Multiple Use Land Management in the 90’s, or, Why Do We Have to Deal with the Courts?

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The topic of my talk today is "Multiple Use Land Management in the 90’s or Why Do We Have to Deal With The Courts?" In the last fifteen years, land managers have increasingly had to be concerned with the courts: prospectively as they make decisions which may well be the subject of lawsuits; actually, as they are called as witnesses or asked to assist in document productions and other trial preparation; and retrospectively, as they are forced to read and heed court decisions.

I would like to analyze with you the interrelationship of the courts and public land managers within the context of one particularly 'hot' issue: the role of recreational use on public lands in the next decade. My thesis is that each branch of government—including the courts—has a unique and necessary role to play in resolving this (like any other) land use controversy.

First, let us look at the legislative policies which bear upon this issue. I believe that the key legislation concerning modern public land use is the Federal Land Policy Management Act (FLPMA) passed in 1976 which mandates that public lands be managed for multiple uses. In reviewing FLPMA, we have to remember what preceded it. As we all know, early in this century our country had more land than it could reasonably use. The government enacted laws which actively encouraged settlers to leave their homes and venture West to use, and ultimately patent, public acreage. Those lands were valued for productive capacity: for raising wheat and alfalfa, for supporting livestock, and for gold and silver mining. None of those lands were settled for recreational purposes, because our society had little time for recreation. We were involved in the business of survival and growth.

Things have changed, and I would suggest to you that the passage of FLPMA in 1976 was one acknowledgement of that change. Our elected officials recognized in the mid-70’s that public lands are a finite resource. FLPMA requires that the "quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values" should be protected and that the lands should be managed in such a way as to recognize the country's need for domestic food, fiber, fuel, and timber resources. In short, the land was to be managed in a way which would support our economy and yet preserve the public trust and assets for future generations.

Yet, FLPMA does not mention recreation as a mandated use. The multiple uses which are to be balanced and considered do not include hunting, hiking, camping, and other recreational uses. In fact, it was not until the 80’s that recreational use of all public lands (not just Parks and, to a lesser extent, Forest Service lands) was demanded.

I turn, then, to the executive or administrative branch of government. It is to the executive branch which we look for implementation of Congressional mandate. You as administrators, pass regulations, enforce them, make case-by-case decisions, and plan for the future. You are putting into effect the broad, sweeping policies of the country on a practical, nuts-and-bolts level.

As administrators, then, how do you deal with recreational use conflicts? Recreation is not one of the uses enumerated in FLPMA. Congress has not enacted legislation which says to you that recreation is to be given equal billing with production, yet the public is clamoring for more and more recreational use.

I suggest that you must not compromise the need to retain balance between recreation use and productive capacity. America cannot be allowed to become a massive theme park where buffalo stampede and elk bugle. We must eat here, be clothed here, and fuel our machinery here, if we are to survive in a global economy. We cannot afford to be the world's Disneyland. You, then, have to make decisions about how recreation and production balance out in each situation; you have to be aware of legislative mandate and implement it.

The third branch of government is the court system. Court involvement in land use is often a subject of audible grumbling. Why should land managers have to be impeded and obstructed by court cases? My argument is that the

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courts are doing their job; that it is a necessary part of our system that courts review decisions made to determine whether they are consistent with the governing legislation, and to determine whether they adequately protect the individual rights involved.

In fact, the court system can protect you from political pressures and bureaucratic warrens, as you make difficult decisions. But courts work best for those who understand them. Courts are not trespassers in these land-use disputes; rather, they are the time-honored forums for resolution of disputes between private rights and public interests. Whether the question is determination of a private 'valid existing right' claim to be free from land use legislation, or the balance between a timber company's right to log a tree stand and society's interest in preserving that stand, the courts are an appropriate place (but not the only place) to resolve the dispute. Problems that must be addressed on a case-by-case basis, taking into account the specific circumstances, sometimes have to go before a court. One claimant may have a valid existing right, whereas another may not. Maybe one tree stand should be saved—another should not. An attempt to legislate those kinds of differences leads to its own brand of problems, so courts come into play.

My advice to you is that you should learn as much as you can about the court system; it is not an arcane monkish library where only those who understand the Latinate language may go. Attorneys do not hold the keys to the kingdom; in fact, if you are a partner to your attorneys in litigation, they will do a much better job of representing you. If any of you watch L.A. Law or any of the other myriad television programs on the law; if any of you read The Verdict or Beyond a Reasonable Doubt or any of the other novels which grace grocery store bookstands and best seller lists—then take that rudimentary interest in the legal system and make it your business to know what laws affect you—to know what result you would like from litigation, and how you can best achieve it. Most court systems have alternative dispute resolution mechanisms: arbitration and mediation. Explore those. Maybe they will work for some disputes.

The courts provide a forum for review of the decisions which you, as land managers make. They are being used more and more frequently—in part, because you are making more and more tough decisions.

Learn to understand the courts, to use them well, and not to be bullied by the prospect of a lawsuit. Judges are, in my experience, decent people who try very hard to render justice—they are not obstructionists.

I end, then, by summarizing my suggestions to you: in content, forget not how we originated as a country; forget not that we have become the nation we are by hard work, production, and self-sufficiency. Do not devote public resources to recreation at the expense of that production. If we cannot participate in the international economy as producers of necessary products, we soon lose our capacity to influence and to direct international politics.

And, in day-to-day procedure, do not fear the courts. They are legitimate players on the field of land use disputes, and if they move too slowly, work toward reforms which will correct that ailment. Do not recede into a flurry of self-defeating cynicism and resistance.

I wish you all success; I wish you happiness; I wish you a professional life which is characterized by a knowledge of our past and a dream of our future.