

February 2021

## Commentary

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### Recommended Citation

Ralph D. Hodges, Jr., Commentary, 54 Denv. L.J. 533 (1977).

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## COMMENTARY

BY RALPH D. HODGES, JR.\*

### INTRODUCTION

Ed Cliff has presented a perceptive review<sup>1</sup> of legislative events since the Public Land Law Review Commission Report<sup>2</sup> was released in June, 1970. He has done a good job of discussing the PLLRC's forest management recommendations and the administrative and congressional action, or lack of it, on each of them. I do not intend to subject each of Ed's points to an exhaustive examination but instead will emphasize and reinforce a number of them and offer a somewhat different slant on others.

First, I'd like to emphasize a point former Chief Cliff made concerning timber demand and supply. In 1973, three authoritative reports by the President's Advisory Panel on Timber and the Environment,<sup>3</sup> the National Commission on Materials Policy,<sup>4</sup> and the Forest Service<sup>5</sup> all came to essentially the same conclusion. That conclusion was that, at current levels of forest management, projected timber demand will considerably outstrip supply.<sup>6</sup>

Nothing has happened since these 1973 reports to alter projections of future demand for wood. In fact, recently revised projections for soaring future energy costs have, if anything, tended to strengthen the position of wood in comparison to non-renewable and energy intensive substitutes such as steel, aluminum, and concrete. Virtually all major competitors to wood de-

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<sup>1</sup> E. Cliff, *Timber Resources* (this issue).

<sup>2</sup> PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970) [hereinafter cited as PLLRC REPORT].

<sup>3</sup> PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT, REPORT OF THE PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT (1973) [hereinafter cited as PRESIDENT'S ADVISORY PANEL].

<sup>4</sup> NATIONAL COMMISSION ON MATERIALS POLICY, MATERIAL NEEDS AND THE ENVIRONMENT TODAY AND TOMORROW (1973) [hereinafter cited as MATERIAL NEEDS]; E. CLIFF, *TIMBER: THE RENEWABLE MATERIAL* (1973).

<sup>5</sup> FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, *THE OUTLOOK FOR TIMBER IN THE UNITED STATES* (1973) [hereinafter cited as *OUTLOOK FOR TIMBER*].

<sup>6</sup> *Id.* at 179-213; PRESIDENT'S ADVISORY PANEL, *supra* note 3, at 56-76; MATERIAL NEEDS, *supra* note 4, at 4C-8.

pend upon resources that are not only depletable but which also have greater energy requirements per unit of production than does wood.

The prospects for increasing demand for wood look as solid as ever. The timber supply picture, however, is considerably less certain. It is made so, in part, by the fact that demands for the many other uses of the forest have also been soaring. All evidence supports a continuation of this trend. The 1975 Resources Planning Act Assessment<sup>7</sup> projected the following increase in demand between 1970 and 2000 for various uses of the forest:

Remote camping	33%
Birdwatching	38%
Small game hunting	21%
Fresh water fishing	56%
Forest-range grazing	50%
Timber	73%
Water (consumptive use)	23%

Although the Forest Service projects<sup>8</sup> demand for timber to clearly outstrip demand for the other listed uses, prospects for meeting this demand remain cloudy. This is due to uncertainties over public and private commitment to the long-term programs and financing required to increase the intensity of forest management.

It is also due to the public's perception that use of public lands for timber production unacceptably degrades the value of the forest for non-commodity uses. This public perception, although erroneous when sound scientific multiple-use management practices are applied, is fostered and reinforced by preservation interest groups, some of whose long-term objective seems to be the elimination of commodity uses from the National Forests and other public lands.

The long-term outlook for timber supply was speculative at the time of the PLLRC, and it remains so today, as it always will. Two recent, far-reaching pieces of legislation, the 1974 Forest and Rangeland Renewable Resources Planning Act (RPA)<sup>9</sup> and the

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<sup>7</sup> FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, RPA, THE NATION'S RENEWABLE RESOURCES—AN ASSESSMENT 1975 at 1 (1976) [hereinafter cited as ASSESSMENT].

<sup>8</sup> OUTLOOK FOR TIMBER, *supra* note 5, at 179-213.

<sup>9</sup> 16 U.S.C. §§ 1601-1610 (Supp. IV 1974).

1976 National Forest Management Act (NFMA),<sup>10</sup> contain not only the opportunities for easing the pending timber supply crisis but also the potential for frustrating and unnecessarily compounding it.

### I. NATIONAL FOREST MANAGEMENT ACT OF 1976

The National Forest Management Act of 1976<sup>11</sup> has the potential for easing the controversy that has surrounded the National Forests for the past decade or more. In passing this legislation, Congress perceived that Forest Service timber management objectives were at times achieved at the expense of other uses of the National Forests.<sup>12</sup> Yet, it is significant that, for the most part, Congress was overwhelmingly supportive of the land management job the Forest Service has been carrying out since 1973 when the Church Committee clearcutting guidelines<sup>13</sup> were adopted as agency policy.<sup>14</sup>

The 1976 Act endorses and implements many current Forest Service timber management policies. While recognizing the need to set forth general policies for the protection of all resource values, Congress supported the concept of retaining flexibility for professional judgment out on the ground. Congress specifically considered, but rejected, highly prescriptive bills that were supported by influential interests<sup>15</sup> in both the House and Senate.<sup>16</sup>

Virtually all moderate conservation groups,<sup>17</sup> as well as the forest industry, rejected the concept of writing rigid land management prescriptions into law.<sup>18</sup> The National Forest Management

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<sup>10</sup> Pub. L. No. 94-579, 90 Stat. 2743 (to be codified in scattered sections of 16 U.S.C.).

<sup>11</sup> *Id.*

<sup>12</sup> *Senate Hearings on S. 3091*, 94th Cong., 2d Sess. 14494-97 (1976); H.R. REP. NO. 1478, 94th Cong., 2d Sess., pt. 1, at 10-14 (1976); S. REP. NO. 893, 94th Cong., 2d Sess. 7-11 (1976); *House Hearings on H.R. 15069*, 94TH CONG., 2D SESS. 10136-94 (1976).

<sup>13</sup> SUBCOMM. ON PUBLIC LANDS OF THE SENATE INTERIOR AND INSULAR AFFAIRS COMM., CLEARCUTTING ON FEDERAL TIMBERLANDS, S. DOC. NO. 505, 92d Cong., 2d Sess. (1972).

<sup>14</sup> FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, NATIONAL FORESTS IN A QUALITY ENVIRONMENT—ACTION PLAN (1972).

<sup>15</sup> Coalition to Save Our National Forests, Sierra Club, Wilderness Society, Friends of the Earth, and others.

<sup>16</sup> *Hearings on S. 2926*, 94th Cong., 2d Sess. (1976) (Sen. Randolph); *Hearings on H.R. 11894*, 94th Cong., 2d Sess. (1976) (Rep. Brown).

<sup>17</sup> Wildlife Management Institute, Society of American Foresters, and American Forestry Association.

<sup>18</sup> See *Senate Hearings on S. 3091*, 94th Cong., 2d Sess. 57, 105, 116, 518, 564, 570 (1976).

Act generally reflects this objective.<sup>19</sup> However, in view of the events of the past few years, it is clear that the nation's conservation policy has been written as much in the courtroom as it has in the halls of Congress.

A narrow court interpretation<sup>20</sup> of the 1897 Organic Act was the major reason the National Forest management issue was taken up by Congress in the first place. Narrow and restrictive court interpretations of the National Forest Management Act could again cloud the nation's timber supply picture.<sup>21</sup> Although a Sierra Club spokesman has stated that court challenges will be delayed until the Forest Service is given a chance to implement the new law, two suits claiming violations under the National Forest Management Act has already been initiated by preservation groups in Texas and Arkansas.<sup>22</sup>

Only time and the courts will tell whether the Forest Service will be permitted to administer the National Forests in the way Congress intended<sup>23</sup> when it passed the 1976 Act—under a broad set of environmental policy guidelines affording considerable flexibility for professional judgment to adjust management practices to local needs and specific ground conditions.

## II. RESOURCES PLANNING ACT

The 1974 Forest and Rangeland Renewable Resources Planning Act (RPA)<sup>24</sup> set up the framework for a national planning process by requiring: (1) periodic assessment of the demand and supply situation for all renewable resources of U.S. forests and rangelands,<sup>25</sup> and (2) development of a Forest Service program for meeting projected demands for these resources in an environmentally sound manner.<sup>26</sup> The first assessment and program were

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<sup>19</sup> 16 U.S.C.A. § 1604 (Supp. 1977).

<sup>20</sup> *Izaak Walton League of America, Inc. v. Butz*, 367 F. Supp. 422 (D. W. Va. 1973).

<sup>21</sup> *Izaak Walton League of America, Inc. v. Butz*, 522 F.2d 945 (4th Cir. 1975); *Zieske v. Butz*, 406 F. Supp. 258 (D. Alas. 1975).

<sup>22</sup> *Texas Comm. on Natural Resources v. Butz*, Civ. No. TY-76-268-CA (E.D. Tex., filed July 2, 1976); *Arkansas Soc'y for the Preservation of Natural Resources, Inc. v. Bergland*, Civ. No. 77-6007 (W.D. Ark., Feb. 18, 1976, *dismissed* Mar. 22, 1976).

<sup>23</sup> 16 U.S.C. § 1604 (Supp. V 1977).

<sup>24</sup> 16 U.S.C. §§ 1601-1610 (Supp. IV 1974).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

released to the public in March, 1976.<sup>27</sup> Although far from perfect, due in part at least to the brutal time constraints set up in the 1974 Act, it represented an outstanding first step in comprehensive planning for the future. Unfortunately, at the time it was released, the Congress was immersed in legislative proposals to correct the Monongahela crisis and to restore Forest Service authority to sell timber, which led to the 1976 Act. As a consequence, the ninety-fourth Congress gave little attention to the 1975 RPA documents.

An additional handicap was the lack of support the recommended program received from the Ford Administration. President Ford's 1978 budget proposal for the Forest Service,<sup>28</sup> which was left essentially unchanged by President Carter,<sup>29</sup> virtually ignores the budget levels recommended by the March, 1976 RPA Program document<sup>30</sup> and, in fact, proposes rescinding some key Forest Service programs—such as the Forestry Incentives Program.<sup>31</sup> Fortunately, in 1977 the RPA Recommended Program has been used by congressional resource and appropriations committees as a basis for proposing substantial increases in the President's 1978 budget recommendations.

At a recent appropriations subcommittee hearing,<sup>32</sup> Forest Service Chief John McGuire expressed the concern that, unless the RPA Recommended Program goals and funding levels are given more consideration in the congressional budgeting process, the Resources Planning Act will become obsolete as a budget planning tool. I share Chief McGuire's concern. The next Resources Planning Act Assessment and Program, which are due in 1980, will be particularly critical to the success or failure of the resources Planning Act process.

### III. TOWARD A NATIONAL FORESTRY POLICY

The RPA could be an ideal vehicle for developing a comprehensive national forestry policy based on sound scientific princi-

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<sup>27</sup> ASSESSMENT, *supra* note 7; FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, RPA, A RECOMMENDED RENEWABLE RESOURCE PROGRAM (1976) [hereinafter cited as PROGRAM].

<sup>28</sup> See THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1978, at 13 (1977).

<sup>29</sup> See FISCAL YEAR 1978 BUDGET REVISIONS, February 1977, at 7 (1977).

<sup>30</sup> PROGRAM, *supra* note 27, at 26.

<sup>31</sup> 7 C.F.R. §§ 701.27-.45 (1977).

<sup>32</sup> *Hearings before the Subcomm. on Interim and Related Agencies of the House Comm. on Appropriations*, 95th Cong., 1st Sess. 848 (1977).

ples and having broad public acceptance. This potential, of course, is not yet realized. We all need to help to make the process work properly.

A prerequisite for a national forestry policy is a rational assessment of the potential contributions to the nation's timber supply by the major ownership classes—industrial, public, and small private.

Industrial ownerships are already leading the way in the application of scientific forestry principles to the practice of forest management. Although containing only thirteen percent of the nation's commercial forest land, industrial lands currently contribute thirty-four percent of the annual U.S. supply of softwood sawtimber. All that really needs to be done to insure that industrial ownerships continue to contribute their share to the nation's wood supply is to avoid governmental policies that discourage timber management by creating economic disincentives. Some current proposals could do just that. I am referring to such matters as: (1) Onerous and unnecessary requirements for federal permits for such things as logging road culverts;<sup>33</sup> (2) the potentially disruptive effect of rural planning;<sup>34</sup> (3) unnecessarily restrictive state forest practice acts; and (4) other such government actions ostensibly designed to achieve lofty ideals but which in reality impose unnecessary burdens on timber growing.

This leads us to the second major ownership class—the fifty-nine percent of the commercial forest land that is held by small private owners. Virtually all of the government policies described above, if not properly implemented, could also create major disincentives to the practice of forestry on small woodlands. However, the owners of these lands face a whole range of other disincentives beyond those confronting the industrial sector. These include: (1) The small size of holdings which make some intensive forest management practices more costly;<sup>35</sup> (2) absentee ownership; (3) ownership objectives that may not be compatible with intensive for-

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<sup>33</sup> See Federal Water Pollution Control Act, § 404, 86 Stat. 816 (1972); Miskovsky & Van Hook, *Regulation of Forestry Related Nonpoint Source Pollution Under the Federal Water Pollution Control Amendments of 1972*, 9 NAT. RESOURCES LAW. 645 (1976).

<sup>34</sup> Federal Water Pollution Control Act, § 208, 86 Stat. 816 (1972); Miskovsky & Van Hook, *supra* note 33.

<sup>35</sup> PRESIDENT'S ADVISORY PANEL, *supra* note 3, at 91-92.

est management;<sup>36</sup> (4) inability or unwillingness to make necessary long-term financial commitments that are further penalized by the inheritance tax system;<sup>37</sup> and (5) unavailability of technical advice.<sup>38</sup> Despite these and other difficulties, the small private holdings contribute thirty percent of the annual U.S. softwood sawtimber supply.

There is a great potential for improving the management of these small holdings and I fully support government programs designed to achieve this objective—such as forestry incentives,<sup>39</sup> technical assistance,<sup>40</sup> and tax reform. But I do not believe that small private woodlands hold the key to meeting increased demand over the short term—between now and the year 2000.

These lands tend to have significant deficiencies in growing stock (timber volume per acre) as compared with the third major ownership class, the National Forests, which have a significant surplus in growing stock.<sup>41</sup> The 1973 Report of the President's Advisory Panel on Timber and the Environment concluded that the inventory and stocking of timber on small private woodlands is not sufficient to provide for a significant increase in timber supply.<sup>42</sup> In fact, the report concluded that there is insufficient inventory on nonindustrial private holdings to sustain even present removals.<sup>43</sup> Another conclusion was that even if tree planting programs are increased right now, there would be no significant effect on timber supply until after the year 2000.<sup>44</sup>

Clearly, timber that is not already relatively close to maturity will be unavailable to meet demand during the next quarter century. The real key to meeting projected future demand for timber lies in the public ownerships, particularly the National Forests. The National Forests contain over half the total softwood sawtimber inventory in the nation and are growing at only thirty-nine percent of their potential<sup>45</sup>—the worst performance of all

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<sup>36</sup> *Id.* at 92.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 7 C.F.R. §§ 701.27-.45 (1977).

<sup>40</sup> PRESIDENT'S ADVISORY PANEL, *supra* note 3, at 240-46.

<sup>41</sup> *Id.* at 92.

<sup>42</sup> *Id.* at 90-94, 283.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



ownership classes. The timber is already there; it does not have to be grown.

When the National Forests are evaluated against the previously listed factors which are obstacles to intensive forest management on nonindustrial private lands—size of holding, level of available technical expertise, and the lack of investment incentives—the obvious reversal of conditions speaks eloquently for the desirability of increasing the commitment to forest management on federal forest lands.

We are all well aware of the interest groups that wish to significantly reduce or eliminate timber harvest from the National Forests. If this is done, increasing costs will be borne by consumers. The inevitable consequence of a stable or reduced supply of any commodity in the face of soaring demand is always increased prices. This would be wasteful and unnecessary. I am convinced that the National Forest can and should contribute more than they have in the past to U.S. timber supply, and that they can do so in an environmentally sound manner which gives protection to other resource values.

#### IV. SPECIFIC COMMENTS

##### A. *Dominant Use Timber Production Units*

One of the more significant PLLRC recommendations was that lands which are highly productive for timber should be classified for commercial timber production as a dominant use.<sup>46</sup> I was disappointed that Congress, in the NFMA,<sup>47</sup> failed to provide policy guidance aimed at classifying National Forest lands for specific purposes and management intensities. Such classification, which hopefully will result from the planning process developed to implement the NFMA, is needed to meet increased demands for all resource uses. It is also essential to attract private investment and to assure Administration support for the appropriations necessary for intensive forest management.

The 1973 Forest Service "Outlook" report indicated that out of a total of almost 500 million acres of commercial forest land in

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<sup>45</sup> *Id.* at 78.

<sup>46</sup> PLLRC REPORT, *supra* note 2, at 92-95.

<sup>47</sup> Pub. L. No. 94-588, 90 Stat. 2949 (to be codified in scattered sections of 16 U.S.C.).

this country, only 10%, or 52 million acres, is in the 120 or better site-productivity class.<sup>48</sup> Prime timber land is an exceedingly scarce commodity. The nation has a great stake in assuring that forest management is given major consideration on areas that are most productive for this use.

I disagree that section 6 of the NFMA<sup>49</sup> places timber use in such a "residual" position, allowing its use only when it does not interfere with or degrade other resources uses. Section 6, in addition to providing guidance on the land management planning process, directs the Forest Service, through the regulation process, to develop guidelines for land management planning which will achieve the goals of the RPA Program within the silvicultural and environmental constraints described in the section.

The environmental objectives set forth in section 6 are designed in general to ensure that timber production will not "irreversibly"<sup>50</sup> damage soil, slope, and other watershed conditions or "seriously and adversely"<sup>51</sup> affect water conditions or fish habitat. The silvicultural guidelines in section 6 are essentially identical to the recommendations of the Church Committee on clearcutting<sup>52</sup> which have been Forest Service policy since 1973.<sup>53</sup>

#### B. *Economic Factors and Considerations*

I disagree with the conclusion that the NFMA substantially rejects the use of economic considerations in the determination of allowable harvest levels in the National Forests. The legislative history of section 11<sup>54</sup> of the Act indicates that, although nondeclining yield will be a general National Forest policy, significant departures from the harvest limitations contained in the language of the first part of the section will be permitted for a number of reasons including, but not limited to, reducing high mortality losses,<sup>55</sup> improving the age class distribution of the forest,<sup>56</sup> and protecting the economic stability of local dependent communi-

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<sup>48</sup> OUTLOOK FOR TIMBER, *supra* note 5, at 302-09.

<sup>49</sup> 16 U.S.C.A. § 1604 (Supp. 1977).

<sup>50</sup> *Id.* § 1604(g)(3)(E)(i).

<sup>51</sup> *Id.* § 1604(g)(3)(E)(iii).

<sup>52</sup> Clearcutting on Federal Timberlands, *supra* note 13, at 9.

<sup>53</sup> NATIONAL FORESTS IN A QUALITY ENVIRONMENT, *supra* note 14.

<sup>54</sup> 122 CONG. REC. H11,836 (daily ed. Sept. 30, 1976).

<sup>55</sup> *Id.* at H11,845.

<sup>56</sup> *Id.*

ties.<sup>57</sup> Such departures must be consistent with the principles of the Multiple-Use Sustained-Yield Act of 1960.<sup>58</sup> Additional direction for the use of economics is contained in section 6(1) of the 1976 Act<sup>59</sup> which mandates that program proposals be supported by an evaluation of long-term costs and benefits.

Clearly, the door is still open to use economic factors or other appropriate criteria to set allowable harvest levels as long as other resource values are protected. The unanswered question is whether the Forest Service will use the discretion available to it in this area. Evidence indicates that relaxation of present harvest scheduling policy will be necessary in some areas of the West (such as Oregon) to avoid significant reductions in timber supply between now and the year 2000. Such relaxation is necessary to permit the old-growth timber, which predominates in National Forest lands, to be used while the young-growth timber on other ownerships is permitted to reach economic maturity.

### C. Access Road Construction

There has been disappointingly little action on the PLLRC recommendation to develop an accelerated construction program for timber access roads.<sup>60</sup> A good transportation system, constructed at an early date, is important for the efficient management of all National Forest resources. It is essential for the efficient salvage of mortality losses, which in 1970 amounted to almost six billion board feet in the National Forests alone. The problems caused by inadequate road appropriations were recognized in congressional discussion of the NFMA, but no legislative action was taken. Congressional appropriations increases in this area for fiscal year 1977 seem to recognize the problem and provide some cause for optimism.

### CONCLUSION

I agree that we could be entering the Golden Age of Forestry. Whether we are in fact depends upon a number of factors. One of the most important of these is whether foresters and professional land managers will assume leadership positions in society

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<sup>57</sup> *Id.* at S17,274.

<sup>58</sup> *Id.* at H11,845.

<sup>59</sup> 16 U.S.C. § 1604(l)(1) (Supp. 1977).

<sup>60</sup> PLLRC REPORT, *supra* note 2, at 99.

as spokesmen for a reasonable approach to solving what often appear to be hopelessly conflicting land use demands. For some reason foresters have sometimes been reluctant to speak out in the past. We need to be much more active in public education. This country has the potential for doubling the production of timber by the year 2020 and doing so without damaging other resource values. Timber management, if properly practiced, does not conflict with most other uses of the forests. In fact, it complements and enhances many uses, particularly wildlife and wildlife-related recreation.

Whether we are entering a Golden Age also depends upon the quality of the job that professional foresters and other land managers actually carry out on the ground. The spotlight will be focused not only on foresters' words but also upon their deeds. The mistakes of the past will no longer be tolerated by a critical public. All the public education and eloquent speeches will be worthless if we fail to carry out our commitment to a quality job of forest management on the ground.

We also need to develop programs to assure that all of the nation's lands, whether in public or private ownership, will be available to meet future demands for forest products and other renewable resources. The National Forests, with half of the softwood sawtimber in the nation, must assume a key role in meeting this future demand, at least between now and the year 2000.

Programs to provide technical assistance and investment incentives to small private landowners need more emphasis than they have received in the past. Existing governmental policy and proposed changes need close scrutiny to determine whether they will impose economic disincentives to timber growing on private lands.

A key to the intensification of forest management practices is a commitment from the Administration and Congress and the long-term investments and programs called for in the RPA Program.<sup>61</sup> Such commitments must be made or there will never be a comprehensive national forestry policy.

The road ahead will be long, rocky, and full of surprises and undoubtedly some disappointments. Achieving the goal will be

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<sup>61</sup> ASSESSMENT, *supra* note 7; PROGRAM, *supra* note 27.

difficult but well worth the effort. In the end, society can only benefit from a rational approach to our natural resource problems. It can only be harmed by irrational, vascillating, and whimsical treatment of these problems.