SLIDES: Forests and Grasslands

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Forests and Grasslands

Natural Resources Law Center,
Boulder, Colorado,
June 8, 2007
The total acres conserved in 2005 rose to 11,890,109 from 6,056,624 acres in 2000, a 96% increase.
(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--
(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
(3) attain the widest range of beneficial uses of the environment without degradation . . . . ;
(4) preserve important historic, cultural, and natural aspects of our national heritage . . . .
(5) achieve a balance between population and resource use. . . ; and
(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
(F) recognize the worldwide and long-range character of environmental problems . . . ;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
AN IDEA (FROM INSIDE THE AGENCY OR OUTSIDE)

A “PROPOSAL”

1501.4 INITIAL DECISION

NORMALLY DO EIS 1501.4/1507.3

DO AN ENVIRONMENTAL ASSESSMENT TO DECIDE 1507.3/1508.9

CATEGORICAL EXCLUSION 1507.3/1508.4

DECIDE TO DO EIS 1501.4(c)&(d)

PREPARE A FONSI 1501.4(e)/1508.13
Undermining NEPA

- Technical Compliance “Too Hard”
- Categorical Exclusions for Regulations and Planning
- Categorical Exclusions for Timber Sales, Salvage Sales, You Name It . .
“The Court finds that the Forest Service acted arbitrarily and capriciously in denying Wyoming, and the nine other states most affected by the Roadless Rule, cooperating agency status. This finding is not premised on a conclusion that the Forest Service had a duty to grant cooperating agency status to any of the states that requested that status, nor does it provide a judicial gloss on the lead federal agency's discretionary authority to grant cooperating agency status.”

“Rather, the finding is based on the fact that the Roadless Rule affected 53.37 million acres of land, or 92% of the total inventoried roadless areas, in those ten most affected states, and the Forest Service did not find it worth its time to explain why it was denying cooperating agency status to those states. Moreover, the logistics of coordinating with ten states would not have been insurmountable.”

_Id._
§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.
A final decision on a proposed action is viewed as causing effects on the resources . . . . when effects may occur without additional action by the agency . . . . For projects and activities, the final decision point is typically the decision to approve the project or activity . . . .

However, for land management plans . . . a cause-effect relationship of this nature typically does not exist. [T]o establish a "cause-effect relationship" . . . it is not sufficient to find that one or more plan components increase or decrease the likelihood of effects from future actions . . . . Rather, it is necessary to conclude that a plan component by itself, without further analysis and decision-making by the agency, will either allow otherwise disallowed, or prohibit otherwise unprohibited, actions. . . .

75 Fed. Reg. 75481 (December 15, 2006)
Land management plans developed under the 2005 planning rule will typically be strategic and aspirational. In 1998 and 2004, the Supreme Court issued decisions that support the Forest Service's conclusion that its land management plans developed under the 2005 planning rule typically will not have independent environmental effects, and thus, will not have significant environmental effects.
In *Ohio Forestry Ass'n v. Sierra Club* . . . (1998), the Supreme Court recognized that, in contrast to proposals for actions that approve projects and activities, the land management plan provisions at issue "do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations" . . . . In *SUWA*, the Supreme Court's description of the Bureau of Land Management's (BLM's) land use plan, developed under the Federal Land Policy and Management Act (FLPMA), is in accord with Forest Service land management plans developed under the 2005 planning rule.
This [Interim Directive] adds three such categories of actions to the agency's NEPA procedures that are applicable to small timber harvesting projects: Category 12 allows harvest of live trees not to exceed 70 acres with no more than 1/2 mile of temporary road construction; Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than 1/2 mile of temporary road construction; and Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than 1/2 mile of temporary road construction.

“The National Environmental Policy Act of 1969 and the Water Quality Improvement Act of 1970 apply to all federal agencies in the performance of any of their responsibilities which may have an impact “on man's environment.” Thus, they provide a statutory basis to bring environmental quality into planning and decision-making wherever gaps exist in previous laws, even though an agency may have to obtain additional legislative authority before taking final action.”