

TESTIMONY

From

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For

**The Committee on Resources
Subcommittee on Forests and Forest Health
US House of Representatives
September 21st 2000**

On

The Future of the Forest Service

Madam Chairman, I am honored to present testimony before your Committee on Forests and Forest Health. The subject matter – “The Future of the Forest Service” – is of extreme importance.

In this paper, I will call upon my own personal experience of results based accountability here in the United States and my home country’s experience when dealing with nearly identical mission problems in the State Forests of New Zealand.

In your letter stating the intent of the Committee in calling this meeting, you indicated that the object of your study would be the Future of the Forest Service. Presumably, the choice of subject indicates concerns about the performance of the Service and the results it is achieving. With your indulgence and all due respect to your superior knowledge of the agency under your review, I am going to target my testimony at some structural and policy issues which may be hampering the organization in the performance of its duties. In my experience it is often in the fundamental principles that the solutions to problems are found.

First, there are two different policies and thus two types of policy goals at work here: conservation policy, which is managed by the Forest Service; and at the same time, resource use policy, managed by the same organization. This situation creates a conflict of policy goals, and leads to muddled outcomes and a great deal of uncertainty. That uncertainty is caused by the Forest Service's inability to satisfy two constituencies at once. Which policy takes priority: conservation or resource use? To have a successful resolution of the issues at stake, it is necessary to untangle the two policies. This

untangling should result in a clearly stated conservation policy that is consistently managed and administered. In addition, successful untangling would need to result in a clear policy for resource use that would be consistently managed across the whole of the public lands managed by the Service.

The Objective

The objective is to manage the national forests on public lands in a manner that guarantees that appropriate conservation and environmental values are preserved and that allows, for the sake of the “national good”, sustainable resource use to continue on a sound economic basis.

Dividing the Tasks

The first and largest task is to identify those resources whose conservation and environmental values are of such “national importance” that they should be preserved in perpetuity. This process should then identify those resources whose value would permit only limited use and finally, those where full sustainable yield harvesting would be allowed. It is through this process that acceptable environmental and conservation outcomes are guaranteed.

A successful strategy for the development of this outcome would address several issues as follows:

1. Which forests lands and resources should be preserved from harvest in perpetuity?
2. Having identified those resources closed to harvest – under what policies would they be managed in the future?
3. Who would manage that conservation estate?
4. What would the defining values be for those resources that were being made available for harvest?
5. What mechanisms would reliably create the best incentives to use those resources in a responsible manner?
6. How could this policy be implemented with minimum level of involvement by regulators and government agencies, and with sufficient certainty to minimize litigation?

The Conservation Estate

The body responsible for this task needs to have a clear and unambiguous mission. Clearly, the mission needs to reflect the nation’s interest in protecting these assets in perpetuity. This suggests that the guiding concept will be **preserving the health** of the forest estates. Good management would now ask, “What are the mission-critical factors in preserving the health of the resources under our stewardship?”

A good way of identifying mission-critical issues is to ask, “What is the worst possible thing that could happen to these resources?” Answer: “That they are destroyed.” Next question: “What might destroy these assets?” Answer: Fire, erosion, noxious plants, animals or over-use. These are your mission-critical issues: the strategies and activities undertaken to minimize these risks.

Congress – when examining the performance of those who have a custodial role over such assets – needs only ask, “What did you do to manage these mission-critical issues and was that enough?”

To be able to consistently identify which forests and other resources should be permanently conserved, the conservation policy must first be defined. Such a policy will have as its foundation binding principles that address the following issues: forest health care, wilderness policy, recreational policy, Endangered Species Act considerations and others. As established by the policy, these values guide the process of identifying the conservation forests.

Having identified which resources are going to be permanently protected, the next question is who will be responsible? The custodian’s mission must be consistent with conservation and ecological outcomes. Clearly, the decision to allow or disallow resource use will be controversial on many occasions. It is not reasonable to expect fair and consistent resolutions without open, vigorous contestability. Whether this can be best achieved by two separate divisions of one organization or by two separate organizations is an open question. My point is that no one can successfully serve two opposed missions at the same time.

One solution would be establishment of a separate entity with a mission statement consistent with conservation ethics that acts independently from other parts of the Forest Service. The downside of this concept is that the new organization may lack credibility in the eyes of both conservation and resource user interests.

An alternative would be a system of trusts, each with its own separate mission, assigned to manage specific forests or other resources. That option would have the advantage of being able to employ people from that locality, bringing local knowledge and local issues to decisions impacting those forests. The downside is that there may not be consistency in the management of forests across the nation compared to a national body.

When the government of New Zealand faced this issue, after much discussion it finally decided that it would establish an entirely new department to undertake this work, the Department of Conservation. Our reasoning was that unless this department was a new body, with a new mission, carrying forward none of the baggage of the past, it was not going to gain the credibility necessary to administer its new functions successfully. The Department of Conservation has, for the most part, been very successful in administering the conservation estate.

The third issue is how will this work be funded? It seems that given the “national” nature of the values being preserved, funding by government (i.e. Congress) would be appropriate. However, it is also possible that revenue generation could come from resource levies, hunting and recreation rights. What is essential, however, is that revenue activities should not impair the organization’s ability to carry out its major task. If finding ways of raising money becomes a priority, these efforts could lead to harmful conflicts of interest with respect to policy.

It might appear that the resources under stewardship should fall neatly into resources to be utilized and resources to be conserved. However, this will certainly not be the case and a much more likely scenario is a situation where only part of a resource meets the criteria for use or protection. If the system and criteria for decision-making are robust and there is full contestability then it is possible for both to exist within the same resource area.

Resource Use

Now we will look at the resources whose use would be allowed. The first question to be addressed in this policy area is "How much and under what conditions would use be allowed? This will clearly vary between renewable and non-renewable resources. However, sustaining the value to the national estate and the legitimate needs of the American economy are the factors that go into this equation and a judgment is then made.

Two important considerations here are consistency and the incentives created. With consistency you produce a degree of certainty that allows investors to act with confidence. Incentives will vary greatly according to how “rights to use” are granted. Short-term rights produce short-term investment. Short-term investors seek to maximize output of a low value product, with little or no regard for the future. Longer-term rights tend to produce more responsible behavior, with longer-term investments that maximize values. Long-term investors pay greater attention to recovery and regeneration. For example, with long-term rights they are incentivized to address issues of forest health, public access, hunting and recreational use, visual values, protection of habitat and maximizing the regenerative capacity of the resource.

There is a stronger incentive if “rights to use” are structured like property rights. There are a wide variety of mechanisms that could be used: lease agreements, negotiated contracts, and sale and repurchase agreements, etc. Whatever their form, it is important that agreements be legally enforceable so as to provide certainty to both sides. Binding documents can incorporate the terms and conditions that would enforce the values considered earlier in this paper and any special considerations that are unique to a particular forest or resource. From my New Zealand experience, this type of contractual agreement gives the greatest certainty with a minimal requirement for regulatory oversight or review.

The issuing of these rights needs to be a competitive process. Currently, there is no good basis for assessing the value of these resources, and a change in policy for “rights to use” could significantly alter resource values. The only way these could be reasonably established would be by an openly competitive bidding process. That bidding process should also allow groups who do not intend to use the resource to bid as well. So, if a conservation group wanted to bid for and purchase a particular contract, there should be no barriers to their doing so, even if it was their intention to protect that forest from harvest.

Having established the separation of conservation from production forests, having defined conservation policy, and having worked through “right to harvest” mechanisms, the next question is "Who would manage the production forest?" Given that the new right to harvest will probably bring with it some important land use values from conservation policy, there will clearly be some obligations on the harvester of the forest apart from a direct commercial interest.

If the chosen mechanism for the issuance of a form of property right were a contract document, then the role of the Forest Service in such an arrangement would appear to be significantly reduced. It is still necessary to have a contract manager who would ensure that the holders live up to their obligations. However, under a contractual process, voluntary compliance becomes much more common because penalties for breach of contract are severe. This relieves much of the burden of oversight that is required for enforcement of administrative law.

Accountability

It is quite common to allow the use of certain resources at less than market rates, as in the case of pastoral lands. While this long-standing practice might be perfectly acceptable, such decisions should be made with full public knowledge, so it is very important that the custodial authority identify and report the revenues forgone.

Summary

In summary, the future of the Forest Service will be governed by the tasks and responsibilities assigned to it. To be successful it must have a clear mission, a workable policy and a chance to succeed.

Several crucial issues must be addressed to achieve such a goal:

- Management structure should reflect the agency’s mission.
- Recognition that it is almost impossible for a single body to be the protector of conservation interests and user interests at the same time.
- A strategy to identify assets so precious that they should be preserved in perpetuity.
- Acknowledgement of public demands for resource use

- Factors relating to the needs of the American economy
- Accountability for the health and welfare of resources under custody
- Reasonable expectation that risks to that estate will be identified and eliminated as far as is humanly possible

If the matters touched on in this testimony are to be resolved, it is absolutely essential that laws provide certainty and protection to **well-defined conservation values** and to **specific “rights to use” national resources**.

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