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Comments on Timber Resources

COMMENTS ON "TIMBER RESOURCES"

BY STEPHEN H. SPURR*

Edward P. Cliff's analysis¹ of events consequent to the report of the Public Land Law Review Commission² in 1970 provides an invaluable insight into the fate of the Commission's recommendations, the Forest and Rangeland Renewable Resources Planning Act of 1974,³ and the National Forest Management Act of 1976.⁴ As Chief of the Forest Service from 1961 to 1972, Cliff played a key role in the evolution of U.S. forest policy during these critical years. His evaluation is both perspicacious and accurate.

Inevitably, Mr. Cliff concentrates upon the management of national forest lands from the viewpoint of an insider. My role, in apposition, is to view these same events as a less well-informed but, upon the same token, perhaps more disinterested onlooker.

The report of the Public Land Law Review Commission⁵ appeared at a time when our current national environmental policy was taking shape under the National Environmental Policy Act⁶ and the Environmental Protection Agency, when public outcry over clearcutting, particularly in the Monongahela and Bitterroot National Forests, was reaching a crescendo,⁷ and when shortages and high prices of wood products were having a disturbing impact on housing and other inputs to the cost of living.⁸ It is not surprising, therefore, that the serious review of "old-line" public land policies and problems was more or less lost in the onrush of new issues and new developments.

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¹ See E. Cliff, *Timber Resources* (this issue) [hereinafter cited as *Timber Resources*].

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

³ 16 U.S.C. §§ 1601-1610 (Supp. IV 1974).

⁴ Pub. L. No. 94-588, 90 Stat. 2949 (to be codified in scattered sections of 16 U.S.C.).

⁵ *PLLRC REPORT*, *supra* note 2.

⁶ 42 U.S.C. §§ 4321-4347 (1970).

⁷ E. CLIFF, *TIMBER: THE RENEWABLE MATERIAL* 4-6 (1973) (prepared for the National Commission on Materials Policy) [hereinafter cited as *TIMBER: THE RENEWABLE MATERIAL*].

⁸ See Task Force on Softwood Lumber & Plywood, *Findings & Recommendations 1* (June 18, 1970) (White House Press Release, June 19, 1970).

What is surprising, however, is the relevance of the recommendations of the Commission seven years later after so much water has flowed over the dam. The report is still current and its recommendations are still generally defensible.

The main thrust of the Public Land Law Review Commission's recommendations was toward land management planning as the process for decisionmaking by public land managers acting under general policy guidelines set by Congress. This process has been utilized as the heart of the Forest and Rangeland Renewable Resources Planning Act,⁹ the National Forest Management Act,¹⁰ and the Federal Land Policy and Management Act of 1976.¹¹ In this regard, the report of the Public Land Law Review Commission has been most influential. At least, it has been anticipatory of future developments.

Certainly, the report of the Public Land Law Review Commission was the first of several key studies. It was followed within three years, after its appearance in 1970, by the Church guidelines on clearcutting,¹² the report to the National Commission on Materials Policy,¹³ the report of the President's Advisory Panel on Timber and the Environment,¹⁴ and the Forest Service's study.¹⁵ These studies provided a background for long-range planning of federal forest lands unmatched in the history of our forest policy.

That the recommendations of these disparate groups had much in common was not purely happenstance, nor was it necessarily totally due to the converging of various lines of evidence. All depended for a statistical base upon the forest survey carried out by the Forest Service,¹⁶ and all were limited, therefore, by the inadequacies imposed on this basic data source by a shortage of

⁹ 16 U.S.C. §§ 1601-1610 (Supp. IV 1974).

¹⁰ National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949 (to be codified in scattered sections of 16 U.S.C.).

¹¹ Pub. L. No. 94-579, 90 Stat. 2743 (to be codified in scattered sections of 7, 10, 16, 22, 25, 30, 40, 43, 48, 49 U.S.C.).

¹² SENATE SUBCOMM. ON PUBLIC LANDS, COMM. ON INTERIOR AND INSULAR AFFAIRS, CLEARCUTTING ON FEDERAL TIMBERLANDS, S. DOC. NO. 505, 92d Cong., 2d Sess. (1972).

¹³ TIMBER: THE RENEWABLE MATERIAL, *supra* note 7.

¹⁴ PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT, REPORT OF THE PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT (1973).

¹⁵ FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, THE OUTLOOK FOR TIMBER IN THE UNITED STATES (1973).

¹⁶ *Id.*

time and money. If American forest policy is to be formulated on a sound base, clearly one of the greatest needs is a revived and revised forest survey, in which heavier and more recent sampling would provide estimates of present and future forest products supply, in terms of both present and potential future standards of utilization. Furthermore, the forest survey should more accurately evaluate not only timber products, but also other forest products such as wildlife, fish, recreational capabilities, grazing potential, and water supply. The Forest Service itself is well aware of these needs.¹⁷ It has simply lacked the wherewithal to meet them.

Coming back to the report of the Commission,¹⁸ it may seem that recent legislation has fulfilled a surprising number of the Public Land Law Review Commission's key recommendations as they relate to management of the National Forest System and National Resource Lands administered by the Bureau of Land Management. However, this is not borne out by the point-by-point review of the nine major recommendations related to timber resources.¹⁹ Basically these relate to the proposal for dominant use timber production units²⁰ and the emphasis on economic considerations in timber sales on public lands.²¹ My own review confirms Mr. Cliff's²² in that, on most of these points, Congress has either rejected the Commission's recommendations or there has been little change in Forest Service principles and practices attributable to the report of the Public Land Law Review Commission.

The sober truth is that the concept of dominant use timber production on federal lands has become less popular, less feasible, and less likely to be adopted in 1977 than it was in 1970. Much the same can be said of multiple use over the same period of years. Despite the logic and reasonableness of the Public Land Law Review Commission's report and the support of many of its recommendations by the President's Advisory Panel on Timber

¹⁷ *Id.* at v-vi.

¹⁸ PLLRC REPORT, *supra* note 2.

¹⁹ *Id.* at 92-103.

²⁰ *Id.* at 92-96.

²¹ *Id.* at 96-98.

²² *Timber Resources*, *supra* note 1.

and the Environment in 1973,²³ dominant use for growing timber has been rejected by and large by the people and by our political process as well. It is not that the concept of dominant use for other purposes has been rejected. Quite the contrary, dominant use for wilderness has gained measurably both in terms of political support and in area covered. The concept of dominant use has been forwarded by the Wild and Scenic Rivers Act.²⁴ Perhaps the most ironclad of the dominant use reservations programs, however, has been that set into action by the Endangered Species Act of 1973.²⁵

The trend toward dominant use for all purposes except timber is illustrated by the Forest Service's estimate of future wilderness withdrawals, as detailed in the Program²⁶ submitted in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974.²⁷ The Program recommends that about 25 to 30 million acres of wilderness be set aside by 2020.²⁸ This would more than double the present area of wilderness.²⁹ Additionally, timber harvest will be banned or greatly restricted on large areas because of steep and fragile slopes,³⁰ endangered species,³¹ protection of water courses,³² or because of economic submarginality. It is apparent that multiple uses, which would include timber harvest, will be prohibited on large areas of national forest lands.

²³ PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT, REPORT OF THE PRESIDENT'S ADVISORY PANEL ON TIMBER AND THE ENVIRONMENT (1973).

²⁴ 16 U.S.C. §§ 1271-1287 (1970 & Supp. II 1972 & Supp. IV 1974).

²⁵ 16 U.S.C. §§ 1531-1543 (Supp. IV 1974). At the moment, it would seem that land use to protect an endangered species takes complete precedence over all other uses. To cite but one example, 40 acres of old growth are set aside in the Texas National Forests around every nesting hold occupied, or perhaps once occupied, by the red-cockaded woodpecker.

²⁶ FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, A SUMMARY OF A RENEWABLE RESOURCE ASSESSMENT AND A RECOMMENDED RENEWABLE RESOURCE PROGRAM (1976).

²⁷ 16 U.S.C. §§ 1601, 1602 (Supp. IV 1974).

²⁸ FOREST SERVICE, *supra* note 26, at 17.

²⁹ *Id.*

³⁰ The term "steep and fragile slopes" is used by the Forest Service to identify areas of concern under the National Forest Management Act of 1976 which specifies that "timber will be harvested from National Forest System lands only where—(i) soil, slope, or other watershed conditions will not be irreversibly damaged" Pub. L. No. 94-588, § 36(g)(3)(E), 90 Stat. 2949 (1976) (to be codified in 16 U.S.C. § 1604(g)(3)(E)).

³¹ See Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (Supp. IV 1974).

³² See Wild & Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 (1970 & Supp. II 1972 & Supp. IV 1974).

Admittedly, the Forest Service has been adept at redefining and reinterpreting the concept of multiple use to keep it as the guiding principle of its land management, and this concept has been reinforced by the passage of the National Forest Management Act of 1976.³³ However, I submit that multiple use in the sense of accommodating all uses is in fact becoming constantly less prevalent in our national forests. Not only is timber seldom the dominant use, but it is tending to become a less-than-equal use. The National Forest Management Act specifies, for instance, that harvest cuts designed to create even-aged stands can be used only when logging is carried out "in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources"³⁴ Conceivably, any changes in these aspects of the ecosystem—and changes are bound to result from any harvest of timber—could be used as grounds in litigation to stop the logging operation.

The trend, therefore, is toward dominant use of nontimber resources of our national forests and away from multiple use including the harvest of timber. I am not passing a value judgment, but rather stating that multiple use is a concept that is losing validity, at least in its original formulation. The doctrine of dominant use put forward by the Public Land Law Review Commission³⁵ has been accepted in principle, but it has been applied increasingly to uses other than timber production. Only time will tell the extent to which our nation's federal lands will be used to produce timber as a renewable natural resource.

³³ Pub. L. No. 94-588, 90 Stat. 2949 (to be codified in scattered sections of 16 U.S.C.).

³⁴ *Id.* § 6(g)(3)(f)(v) (to be codified in 16 U.S.C. § 1604 (g)(3)(F)(v)).

³⁵ PLLRC REPORT, *supra* note 2.

