MULTIPLE USE AND ENVIRONMENTAL DECISIONS ON THE PUBLIC LANDS

THE PUBLIC LANDS have long been managed with attention given to environmental concerns. National parks were set aside to protect natural scenic wonders and wildlife refuges, to protect wildlife in natural settings. By and large, the men who have managed the public lands since the turn of the century have shown a concern for environmental matters that was more acute than that of the general citizenry.

Today, perhaps for the first time, the shoe seems to be on the other foot. The American public is greatly concerned with the quality of our environment and is demanding, among other things, that those who manage the public lands do something in tune with this concern. On the national forests and on the public lands managed by the Bureau of Land Management, this means integration—integration of the requirements of the National Environmental Policy Act into the much more general requirements of the multiple-use acts, which guide land-use decisions on these lands.

Although the foresters and other resource specialists who have been responsible for public land management have long recognized environmental values, there was little or no mention of them in statutory policies until the Multiple Use-Sustained Yield Act of 1960. At that time, in the hearings and floor debates in the House of Representatives, it was included in a discussion of the meaning of the term "outdoor recreation." It was made clear in the hearings and debates that "outdoor recreation" was intended to cover a broad range of matters, including aesthetics, as important factors in national forest management. The Classification and Multiple Use Act of 1964, which provided similar, but temporary, multiple-use direction for lands administered by the Bureau of Land Management, included "ecology" as one of the factors to be considered in public land management. Thus the 1964 act is to some degree more explicit than the 1960 Act in its reference to environmental values.

The multiple-use acts for both the U.S. Forest Service and Bureau of Land Management provide these agencies with their basic charters for planning land use and for allocating lands among various uses. But neither act really requires the agencies to provide evaluations of land use based on meeting specified objectives, such as those related to the environment. Also, neither act establishes clear objectives of land management. These gaps have been filled in part by the National Environmental Policy Act. But the multiple-use acts form the basic statutory land-use planning directives for the bulk of the public lands, giving both agencies broad charters for land management and placing little restriction on the manner in which the agencies exercise administrative discretion, especially in the case of the Forest Service. The discretion of a public agency dealing with public resources is ultimately limited by public opinion and by the interpretations of the courts. And both public opinion and the courts today are affecting the public land decisions, which in the past were left largely to the discretion of the agencies and the judgment of their employees. While there seems to be general public backing of most administrative decisions the agencies make, there is emphatic disagreement with some decisions.

Limitations on Professional Judgment

In the past, it may have been possible to rely on the professionals for most public land decisions. In those happy days, the decisions often did not involve choosing among competing uses of public lands. But today, when both the variety and intensity of possible uses are increasing, and when many of these uses are public in the most visible sense, professional judgment must be supplanted by procedures that meet the test of public acceptance.

In the August, 1970 *Journal*, excerpts were printed from a number of letters that commended last spring's statement of Kenneth P. Davis, President of the Society, before a Senate Subcommittee on Appropriations. Davis' statement concerned clearcutting and defended its place as one of the professional forester's silvicultural tools. The following statement is from one of the letters: "I would like to commend you on an admirable job of defending the right of foresters and land managers to manage the national forests of the United States based on professional judgment and historical facts" (J. Forestry 68:8:514).

It can be argued that the land manager who is given broad, statutory discretion and appropriations to implement his decisions, has a certain "right" to manage the lands on the basis of his professional judgment, in lieu of meeting objectives or guidelines provided by the Congress. But even if this is the case, it is becoming ever more clear that professional judgment is, by itself, inadequate to meet modern pressures on land managment. The public concern with clearcutting shows this as does the public concern with the results of applied professional judgment in the Santa Barbara oil spill. It is also clear that this "right" conferred in the multiple-use acts has been limited sharply by the Environmental Policy Act. In the case of the Forest Service it was also

THE AUTHOR is a former member of the staff of the Public Land Law Review Comm. and presently Charles Bullard Research Fellow, Harvard University, Cambridge, Mass. Adapted from a paper presented at the 1970 SAF National Convention, Las Vegas, Nev., October 13.

Perry R. Hagenstein

limited by the Wilderness Act, as shown by the following.

On February 27, 1970, Judge Doyle of the District Court of Colorado ruled that an area known as East Meadow Creek, which is contiguous to the Gore Range-Eagles Nest Primitive Region on the White River National Forest in Colorado, must be included in the study of this area for possible inclusion in the Wilderness Area System. This decision prohibited the Forest Service from completing a planned timber sale in the East Meadow Creek area. In reaching its conclusion, the court stated:

> For many years primitive, wilderness, and wild areas have been set by the Secretary of Agriculture and the Chief of the Forest Service. Under the Multiple Use-Sustained Yield Act *(16 U.S.C. 529)*, this authority of the Secretary of Agriculture to preserve wilderness was specifically recognized. However, prior to the Wilderness Act, the issue of what uses might be made of such areas was entirely within the discretion of the Secretary of Agriculture and the Forest Service. . . One of the major purposes of the Wilderness Act was to remove a great deal of this absolute discretion from the Secretary of Agriculture and the Forest Service by placing the ultimate responsibility for wilderness classification in Congress. . . The duty of the Secretary of Agriculture is to study and recommend, and this duty is mandatory (2).

In this case the Court found that by selling timber the Forest Service was planning to take actions that would preclude the possibility of any further consideration by the Congress and the President of including this area in the Wilderness Area System. At one time, prior to the Wilderness Act, the professional land manager working for the Forest Service apparently had a legal right to exercise his professional judgment, modified only by the political judgments of the Secretary's office, as to what public lands should be incorporated in wilderness areas. But that right has now been clearly limited as a result of action taken by the public through the courts.

Lack of Direction

It must be recognized that Congress wasn't very helpful in providing guidance to the public land agencies in the multiple-use acts. At the time the 1960 act was passed, Congressman Wayne Aspinall, Chairman of the House Interior and Insular Affairs Committee, stated in a letter to Harold Cooley, Chairman of the House Committee that was assigned jurisdiction over the bill, "The bill gives little guidance as to how the relative values of the resources or the relative merits of competing uses will be established, or what dispositions will be made in case of dispute." The statement of Congressman Clem Miller, made during the floor debate of the House of Representatives on the Multiple Use-Sustained Yield bill, in retrospect shows great foresight. Miller stated:

> I am wondering at this point whether the Forest Service should not make better provision for public scrutiny of proposed management plans for other areas before the plans go into effect . . . I am also wondering how the Forest Service is to process appeals from these various groups whose use desires in a particular area may differ and be virtually irreconcilable. . . It may be that after the dust has settled, and with the passage of time, we will achieve a greater measure of historical perspective and the haste with which we have considered this far-reaching legislation may be regretted by all. . . The increased demands to use the forests for their many uses cannot be met simply by pronouncing a policy of multiple use (*5*).

Ten years later (the act having been signed on June 12, 1960) the Public Land Law Review Commission in its report, *One Third of the Nation's Land,* stated: "Multiple use is not a precise concept. It is given different meanings by different people, as well as different meanings in different situations . . . This confusion permeates public land policy" (*6*). The lack of direction for public lands was evident to the Commission. The analyst trying to deal with evaluations of multiple-use questions soon finds, however, that Chairman Aspinall's desire for guidance on "relative values of the resources" is not readily fulfilled. As John Zivnuska has pointed out with respect to multiple-use analytics, "A basic problem to be faced is the very low level of knowledge of the physical relationships and values and costs involved in various uses which can be made of forests and wildland" (*10*). Even the relatively understandable constructions of the economist and the resource manager require estimates of values and relationships that are often far more detailed than those that are available. In presenting an economist's view of multiple-use decisions, G. Robinson Gregory pointed this out in an article published in *Forest Science* in 1955 (*4*).

In light of the foregoing, the National Environmental Policy Act and the guidelines that have been established for its implementation by the Council on Environmental Quality can be viewed as giant steps forward. All federal agencies are now required to prepare detailed environmental statements before undertaking any major actions or reporting on legislation that significantly affects the quality of the human environment. I think the intent of this act is highly significant in that it would require the public land agencies, among others, to show how their proposed actions would affect the environment and make their evaluations a matter of public record. Whether or not it will be successful in forcing the development of sound analytical methods and relevant data is, unfortunately, uncertain. A case in point shows why.

Planning, Programming, and Budgeting System

In recent years, we have seen the executive branch of the federal government attempt to institute on a broad scale the system of program evaluation known as PPB, the Planning, Programming, and Budgeting System. This was to have provided a framework for program decisions. The problems encountered in instituting PPB suggest some of the problems that face the implementation of the National Environmental Policy Act.

PPB promised to provide a more rational view of the effects of federal program alternatives. But it has, to a substantial degree, failed and not entirely because of the opposition to change and the inertia of the bureaucracy. In part, it has failed because its application fell afoul of

the organizational and interagency politics of the federal bureaucracy. It has also failed because PPB has not been integrated into the overall federal political and administrative structure. Numerous compromises were made in defining categories of outputs and programs for PPB. While on the surface this seems rather straightforward, it, in fact, has tremendous implications for organizational structure and program levels, both of which are guarded jealously by the existing bureaucracy. The objective of each agency in this give-and-take is typically to define categories in a manner that will protect its programs and responsibilities. The hybrid categories resulting from compromise have not provided a useful basis for choice at any given level—among programs by a bureau chief, among bureau programs by a secretary, or among department programs by the Office of Management and Budget. Establishing the process for making environmental statements under the National Environmental Policy Act could produce the same results.

From another perspective, PPB has had limited success because it has been a closely held executive branch process and not a federal government process. Our political system, with Congress acting as the major point of contact between the citizen and his government, is intended to provide public programs that are reasonably responsive to the desires of the public. PPB suffers from an approach that is intended to substitute for, rather than aid, the rest of the political decision process.

Integration of Objectives

This separation of administrative process from the political and legal framework of government, it should be noted, is not a problem with PPB alone. In a recent issue of *American Forests,* a description of the passage and initial implementation of the 1960 Multiple-Use Act contained the following statement concerning a speech made by the Chief of the Forest Service at the World Forestry Congress some three months after the passage of the act: "McArdle's statement was of great policy significance and insofar as the Forest Service was concerned at that time, the interpretations given in the above paragraphs [of that statement] carried equal weight with the legislative history" (*1*). This is arrogance of a high order in a system where laws establish the legal framework for federal programs and legislative history carries a great weight in interpreting the meaning of laws. The same sort of arrogance states that PPB need not be responsible to the political environment and can be implemented without regard to its implications for reasonable choices by the political process. It thereby loses much of its potential impact.

It would seem that the requirements for public participation in the preparation of statements under the National Environmental Policy Act should help to assure that the statements are relevant for the political process. But integration of these statements into the regular land-use planning process of the public land agencies may be a very trying experience, at least for those attempting to get estimates of the effects on other objectives of public land management. The problem is that the stated objectives of land management are now a hodgepodge that defy meaningful interpretation and comparison. The *Forest Service Manual* lists three ob-

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jectives of multiple-use management that provide for coordination of management objectives for each of the individual resources so as to conform with "public needs" and so that each activity contributes to "optimum efficiency and public benefit" (*6*). These very broad terms are not defined and one must turn to the stated objectives for the individual resources to see what is to be coordinated by multiple-use planning.

Timber management has a single objective of growing and harvesting timber crops "to the best public advantage." In addition to two "leadership" objectives, range management calls for development of range resources to reasonably attainable potential and for stability of family ranches. Watershed management has eight objectives, which include harmonizing with other uses, providing necessary management information, cooperating with other agencies, and so on (*6*). Trying to understand, in terms of these stated objectives, what a comparison of the benefits of any two resource management programs implies is mind-boggling, to say nothing of the problem of trying to comprehend evaluations involving all resources. The directives of the Bureau of Land Manageemnt are similarly open-ended and indefinite. The various resource programs in the BLM have often been built around the implementation of specific laws, and their objectives are not readily subject to comparison.

This is the existing multiple-use context into which the requirement for environmental statements is now injected. Dismay over the prospects of this integration leads to the conclusion that a major federal effort is necessary to provide a coherent statement of objectives of public land management and to provide procedures for evaluating and making multiple-use decisions on these lands.

An appropriate approach to defining objectives and establishing procedures would be parallel to that used by the federal water resource agencies in developing the statement of standards and procedures now contained in *Senate Document 97* of the 87th Congress (*8*), which is now being revised under the leadership of the Water Resources Council. *Senate Document 97* is an outgrowth of the old "Green Book," which was the first generally followed statement of procedures for calculating benefit-cost ratios for federal water resources projects (*3*). While both the "Green Book" and *Senate Document 97* have been criticized on conceptual grounds, and on the basis of some of the decisions that have been made after following the procedures required by them, this approach has been dynamic and has substantially improved decisions on water-resource projects. It should further be noted that improvements have come about through the efforts of the federal agencies that are involved and also through scholarly debate and congressional hearings.

A Suggested Approach

The suggested approach for public land decisions should embody five important points:

(1) The objectives and procedures should be developed jointly by the U.S. Forest Service, the Bureau of Land Management, and perhaps the Bureau of Sport Fisheries and Wildlife for the public lands they manage, with outside help from scholars and others as they feel is necessary.

(2) The procedures should provide for comparisons of the net public benefits to be obtained from all of the various uses and combinations of uses of the public lands and for the definition of net public benefits.

(3) The procedures and objectives should include the procedures adopted for preparation of environmental policy statements under the National Environmental Policy Act.

(4) The procedures should require public participation in the preparation of public land-use plans.

(5) Congress should be involved by reviewing the procedures and objectives while in draft form and adopting them by resolution when they are in a form suitable for approval.

In the 1960 and 1964 multiple-use acts, the Congress failed to provide a clear idea of how the various uses of the public lands should be balanced or what objectives should be served. The professionals, such as Zivnuska, who have considered the problem conclude that there is no simple statement of objectives for which decision models can be readily developed and used. And where the choices are difficult and social values are involved, professional judgments by themselves are inadequate. The approach outlined above would assure that the political skills of Congress be utilized in reviewing the approaches suggested by the agencies. And it would provide a meaningful framework for the integration of environmental quality considerations in land-use planning.

The failure, as I see it, to adopt this or some similar approach for future decisions on the public lands will lead to years of indecision in public land management and to disputes in the courts over those decisions that are made. The public will be heard in this way if other means are not provided.

Conclusions

Roy Utke, current president of the Western Wood Products Association, recently made the following comment concerning the recommendation of the Public Land Law Review Commission that there be increased public participation in land-use planning. He said that, "the defect in this recommendation is the possibility of delay for the sake of delay which is inherent in any provision for elaborate consultation and coordination." Utke went on to say that:

> All public administration is presently going through a major change in which the right to challenge administrative decisions is being greatly expanded by the courts. We all have much at stake in the progress of this transition for the federal resource managing agencies. A way must be found that will not endanger the ability of the agencies to maintain schedules of planned flow of timber offerings or other resources to avoid serious disruption of useful products to the detriment of the general public (9).

It should be noted that the roles of the players are changing: it was only a few years ago that the timber industry was promoting the idea of public involvement in plans for access road construction and for timber sales. Nevertheless, I think Utke, from his point of view, has good reason to be concerned. Under our present framework for multiple-use decisions there is almost no limit on the extent to which questions can be raised concerning the proper exercise of the discretion given to the public land agencies. And this is the basis for the court actions that can be expected.

"But today, when both the variety and intensity of possible uses are increasing, and when many of these uses are public in the most visible sense, professional judgment must be supplanted by procedures that meet the test of public acceptance."

As long as we the public are willing to have the public lands managed on an *ad hoc*, case-by-case basis, with neither coherent objectives nor procedures identified in advance and followed, we should not decry court involvement in public land decisions. This is the way to make public land programs responsive to the public. The alternative is to have, as I propose, the public land agencies working together with the Congress in a public manner to establish procedures for public land decisions. Procedures developed with both public and Congressional involvement will go a long way in dispelling the problem of a lack of confidence in public land decisions.

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