions that are sustainable.⁷¹

Of course, collaboration is no silver bullet. Collaboration has worked well primarily where it has succeeded in building a basis for mutual trust (see the sidebar below). Where distrust remains, results have been mixed.

In the Santa Fe case example, according to the line officer, “local constituents simply do not trust the Forest Service to do the right thing.”⁷² A suspicious public demanded more information than technically needed to justify a relatively simple fuels reduction project.⁷³ The Forest Service spent nearly five years and more than \$1 million on project planning. Much of the time was spent on collaborative efforts to build public trust and support for the project. Given the urgent need for the project, some questioned the value of the time spent.⁷⁴

The emerging collaborative approach hinges on the Forest Service’s ability to hold open discussions with stakeholders. That ability can be constrained by procedural barriers associated with FACA, administrative appeals, prolonged delays, uneven standards for judicial review, and the Forest Service’s own uneven expertise in collaboration.

PONDEROSA PINE FOREST PARTNERSHIP*

“Some kind of intervention was necessary,” said Mike Preston, a commissioner for Montezuma County in southwestern Colorado.

For years, bitter conflicts over timber harvest had slowly ground public land management to a halt. Meanwhile, the ponderosa pine forest—historically open, with lots of grasses under the big, old trees—continued to decline, choked by “dog-hair” thickets of invading small trees. Catastrophic fires threatened each year to incinerate the entire forest and cook the soils, doing long-term ecological damage.

The county decided to try something new. It brought together various sides—loggers and environmentalists, state and federal managers, college researchers and facilitators—in a collaborative experiment called the Ponderosa Pine Forest Partnership.

Each partner has a mutually shared responsibility for community and forest sustainability. Partners build new relationships based on shared values, shared knowledge, and constructive action.

The experiment has worked because the partners discovered a basis for mutual trust. Traditional relationships, all too often based on mutual recrimination, have given way to new arrangements in which ecology drives the economics of forest restoration.

Based on principles of adaptive management, the San Juan National Forest marks trees to be left standing. Then local loggers remove the remainder, using ecologically sound techniques. Next come the controlled burns. The fires burn off brush and add nutrients to the soil but kill few trees.

⁷⁰Personal communication with Jack Ward Thomas, Forest Service Chief emeritus and former leader of the Forest Ecosystem Management Advisory Team process.

⁷¹For an authoritative discussion of collaborative approaches, see Hummel and Fleet, pp. 97–129.

⁷²Santa Fe NF, appendix C, p. C–18.

⁷³Santa Fe NF, appendix C, p. C–18: “[The public does] not accept agency expert opinions on face value. Consequently, the information needs were greater for this project than for many others of similar size and complexity. There was a demand for ‘outside’ scientific opinion, such as that presented by well-known forest ecologists at a community forum.”

⁷⁴Line officers estimated that, without fuels treatments, a wildfire in the watershed would spread to 46,000 acres within two days. “The mayor [of Santa Fe], regional forester [for the Forest Service’s Southwest Region], and others questioned the length of time involved.” Santa Fe NF, appendix C, pp. C–13, C–19.

The result is astounding. Thousands of acres in the forest's ponderosa pine zone have been restored to open, sun-filled expanses, with meadow like floors and clumps of large trees. "It's a much better approach to forestry than we've seen elsewhere in the national forest," said Mark Pearson, executive director of the San Juan Citizens Alliance. "People can get timber products off the forest at the same time that they're supporting the ecosystem."

* Based on Jim Greenhill, "Partnership Reduces Fire Danger, Helps Forests With Logging," *The Durango Herald*, 9 May 2002.

FACA Constraints

One increasingly desirable—and sometimes necessary⁷⁵—option for line officers is to utilize broadly representative public groups to provide consensual advice on watershed- or landscape-level projects. Consensus goes beyond collaboration; it entails agreement reached by a group through its own decision-making process. If the Forest Service decides to utilize such a group, it is required by FACA to charter an advisory committee.⁷⁶ Under USDA regulations, the chartering process is usually so laborious and time-consuming that its potential advantages have never been fully realized—and, until recently, seldom explored.

In August 2001, new FACA regulations issued by the General Services Administration went into effect. The new regulations exempted some groups from FACA requirements, including groups with members who are not actually managed or controlled by the executive branch, who provide individual advice, or who exchange facts or information.⁷⁷

However, when the exemptions do not apply, then the Forest Service must still go through the time-consuming process of chartering an advisory committee. The alternative is to use methods that do not trigger FACA requirements. Such methods would not facilitate the consensual approaches that might work best in some situations.

Administrative Appeals

The Forest Service's procedure for administrative appeals allows citizens to challenge a line officer's decision to proceed with a project. Although the Forest Service has long had an administrative appeals process, none was legally required for the agency until the 1993 Interior and Related Agencies Appropriation Act.⁷⁸ The Forest Service is now required by law to give public notice and an on-the-record comment period for proposed actions covered by environmental assessments and findings of no significant impact.⁷⁹ Other federal land managers have administratively established review procedures or no appeals process at all.⁸⁰

Administrative appeals can greatly delay a project. For time-sensitive projects, results can be disastrous. For example, unless insect-infested trees are swiftly removed, infestations can spread to healthy forests and even to nonfederal lands. In the Southeast, southern pine beetle infestations have repeatedly spread from national forests to private lands because the Forest Service was unable to complete environmental analysis and take action soon enough to prevent it.⁸¹

Moreover, the opportunity to appeal can discourage collaboration. If a group's only chance to affect an outcome is before a decision is made, its incentive to engage from the outset in collaborative decision-making will be strong. However, if the group can later appeal the decision, it can ignore opportunities for predecisional collaboration and focus instead on postdecisional challenges. Instead of helping parties work out

⁷⁵For example, under the Secure Rural Schools and Community Self-Determination Act of 2000.

⁷⁶NFMA, 16 U.S.C. 1612(b), provides for the involvement of FACA-chartered advisory boards in forest planning.

⁷⁷41 CFR 102-3.40. There are also statutory exemptions, such as section 204 of the Unfunded Mandates Reform Act of 1995, that exempt advisory committees whose membership consists of state, local, and tribal elected officials or their designees, and where their meetings are concerned with managing federal programs with intergovernmental responsibilities or administration.

⁷⁸106 Stat. 1419.

⁷⁹36 CFR 215.

⁸⁰43 CFR 1610.5-2. For example, BLM decisions are appealable to the Interior Board of Land Appeals, and the National Park Service has no appeals process.

⁸¹E-mail memorandum from Robert Pierson, planning director, USDA Forest Service, Southern Region, 24 April 2002.

their differences, the appeals process can all too easily become a tool for obstruction.⁸²

In the Santa Fe case example, the national forest spent years consulting with the public and tailoring its municipal watershed restoration project accordingly. The effort paid off: A broad consensus emerged behind the final project decision. However, two groups have threatened to challenge the decision. If the challenge materializes, it “would illustrate a rather common situation,” according to the local line officer. “The agency often works diligently and collaboratively to design a project acceptable to constituents, only to have implementation stalled by a very small minority relying on esoteric legal arguments.”⁸³

However, most collaborative groups recognize that Forest Service decisions are subject to appeal but choose to work with the agency, anyway. Recent experience suggests that a collective sense of ownership flows from decisions reached through collaborative processes. Local peer pressure can sometimes—but not always—help influence appellants to settle their cases. “Although challenge is still possible,” noted the line officer in the Santa Fe case example, “many believe that residents and members of environmental organizations that have been engaged throughout the process will exert pressure on potential litigants to allow implementation to proceed.”⁸⁴

Procedural Delays

For time-sensitive projects, merely delaying implementation can be enough to stop work from ever beginning.⁸⁵ The ability of a single group to control the process can discourage groups from participating at all if it seems a waste of time. In the Bitterroot case example, litigious groups “appeared to many to push the majority of local interests out of the picture,” according to the line officer. Thereafter, what was initially a highly productive process of public involvement “seemed to dissolve into a process of litigation.”⁸⁶

Even if there are no appeals, it can still take a long time for work to begin.⁸⁷ In the Indian River case example, the public appreciated the need for environmental analysis and public participation, but was frustrated by the amount of time involved. “Questions arise as to why professional input and documents need to be continually revised to deal with new information or concerns,” noted the line officer, “and why it is necessary to document everything in great detail in anticipation of appeals.”⁸⁸ Appeals and litigation did result, even though the project—to restore a National Wild and Scenic River corridor degraded by use—was relatively noncontroversial; the EA generated only five comments, including those from the groups that appealed and litigated. It took more than two years after initial scoping to finally reach a settlement.

Public discouragement over procedural delays can prevent the Forest Service from forming and sustaining valuable partnerships. For example, the National Wild Turkey Federation, through a partnership agreement, helps the Forest Service create walk-in areas, plant wildlife openings, develop water resources, and conduct prescribed burns on national forest land. Many species benefit from the projects, including fire-dependent plants and threatened and endangered wildlife, such as the red-cockaded woodpecker and Indiana bat. Biologists from the Federation provide the Forest Service with technical advice and assistance. After generating the necessary

⁸²Case examples consistently suggest that appeals do not help resolve disputes. In the Megram case example, “[T]he appeals process did not change the forest’s decision. It provided neither the means nor the incentive to negotiate a resolution that addressed both the Forest Service’s concerns and the appellants’ core objections” (Six Rivers NF, appendix C, p. C-27). In the Indian River case example, “The Indian River, like most rivers on the Hiawatha National Forest, was heavily damaged during the log drives of the early 20th century. However, the plaintiffs did not want to see any management activities within the corridor, even if designed to restore the river system.—[T]he [high] level of public acceptance [for the project] by the majority of stakeholders was not increased by the litigation” (Hiawatha National Forest, “Indian River Watershed Restoration Project,” appendix C, pp. C-34-35).

⁸³Santa Fe NF, appendix C, p. C-20.

⁸⁴Santa Fe NF, appendix C, p. C-19.

⁸⁵In the Megram case example, a fuels treatment project was delayed for more than a year by administrative barriers related to appeals. By the time the project proceeded, it was too late; a fire burned through most of the project area before fuels could be treated. See Six Rivers NF, appendix C, pp. C-24-25.

⁸⁶Bitterroot NF, appendix C, p. C-10.

⁸⁷In the case example of the Morgan Falls trail reroute—a noncontroversial “white-hat” project—planning and analysis took about 20 months, a length of time that “generally amazed and disheartened” local people, according to the line officer. “The process is frustrating for many local publics and employees due to the amount of time it takes to put an action in place.” Chequamegon-Nicolet NF, appendix C, p. C-41.

⁸⁸Hiawatha NF, appendix C, p. C-34.

funds and providing technical support, the Federation's members expect the Forest Service to deliver the associated projects. Prolonged delays damage the agency's credibility as a partner and discourage the Federation from continuing support.⁸⁹

Standards for Judicial Review

Evolving case law for NFMA, NEPA, and other statutes has slowly defined what is required of national forest land managers. Legal issues remain unaddressed or unresolved between jurisdictions, requiring the agency to rely on its own interpretation of appropriate legal standards. The resulting uncertainty for national forest managers constrains cross-jurisdictional collaboration.

In 1998, for example, 22 years after NFMA became law, the Supreme Court addressed the timing of judicial review of forest plans with regard to NFMA claims.⁹⁰ Yet questions still remain regarding the timing of judicial review for forest plans and projects.⁹¹ Other issues that have not been resolved include:

- appropriateness of the use of a NEPA categorical exclusion if “extraordinary circumstances” are present, i.e., the “mere presence” conundrum⁹² (conflict among the 7th and 9th, 10th Circuit Courts of Appeal);
- use of wildlife population data versus habitat to comply with 36 CFR 219.19(a)(6) (monitoring of management indicator species) (conflict among the 9th and 7th, 11th Circuit Courts of Appeal);
- application of the Migratory Bird Treaty Act to federal actions (conflict between D.C. Circuit and 8th, 11th Circuit Courts of Appeal); and
- application of NEPA to the designation of critical habitat under ESA (conflict between the 9th and 10th Circuit Courts of Appeal).

Agency Follow-through

Despite the Forest Service's professed commitment to collaborative decision-making, partners have sometimes found it difficult to work with the agency. Problems include a lack of institutional capacity for collaboration and an inability to keep commitments.⁹³

In some cases, despite major resource commitments by communities, the Forest Service has failed to respond in kind. For example, by the time the last sawmill closed in Hayfork, California, in the mid-1990s, the community had lost more than 50 percent of its wage income. Undeterred, community members formed the Watershed Research and Training Center to stimulate new employment and enterprise through restoration and stewardship opportunities on federal lands. Those opportunities are great; national forests comprise more than 70 percent of the county, and the need for thinning, fuels reduction, and forest restoration is clear.

The Watershed Center trained local people and developed new, environmentally sensitive ways to use and market small-diameter forest materials and other byproducts from ecosystem restoration. The Forest Service's State and Private Forestry Staff provided considerable funding through its Economic Action Program; the agency's Forest Products Laboratory gave research help through its extensive programs for finding new ways to use unmerchantable forest materials, such as small trees and brush.

Despite all the enthusiasm and support, fewer than 200 acres have actually been treated since 1996. The Forest Service's failure to proceed with local projects has multiple reasons—bureaucratic process, competing regional and national priorities, and a lack of project funding and follow-through. Whatever the reasons, the bottom line is this: The national forest has not matched local commitment by taking decisive action. The result is supreme frustration and discouragement in the local community.

⁸⁹ Personal communication with Dr. James Earl Kenamer, president of the National Wild Turkey Federation.

⁹⁰ *Ohio Forestry Association v. Sierra Club*, 523 U.S. 726 (1998).

⁹¹ See, e.g., *Wilderness Society v. Thomas*, 188 F.3d 1130, 1133 n.1 (9th Cir. 1999) (forest plans ripe for review of NEPA claim); *Heartwood v. Forest Service*, 230 F.3d 947 (7th Cir. 2000) (NEPA challenge to timber categorical exclusion ripe for review); *Coalition for Sustainable Resources v. Forest Service*, F.3d 1244 (10th Cir. 2001) (ESA challenge to forest plan not ripe for review).

⁹² Whether the “mere presence” of an extraordinary circumstance (e.g., listed species, steep slopes, or highly erosive soils) eliminates the possible use of a categorical exclusion has been the subject of considerable debate. See for example Federal Register 48412, 48414 (20 September 2001).

⁹³ Brett KenCairn, “Public Agencies in Collaboration: A Panacea to Gridlock or the Next Big Debacle?” Report to the Forest Service's National Leadership Team (October 2000). KenCairn is the Director of Indigenous Community Enterprises in Flagstaff, Ariz.

Management Inefficiencies

The Forest Service has a proud tradition of conservation leadership and management, dating to President Theodore Roosevelt, who founded the Forest Service in 1905. Gifford Pinchot, the first Forest Service Chief, described the early Forest Service's record of efficiency and effectiveness, including a commendation for sound fiscal management.⁹⁴ In recent decades, however, the agency has struggled with management problems.⁹⁵ Systematic efforts to improve agency performance go back to at least the 1980s.⁹⁶

In some areas, the Forest Service has made progress. For example, the agency has established standard, reliable frameworks for collecting information on nationwide acres at risk from wildland fire;⁹⁷ on the status of natural resources on the national forests and grasslands (the Natural Resource Information System); and on recreational use of the National Forest System (the National Visitor Use Monitoring Project). In 1999, to solve persistent accounting problems, the agency introduced its Foundation Financial Information System. Together with the Bureau of Land Management and other partners, the Forest Service has sponsored Service First, an innovative approach that cuts through red tape for better service delivery.⁹⁸

Nevertheless, the Bosworth Team identified several internal factors that continue to keep work from getting done on the National Forest System: poor planning, confusion about planning requirements, a deteriorating skills base, decisions to monitor individual species, and funding rules.

Poor Planning

The GAO has advised the Forest Service to better manage its planning process by:⁹⁹

- improving agency accountability for performance;
- improving agency commitment to monitoring and evaluation, including standardized protocols;
- adopting the recommendations of internal efficiency review teams;
- involving the public more actively at the beginning of the planning process; and
- developing common socioeconomic and environmental databases for use by forest planners and managers.

Case examples suggest that poor planning decisions not directly related to statutory or regulatory requirements or to the appeals process can cost the Forest Service precious time. In the Megram case example, time was lost due to management's decision to use provisions under the 1995 Rescission Act to expedite a time-critical salvage sale. "The forest now believes," the line officer observed, "that the forest lost nearly a year through its initial strategy and that using provisions under the Rescission Act, particularly for the inventoried roadless area, was a serious mistake."¹⁰⁰

Confusion About Planning Requirements

In 1976, when NFMA passed, the Forest Service assumed that forest-level plans would meet most or all NEPA requirements for environmental studies. That assumption proved overly optimistic as it became clear that the Forest Service could not address project-level impacts at the programmatic level of evaluation for a 10- to 15-year land management plan. After a number of court cases, the Forest Service adopted a tiered planning process for developing NEPA documentation at both the forest plan and project levels. The evolution of ecosystem management for a third stage—large-scale environmental analysis—to evaluate the effects of management actions across ownerships and even across states.

Requirements for multitiered planning and analysis have produced confusion about decisions made and documentation required at the various scales, especially

⁹⁴ Pinchot, pp. 281–299.

⁹⁵ See, for example, U.S. General Accounting Office, "Forest Service Decision-Making: A Framework for Improving Performance" (Report to Congressional Requesters; GAO/RCED-97-71; April 1997); and National Academy of Public Administration, *Restoring Managerial Accountability to the United States Forest Service* (August 1999).

⁹⁶ Personal communication with Gerald W. Williams, National Historian for the USDA Forest Service, Washington Office, Washington, D.C. Relatively recent efforts to improve internal processes include the "reinvention" initiative of the mid-1990s and the process of revising the Forest Service's strategic plan, finalized in 2000.

⁹⁷ USDA Forest Service, "Historical Fire Regimes by Current Condition Classes," (Washington, D.C.: USDA Forest Service, February 2001), Website <<http://fs.fed.us/fire/fuelman/data—summary—tables.pdf>>.

⁹⁸ See Hutch Brown and Russ Linden, "Daring to be Citizen Centered," *The Public Manager* (Winter 2001–02), pp. 49–52.

⁹⁹ See GAO, "Forest Service Decision-Making," especially pp. 33–50.

¹⁰⁰ Six Rivers NF, appendix C, p. C-25.

between the programmatic (forest plan and large-scale assessment) and project levels.¹⁰¹ For example, a ranger district might pour resources into a watershed analysis and produce an in-depth, 300-page study, when all that was really needed for landscape-level planning was a 15-page overview.¹⁰² Confusion about what is actually required and needed has led to delays and resource waste.

Deteriorating Skills Base

From 1992 to 2000, according to a report by the National Academy of Public Administration, the number of Forest Service employees fell by 23 percent.¹⁰³ The most negative competency assessment in the report went to the agency's Ecosystem Management Staff, which includes inter-disciplinary planning occupations. At the very time when the need for interdisciplinary planning skills is rising, the Forest Service is losing precisely those skills. To complicate matters, the requirements for project planning have greatly increased in complexity, particularly with the introduction of large-scale environmental analysis, without a commensurate increase in training.

Under the circumstances, line officers have difficulty completing project planning on time. In the Bitterroot case example, about 60 employees with a wide range of skills were needed for at least 12 months of planning work. The needed skills "are in short supply relative to demand," noted the line officer. "There is little systematic training to develop these skills, and there are few support systems to reinforce any limitations of the team." Moreover, stress levels are high. "Many employees would prefer to avoid such assignments," observed the line officer, "because they perceive them as unrewarding exercises in paperwork, with a greater chance of frustration and failure than of success."¹⁰⁴

Monitoring Individual Species

Some forest plans and other documents commit line officers to monitoring individual species, even though there is no clear idea of the feasibility, cost, or potential benefit of doing so. Examples include the "Survey and Manage" provision in the Northwest Forest Plan and the commitment by the Forest Service's Southern Region to monitor populations of many species.

Commitments to monitor individual species are arguably discretionary. Moreover, other options are available to protect species at risk. However, after commitments are made, they are difficult to rescind or even to modify, even when they are found to be inappropriate or unworkable.

Funding Rules

Ecosystem management facilitates projects that serve multiple objectives. For example, a thinning project can serve to restore wildlife habitat, reduce fuel loads, improve watershed condition and function, and produce forest products for local communities.

Logically, such projects with multiple objectives should be able to draw on various sources of funding. Unfortunately, the Forest Service's budget rules have not kept pace with changing needs.¹⁰⁵ Line officers have cited the budget structure as a major impediment to the cooperative, integrated development of plans and projects.

SCOPE OF THE PROBLEM

The Forest Service has created some of its own problems and can rightly be expected to solve them itself. However, much of the problem lies beyond the Forest Service's own range of control. The Forest Service can, for example, do little to change requirements associated with federal statutes. These requirements, according to the GAO, have made it difficult for the Forest Service "to predict when any given decision can be considered final and can be implemented, increasing the costs

¹⁰¹ In the Megram case example, confusion over "Survey and Manage" requirements under the Northwest Forest Plan contributed to the remanding of an environmental assessment and associated project delay. As the line officer put it, "The forest had recently come under the Northwest Forest Plan, the requirements of which were complex and confusing, with little clear direction at first." Six Rivers NF, appendix C, p. C-25.

¹⁰² Personal communication with Forest Service Associate Chief Sally Collins, former supervisor of the Deschutes National Forest in Oregon.

¹⁰³ National Academy of Public Administration, Center for Human Resources Management; USDA Forest Service Workforce Plan.

¹⁰⁴ Bitterroot NF, appendix C, p. C-11.

¹⁰⁵ Any changes to the Forest Service's budget rules will require coordination with the Chief Financial Officer at USDA.

and time of decision-making and reducing the agencies' ability to achieve the objectives in their plan."¹⁰⁶

Workload

The Forest Service manages 192 million acres of national forest land. That amounts to 8.5 percent of the land area of the United States, an area the size of the original 13 colonies. The National Forest System comprises 155 national forests and grasslands with 585 ranger districts in 44 states and Puerto Rico.¹⁰⁷

Under NFMA, the Forest Service is required to prepare forest plans for the entire National Forest System. Forest plans are generally 300 pages long.¹⁰⁸ Each forest plan is tied to a programmatic EIS covering an area of about 1 to 3 million acres. Forest plan EISs are about 500 pages long, though CEQ NEPA regulations encourages agencies to limit normal EISs to 150 pages. The entire process of preparing and finalizing a forest plan can take years; for example, it might take five years to prepare a 15-year forest plan. As new information emerges, the Forest Service routinely prepares forest plan amendments and new programmatic EISs. The agency requires review of environmental documentation every three to five years to determine whether it needs to be updated.¹⁰⁹

At any given time, every ranger district has many projects underway. Under NEPA, environmental analysis must precede many ground-disturbing activities on federal land. The Forest Service produces about 5,000 EAs in support of "findings of no significant impact," which document the agency's judgment that an EIS is not required. The Forest Service produces about 120 project-level EISs per year, more than any other federal agency.¹¹⁰ EISs can be hundreds and EAs dozens of pages long, particularly in contentious cases. Agency requirements for documentation are rigorous. At training sessions, the USDA Office of General Counsel tells Forest Service employees that the rule for judicial review of an agency action is, "If you did it, but you didn't write it down or you can't find it or you can't find it fast, you didn't do it."¹¹¹ Documentation associated with one case example has reached 10,000 pages.¹¹²

The entire NEPA process for a project, from scoping to implementation, can normally take more than a year. For example, the Morgan Falls Trail Reroute Project was a noncontroversial project with a widely accepted need. There were relatively few public comments and no appeals. Yet planning for the project, from initial scoping to a decision notice, took about 20 months.¹¹³

In some cases, particularly where public interest is high, the planning process can take much longer. Planning for the Santa Fe Municipal Watershed Project outside Santa Fe, N.M., began in 1997 and did not produce a final EIS and record of decision until October 2001, a period of almost five years.¹¹⁴ If challenges follow, the planning process can drag on for another year or more. In the Megram case example, delays associated with appeals and litigation have prevented most fuels treatments from taking place on a blowdown that occurred in December 1995, almost seven years ago.

Costs

What does all the time spent on planning, analysis, and documentation cost? Although exact figures are not available, educated guesses by Forest Service professionals provide some insight. A 1999 report by the National Academy of Public Administration, based on interviews with Forest Service personnel, estimated that planning and assessment consume 40 percent of total direct work at the national

¹⁰⁶ GAO, "Forest Service Decision-Making," pp. 10-11.

¹⁰⁷ Personal communication with Greg Asher, Office of Lands, USDA Forest Service, Washington Office.

¹⁰⁸ Although the NEPA regulations state that a normal EIS shall not be more than 150 pages, and less than 300 pages for proposals of unusual scope and complexity.

¹⁰⁹ Michael J. Gippert, "Why Can't the Forest Service Make More Use of NEPA Tiering, and Why Does the Forest Service Do So Much to Comply With NEPA?" (USDA Office of General Counsel, draft report; 1 July 1997), in *passim*.

¹¹⁰ These figures do not include 15,000 or more categorical exclusions completed each year. Under CEQ regulations, no document must be completed for use of a "categorical exclusion" because the agency has found that this category of actions do not individually or cumulatively have a significant effect on the human environment. 40 CFR 1508.4. An agency may decide in its procedures to prepare environmental assessments even though it is not required to do so.

¹¹¹ Gippert, "Why Can't the Forest Service Make More Use of NEPA Tiering," p. 11.

¹¹² The Megram Fire Recovery Plan on the Six Rivers National Forest, Calif. E-mail memorandum from Forest Supervisor S.E. Woltering, Six Rivers National Forest, 22 April 2002.

¹¹³ See Chequamegon-Nicolet NF, appendix C, pp. C-39-42.

¹¹⁴ See Santa Fe NF, appendix C, p. C-16.

forest level.¹¹⁵ That would represent an expenditure of more than \$250 million per year, or more than 20 percent of the congressional appropriations for managing the National Forest System.

Of course, not all planning is time wasted. Part of that \$250-million planning expenditure would be money well spent. However, the GAO has cited an internal Forest Service estimate that “inefficiencies within this process cost up to \$100 million a year at the project level alone.”¹¹⁶

In the case example of the Bitterroot National Forest, the national forest tracked planning costs for its fire recovery project following the 2000 fires. Treatments were proposed on about 80,000 acres. With some costs still outstanding, Forest Service employees spent about 15,000 person-days, or 57 person-years, on planning the project.¹¹⁷ In addition, the national forest contracted for a fire effects study. Total costs for analysis and documentation amounted to about \$1 million, including more than \$100,000 in printing and mailing costs.

Are such high planning costs for individual projects justifiable? In the case example of the Santa Fe municipal watershed, the planning cost for a project covering less than 8,000 acres was more than \$1 million.¹¹⁸ At the estimated treatment cost of \$1,500 per acre, the money spent on planning could have treated more than 600 acres—only a small fraction of the project area, but at least some work could have begun.

Appeals and litigation are related to another procedural cost that is often poorly understood. Today, many forests are far denser than they were historically.¹¹⁹ Restoring healthy ecosystems often requires removing some of the trees and undergrowth, which is expensive. Where commercially viable, a timber sale can help defer the costs. In fact, most timber sales on the national forests are at least partly designed to return lands to a healthy condition.

The vast majority of timber sales proceed to completion unchallenged.¹²⁰ However, some groups have successfully used appeals to obstruct timber sales, and Forest Service employees therefore treat almost every ground-disturbing project as a potential target.¹²¹ They spend a tremendous amount of time trying to “bullet-proof” project planning against appeals and litigation. Challenges themselves, if they materialize, can be enormously time-consuming. Overall, the delays, even if a project is allowed to move forward, can reduce or eliminate the commercial value of removed materials, ultimately killing a timber sale. Figure 1 suggests a correlation between the rising number of appeals in recent years and falling volumes of timber harvest.

Timber sales can be the only feasible tool a national forest has to restore a forest to health. Process-related delays can take that tool away. The Megram case example is a case in point. In 1995, the Six Rivers National Forest in California responded to a 35,000-acre blowdown by proposing to treat the resulting fire hazards through a salvage sale. “As often happens,” noted the line officer, “the only way the forest could finance fuels treatment was through a commercial timber sale that generated enough funds to finance other treatments, such as prescribed fire.”¹²²

Constrained by administrative hurdles, the salvage sale failed to proceed until 1998. In 1999, the 59,000-acre Megram Fire burned through the area. It was exactly the kind of event that the national forest was trying to forestall by reducing hazardous fuels.

¹¹⁵NAPA, *Restoring Managerial Accountability*, p. 18.

¹¹⁶GAO, “Forest Service Decision-Making,” p. 4.

¹¹⁷Bitterroot NF, appendix C, p. C-10.

¹¹⁸Santa Fe NF, appendix C, p. C-19.

¹¹⁹For an authoritative discussion of changes in historical forest ecosystems in the West, see Stephen F. Arno, “Fire in Western Forest Ecosystems,” in James K. Brown and Jane Kapler Smith (eds.), *Wildland Fire in Ecosystems: Effects of Fire on Fauna* (RMRS-GTR-42-volume 2; Fort Collins, CO: Rocky Mountain Research Station, 2000), pp. 97-120.

¹²⁰Presentation by Ross W. Gorte, Specialist in Natural Resources Policy, Congressional Research Service, on 21 May 2002 as part of a Congressional Briefing Conference for the USDA Forest Service, Government Affairs Institute, Washington, D.C.

¹²¹See, for example, Hiawatha NF, appendix C, p. C-35: “The Hiawatha [National Forest] operates under the assumption that every decision will be appealed.—There is a general sense that some groups “throw anything at the wall to see if something sticks” relative to issues raised in response to public involvement efforts.” In the Morgan Falls case example, “This project was not appealed, but the level of effort put into the document and background material was made with potential appeals in mind.” Chequamegon-Nicolet NF, appendix C, p. C-41.

¹²²Six Rivers NF, appendix C, p. C-23.

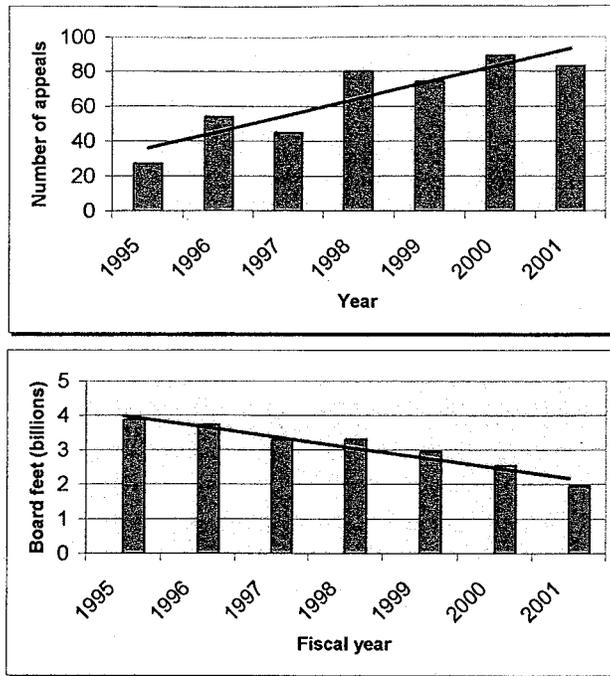


Figure 1—Appeals, even if unsuccessful, can lead to reduced timber sales, limiting land managers' options for restoring healthy ecosystems. Since 1995, the number of appeals filed against Forest Service decisions under the Administrative Procedures Act and statutes such as NEPA, NFMA, and ESA has been rising (top). At the same time, the volume of timber harvest has been falling (bottom).

Line officers prepared a postfire recovery plan for treating the areas most at risk—a little more than a thousand acres. Again, employees went to great lengths to prepare all the necessary studies and documentation, only to be taken to court, where a judge threw out the EIS. “Nothing will change on the ground,” observed the forest supervisor, “other than we’ll be able to salvage less because of the lost value in the trees.”¹²³

NEED TO SOLVE THE PROBLEM

The Megram case example and the others treated in this report raise serious questions about the Forest Service’s statutory, regulatory, and administrative framework: Does it produce efficient, effective service delivery? Does it permit the Forest Service to meet environmental challenges? And does it help the Forest Service build and sustain public trust?

Efficiency and Effectiveness

GAO has concluded that “the Forest Service’s decision-making process is clearly broken and in need of repair.”¹²⁴ The Forest Service does complete thousands of projects each year, thanks to the dedication and perseverance of its employees. However, it can take more than a year—and often many years—to complete the planning for projects, even for ones that are relatively simple and noncontroversial.

The need for so much planning is questionable. For example, much of the environmental information that the Forest Service collects is of dubious scientific or practical value. Although it might be needed to meet procedural requirements or to withstand appeals and litigation, resources spent on process cannot be put to other

¹²³ Memorandum from Forest Supervisor S.E. Woltering, Six Rivers National Forest, 22 April 2002.

¹²⁴ GAO, “Forest Service Decision-Making,” p. 12.

uses. The opportunity costs alone—which might range into the tens of millions of dollars—suggest a fundamental lack of efficiency and effectiveness in national forest management.

Healthy Lands

Limited resources might be put to better use in restoring healthy, resilient ecosystems. Large portions of the National Forest System are in poor or declining health. Much more could be done on the ground to restore ecosystems on federal lands; in the words of Aldo Leopold, “Conservation—is a positive exercise of skill and insight, not merely a negative exercise of abstinence or caution.”¹²⁵ Neither ecosystem values nor the public are well served when responsible management actions take a back seat to process.

Obviously, some planning is required; interagency consultations and environmental studies are certainly needed to ensure that management actions are sound. However, consultation requirements—in their current form—often shift the focus of management away from the long-term health of the land. Moreover, procedural requirements for studies—again, in their current form—often produce long decision-making delays that can prevent needed work from happening before it is too late.

Most scientists and land managers understand the need for adaptive management. Managers can and should take responsible action without knowing everything that might ever be known about a piece of land. The trick is to carefully monitor the effects on the land and adjust future management actions accordingly. Unfortunately, the Forest Service’s procedural framework is poorly suited to adaptive management.

Collaborative Decision-making

At its core, the debate over natural resource use on public lands is driven by differences over values. Sound science and competent land management cannot resolve such differences. In a democracy, interested citizens must have ample opportunities for working out their differences through a decision-making process that is fair, constructive, and participatory. The environmental laws were partly designed to help establish that process.

Today, in the best tradition of our environmental laws, line officers are building on statutory requirements for public involvement by fostering collaborative decision-making that is both timely and effective. Airing differences and finding common ground take time, but collaboration ultimately makes national forest management more efficient and effective by generating public support for decisions made and work done on the ground.

Too often, though, the Forest Service’s procedural framework discourages collaborative decision-making. For example, the agency’s appeals process tends to feed distrust rather than build on shared values and goals. Where process favors obstruction, the effects on land management can be devastating, shaking public faith in the Forest Service’s ability to care for the land and serve people.

Opportunities

Reasonable people will disagree on the nature, scope, and complexity of the statutory, regulatory, and administrative hurdles facing the Forest Service. However, most people will agree on the core values of good government in federal land management: efficient, cost-effective service delivery; healthy, resilient ecosystems; and meaningful public involvement. These values generally transcend conflicts among competing groups over specific values associated with natural resources on public lands.

The environmental laws were designed to promote transcendent values of good government. Evidence suggests that the laws are not the problem. The Thomas Report, business process analysis, and case examples reveal no fundamental conflicts among the laws.¹²⁶ The problem lies in their implementation through a maze of rules and regulations that has evolved over the years.

The rules and regulations have placed the Forest Service in a serious predicament, whereby the process defeats its own purpose. In the Santa Fe case example, one Forest Service critic put it this way: “I would like to just say that we are very concerned about the risk of wildfire in the watershed.—But we will require the Forest Service to follow the letter of the law. These laws are established to protect

¹²⁵ Aldo Leopold, “The Farmer as a Conservationist,” in *The River of the Mother of God and Other Essays* by Aldo Leopold, ed. Susan L. Flader and J. Baird Callicot (Madison, Wisc.: University of Wisconsin Press, 1991), p. 257.

¹²⁶ See, for example, Bitterroot NF, appendix C, p. C-17: “There was no indication that ‘conflicting laws’ were an issue in this case.”

the environment.”¹²⁷ In the name of environmental protection, the focus has too often shifted from protecting resources to policing processes. The problem is this: We are following the letter of our environmental laws without infusing their spirit into what is actually happening on the land.

Opportunities abound for reviving the spirit of our environmental laws. Advances in science and technology have paved the way for a new era of public land management through collaboration and flexible decision-making. Ecosystem-based approaches grounded in adaptive management promise to reverse decades of land health decline and restore healthy, resilient ecosystems far into the future.

The key is to tailor the Forest Service’s statutory, regulatory, and administrative framework to the new opportunities. Part of the solution will be internal; the Forest Service has an obligation to reform its administrative processes accordingly. However, the problem goes far beyond the range of control of any single agency. Over the years, a central lesson for the Forest Service has been the need to work with partners. By applying that lesson, the Forest Service can strengthen its partnerships and find collaborative ways out of its process predicament.

NOTE: The report in its entirety has been retained in the Committee’s official files.

An article from The Oregonian submitted for the record by Mary McCormick, Staff Assistant to the Deputy Chief for Research and Development, Forest Service, U.S. Department of Agriculture, follows:]

Article submitted for the record by Mary McCormick, Staff Assistant to the Deputy Chief for Research & Development, WO/USDAFS

COLLABORATE FOR HEALTHY NATIONAL FORESTS

AUGUST 6, 2002: THE OREGONIAN

BY ROBERT LEWIS JR. WASHINGTON, D.C.

On July 27 you clearly reported one side of an ever-increasing debate concerning management of our national forests. The crux of your story, “Scientists chastise Forest Service chief,” focused on a letter by a group of scientists criticizing the U.S. Forest Service and Chief Dale Bosworth for his congressional testimony on why the Forest Service cannot accomplish more on the land. As the Forest Service’s deputy chief for research and development, I have several comments.

The six scientists who wrote the letter disagreed with Bosworth’s statement that a report they prepared, known as the Beschta Report, aided in preventing the Forest Service from working to restore ecosystem health. The Forest Service has clear evidence that the Beschta Report prevented or delayed Forest Service management action.

A compendium of opinions and reviews were cobbled together, then passed among similar interested individuals for further endorsement, leading to a conclusion of declared fact. This is not good science; it is not even science. It is marketing.

An internal Forest Service review of the Beschta Report was conducted by a group of eight Forest Service scientists in 1995. Each scientist provided independent comments on the Beschta Report. A recurring concern by the reviewers in 1995 was that “many state-

¹²⁷ Bryan Byrd, Executive Director, Forest Conservation Council, quoted in Santa Fe NF, appendix C, p. C-20.

ments and assumptions made in this paper (Beschta Report) are unsubstantiated. In general, this paper seems to represent a hasty response to potential fire sales in the west [sic 1994]. The literature cited is extremely limited and largely ignores existing literature concerning fire, soil, and forest health related to forest problems east of the Cascade Range.”

My sincere hope is that the science community will stop placing blame and start figuring out how to solve the problem. Many agree that we need to thin and/or underburn many overgrown forests to make ecosystems healthier and to reduce the potential for catastrophic fire.

Where a fire has already burned through, we might need to remove some of the burned trees to prevent another catastrophic fire in future years. The Forest Service has more than doubled the number of acres treated on the national forests in recent years, but we need to do much more. Procedural constraints are hindering progress on the ground.

We should base our decisions on the best science available, then monitor the results and adapt our management accordingly.

All over the country, people are sitting down together at the local level to hammer out agreements everyone can live with. The Forest Service is only one partner among many. Collaborative stewardship and adaptive management hold the key to a future of healthy, resilient national forests and grasslands, especially when the scientific community works together to bring new knowledge to the decision-makers. I hope we can collaborate and work toward the same mutually beneficial objectives for both public and private lands.

