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1996

9-18-1996

What Can We Learn from Past Reform Efforts

R. Max Peterson

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Citation Information

Peterson, R. Max, "What Can We Learn from Past Reform Efforts" (1996). *The National Forest Management Act in a Changing Society, 1976-1996: How Well Has It Worked in the Past 20 Years?: Will It Work in the 21st Century? (September 16-18)*.

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R. Max Peterson, *What Can We Learn from Past Reform Efforts, in THE NATIONAL FOREST MANAGEMENT ACT IN A CHANGING SOCIETY, 1976-1996: HOW WELL HAS IT WORKED IN THE PAST 20 YEARS? WILL IT WORK IN THE 21ST CENTURY?* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1996).

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WHAT CAN WE LEARN
FROM PAST REFORM EFFORTS

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The National Forest Management Act in a Changing Society
1976-1996

September 16-18, 1996

Natural Resources Law Center
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What Can We Learn from Past Reform Efforts

by R. Max Peterson

I. Summary

One conclusion that seems inescapable from past reform efforts is that each reform seems to have increased the cost and decreased public satisfaction with the result! Hardly an encouragement for further reform. What this represents may be simply increasing conflict between highly organized user groups each seeking an increased share or certainty for the use it considers "best".

The National Forest Management Act itself was a "reform" of prior planning efforts that evolved from the time the 1897 organic Act was enacted which envisioned that the Forest Reserves would provide a sustained timber supply and favorable conditions of water flows. 16USC§475. The evolution of resource planning in the Forest Service has been well documented¹ but there are several recurring assumptions or themes that have persisted and underlie past and some current reform efforts including:

¹ For a brief overview of those efforts see Land Management Planning on the National Forests: In Retrospect and Prospect by R. Max Peterson, Oregon State University Starker Lecture, November 3, 1988.

1. Multiple purpose lands by definition are lands where numerous types of users and uses are expected to share both the land and its varied resources.
2. No one use or uses has a legal priority or primacy except in areas specifically designed by Congress such as wilderness or national recreation areas, scenic areas, etc.
3. There is an expectation that the mix of uses will change over time to reflect both changing needs of society as well as new scientific information concerning resources and their management.
4. Forests serve people's social, economic, environmental, aesthetic and spiritual needs and aspirations, as well as being home to a wide variety of fish, wildlife and other flora and fauna which have substantial value locally, regionally, nationally and sometimes internationally.
5. The "best" or "optimum" plan for an area of land can be determined that is scientifically sound, financially feasible and socially acceptable -- locally, regionally and nationally.
6. Should Congress decide or prescribe priorities of use or prescribe different goals for these multiple purpose lands, or should Congress require a process for determining the optimum mix.
7. The agencies are expected to develop and carry out plans and programs that provide optimum multiple purpose use of such lands, yet numerous other

laws give other agencies, many with single purpose mandates, the authority to make decisions that control land use -- EPA, COE, USFWS, NOAA. The process requirements, priorities, or mandates for these organizations may or may not mesh with the NFMA planning process and thus adds cost, confusion and sometimes lengthy delay. Court decisions frequently fault the meshing of the different agency processes.

In spite of that healthy skepticism about reform, it seems highly probable that a new round of either administrative or legislative reforms will be forthcoming. It seems to me that we need to invest substantial time in determining where we want to go in future management of national forests before we try to refine a new process or prescription of how to get there. This requires, in my view, the following:

1. Some process for reestablishing reasonable agreement (working majority), probably not a consensus, on what the public expects from the multi-purpose lands nationally, regionally and locally. Are the basic premises of lands that are available for several purposes still valid? If so, how is that mix of uses to be determined? Some process similar to the Canadian roundtable conducted at national, regional and local levels might help determine the level of expectation/future vision of different groups for future forest management.

2. Review and refine how the RPA/NFMA process should guide management.
Review and refine the appropriate role of the Congress/Executive branch at federal and state level, and the courts in this process.
3. Reestablish a sense of reasonable and future expectations on the part of various user of national forests and a sense of shared destiny. Some process of seeking common ground nationally, regionally and locally would be very beneficial. As long as groups think their best strategy is to "fight", they probably will not "switch"!
4. There is a need to define a way for local and regional communities, as well as states, to be more involved and therefore more supportive of decisions reflected in plans.
5. We need to particularly evaluate and refine the process requirements of overlapping laws to focus on optimum plans and related projects that comply with basic laws related to air, water, wildlife and soil, but without such costly and burdensome process rules. Some progress has been made in this through such procedures as habitat conservation plans, but it is not clear whether those changes will pass court challenges.
6. While many in this group may not agree, we need to rethink the appropriate role of the courts in dispute resolutions. It seems to me that arbitration panels, science panels, or citizen panels might well be superior to the present court procedures.
7. Laws and regulations such as NEPA and NFMA need to be reviewed to make some common sense judgments about the level of site specific detail required at various

planning levels. For example, to examine and evaluate the options and lay out the potential social, environmental and economic consequences for a National Forest results in documents that literally no one, certainly not the decision maker, have time to read. After all that work the claim by some is that no decisions, therefore no actions, result. This means that the project level is burdened with not only project level impacts but cumulative impacts from other projects over time which should be the primary purpose of the Forest Plan.

8. Public lands do not exist in a vacuum and should be considered in terms of how management of such lands in a particular area relates to other state and private lands. This does not mean, in my view, some type of master plan but a level of cooperative planning and action so that the whole is greater than the sum of the parts.
9. There is a clear need to develop a broadly shared land and conservation ethic related to public lands which recognizes that our "rights" to use such lands includes the responsibility to share and be considerate toward other uses and users.

General References

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