

The Forest Service's 2012 Planning Rule and its Implementation: Federal Advisory Committee Member Perspectives

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INTRODUCTION

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The National Forest Management Act (NFMA) of 1976 requires the preparation of land and resource management plans for every national forest and grassland in the National Forest System (NFS). In 2012, new planning regulations written pursuant to NFMA were promulgated by the President Obama Administration and withstood a legal challenge in 2015.

Getting to this point was no small feat given the tortured history of previous planning rules. Until 2012, forest planning was guided by regulations implemented in 1982. The US Forest Service (USFS) rewrote the 1982 regulations in 2000, but they were considered unworkable by the agency and were never fully implemented. The USFS rewrote these regulations again in 2005 and 2008, but the regulations were enjoined by the courts because of their failure to meet legal requirements. And so it went, with one implication being that national forests are often managed under outdated plans, most of which were prepared between 1983 and 1993. More than half of the national forest plans in the NFS are past due for revision.

Appreciating the difficulty of the task before it, the USFS approached the 2012 rulemaking with an unusual degree of inclusivity and public participation. Those joining the process understood the stakes involved, as forest plans guide most decisions made on a national forest, and NFMA planning regulations guide the development of these forest plans. The implications are far-reaching, from determining timber availability to the conservation of wildlife.

As required by law, the 2012 Planning Rule is consistent with the core laws governing the NFS. As such, traditional themes of multiple use and sustainability (ecological, social, and economic) are firmly rooted in the regulations. But the Rule also signaled a potential shift in the way national forests are to be managed. At their core, newly revised forest plans are to be more adaptive, science-based, and developed with a stronger level of public involvement. They also are to consider climate change,

landscape-scale restoration, and ecosystem services, among other values that are to be more formally integrated into a more efficient and responsive planning framework.

Though simplified, the process begins in earnest with the preparation of a “plan assessment,” wherein the Forest Service identifies and evaluates relevant existing information (ecological, economic, and social) from a variety of sources. It is here where the agency is to identify key assumptions, risks, and areas of uncertainty that are relevant to decisionmaking. Using information from the assessment and monitoring, the Forest Service is then to identify a “need to change” the existing plan” and begins the plan revision. This stage is where some common features of planning are developed, such as the designation of particular management areas or zones on a forest.

Plan components are at the heart of a forest plan, and the 2012 Rule requires that “every project and activity must be consistent with the applicable plan components” (36 CFR §219.15[b]).

Components are to be integrated, written clearly, concisely, and without ambiguity, and include desired conditions, objectives, standards, guidelines, goals, and suitability-of-land determinations. Taken together, plan components establish the vision of a plan, set forth the strategy to achieve it, and provide the constraints of subsequent management.

Monitoring is a core part of the adaptive cycle adopted by the Rule, and it requires a plan-monitoring program and a broader-scale monitoring strategy. Monitoring is to inform the Forest Service and the public about the effectiveness of the revised plan (and their associated plan components), and the Rule creates a framework wherein amendments to forest plans can be made more easily, with the objective of providing a more adaptive planning cycle. (Readers unfamiliar with forest planning or the 2012 Rule are encouraged to refer to *A Citizens Guide to National Forest Planning*, which demystifies the planning process (available at <https://www.fs.usda.gov/main/planningrule/committee>). A more technical review, with a contrast to the 1982 Rule, is Jonathan Haber, *Creating the Next Generation of National Forest Plans* (Missoula, MT: Bolle Center for People & Forests, 2015) (available at <http://www.cfc.umt.edu/bolle/perspectives/>).

To guide implementation of the 2012 Rule, the USFS took the unprecedented step of creating a National Advisory Committee “to provide advice and recommendations on implementation of the planning rule” (76 Fed. Reg. 81,911, 2011). Established under the Federal Advisory Committee Act, the group consisted of 21

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members (and alternates) representing broad and balanced interests in specified categories, such as tribal, timber, grazing, and conservation.

From 2012 to 2018 (the Committee was not re-chartered in 2018), the Committee found consensus on some of the most difficult issues in forest planning, many of which apply to national forest management more generally such as wilderness evaluation and agency personnel transitions. One of the Committee's most notable achievements was providing recommendations on the highly technical forest planning "Directives" in the USFS Handbook and Manual. The Committee also produced *A Citizen's Guide to National Forest Planning* and another guide designed specifically for state, local, and tribal governments.

Dozens of formal recommendations were made by the Committee to the Chief of the USFS and Secretary of Agriculture over the Committee's six year tenure. Many of these recommendations were based on observations made and lessons learned from those "early-adopter" national forests selected by the USFS to first implement the 2012 Rule. The Committee's work concluded with a final set of 66 formal recommendations made in January of 2018.

These recommendations, and other Committee materials (available online at <https://www.fs.usda.gov/main/planning-rule/committee>) showcase the Committee's ability to find agreement and solutions to problems that have challenged the USFS for years. What the USFS does with this advice is far from certain, but the special attention given to the Committee by the agency for six years is perhaps evidence that the USFS understands the risks associated with planning failure and recognized the Committee's ability to help the agency steer clear of it.

Now that the Committee's official work is complete, I asked a select group of former members to share their individual reflections and assessment of the planning rule and its implementation so far. I asked them to speak candidly for themselves, not for the group. As readers will see, their views about the Rule and its implementation often diverge, sharply, making it all the more remarkable that this group found so much common ground and offered so many consensus recommendations during its six-year tenure. Of course, I wish every member of this talented Committee was afforded the opportunity to reflect like this,

but the publishing constraints of the *Journal* necessitated I choose particular interests, and I did so mindful of its focus area and readership. These individuals, and others on the Committee, have a deep knowledge of the Rule, and all remain engaged in a planning process that will shape the future of the NFS. Readers of *The Journal* should feel welcome to reach out to any Committee member for their thoughts and perspectives on the Committee's work and national forest planning.

Tom Troxel and Lindsay Warness

Timber Industry Representatives

As members of the Forest Planning Advisory Committee, we appreciate this opportunity to share our insights on forest planning under the 2012 Planning Rule. We are very proud of the Committee's work and the ability of members from the whole spectrum of interests to reach consensus on so many contentious issues.

Forest planning is tough. It is a long, tedious, detailed, dry process, with a great deal at stake for the USFS, stakeholders, and communities and local governments. That was true under the 1982 Rule and will also be true under the 2012 Rule.

The 2012 Planning Rule includes a number of key changes to the 1982 Planning Rule, including the following: (1) Forest Supervisors are now the Responsible Official instead of Regional Foresters, arguably bringing decisionmaking "closer to the ground"; (2) there is a strong emphasis to complete plan revisions within four years—a big deal considering that many plan revisions have taken 10 years, or more, to complete; (3) there is much more emphasis on involving stakeholders, local governments, and the public in the plan revision process; (4) there is a predecisional objection process instead of the administrative appeals process; and (5) there is a requirement to use the best available science to inform the planning process. We believe these changes will turn out to be positive for the USFS, for planning participants, and for the national forests.

Overall, we encourage forest planning participants to focus on the plan's forest management strategies, timber outputs, maintaining a diversity of age classes, and reducing the potential for catastrophic fires and insect epidemics. In addition, several other aspects of forest planning warrant close scrutiny because of their ability to

affect forest management, and stakeholders should also focus on ensuring the following:

- That stakeholders, local governments, and the public are provided ample opportunities for involvement in the planning process. The USFS should leverage partnerships in obtaining information, data, and local knowledge.
- That the Plan Assessment describes the current condition of forests, including standing inventory, age classes, growth, and mortality, as required by the Planning Directives.
- That the plan provides for ecological, social, and economic sustainability, as required by the 2012 Rule. This may provide an opportunity to partner with the USFS to help them better understand national forest contributions to local economies.
- That the inventory and evaluation process for making Wilderness recommendations carefully follows the process in the Directives. Keep in mind that only Congress can designate Wilderness, and that the USFS is not *required* to recommend areas for Wilderness designation.
- That plan components are written clearly and concisely. Desired condition statements must be detailed enough to measure progress toward their achievement, and objectives need to be measurable and time-specific. Vague plan components, such as "Healthy rangelands support healthy wild horses" do not conform to the 2012 Rule and must be deleted or rewritten.
- That plan objectives are not unduly constrained by the unit's "fiscal capability."
- That designated species of conservation concern meet both criteria in the 2012 Rule: (1) it is a species (other than a threatened and endangered species) present in the plan area, and (2) the Regional Forester has determined that the best available science indicates substantial concern about the species' ability to persist over the long-term in the plan area. Those criteria can be more complex than is readily apparent, such as for species on the periphery of their range and for naturally wide-ranging or rare species.
- That the monitoring plan will allow the USFS and stakeholders to evaluate the implementation and effectiveness of the Plan, such as whether objectives and desired conditions are being accomplished. The monitoring plan must be realistic and within the Forest's capabilities to implement.

- That plan components and the monitoring plan provide the basis and needed monitoring results to allow adaptive management adjustments to the plan.

Well-written forest plans will speed up project planning and lead to increased and more efficient on-the-ground management. Thus far, only the Francis Marion National Forest in South Carolina has completed a plan revision using the 2012 Rule, with several other national forests well into the process. Results to date have been mixed, and there is room for improvement. Public participation is essential, and the key to successfully participating in forest planning is to be engaged from start to finish. The old saying that “the world is run by those who show up” is certainly applicable to forest planning.

Tom Troxel was a Timber Industry representative on the Committee. Tom was Executive Director of the Intermountain Forest Association in Rapid City, SD, for 28 years, before retiring in December 2017.

Lindsay Warness served as a Timber Industry Representative on the Committee. She is the Forest Policy Analyst for Boise Cascade in La Grande, Oregon.

Jim Magagna Private Landowner/Grazing Representative

I accepted appointment to the FACA Committee on the 2012 Forest Service Planning Rule with both cautious optimism and apprehension. As a representative of the grazing industry who had felt the impacts of lack of management of our national forests over the past 25 years, I was anxious to embrace a new direction. At the same time, I shared the serious concerns with certain provisions of the Rule that had already caused my industry to initiate litigation challenging it. My dilemma was whether I could engage in meaningful dialogue with representatives of groups with which my industry was often in conflict in order to define a path forward for implementation of a Rule that we felt had serious flaws.

After six years, I look back on the significant accomplishments of the Committee that addressed several of my initial areas of concern. These include increased emphasis on the requirement for socioeconomic analysis, defining landscape-level analysis in a manner that assures respect for private property rights, increased focus on the

engagement of state and local governments in the planning process, and recognition of the role of livestock grazing as a tool for forest management.

I do, however, have significant concerns about the 2012 Rule. These do not reflect failures in the implementation of the Rule or the efforts of the Committee. They point to the need for targeted changes to the Planning Rule and, if necessary, clarification of Congressional intent.

The singular issue on which I most often found myself at odds with many of my Committee colleagues was species viability as applied to animal species. In my view, the management of wildlife should lie within the jurisdiction of state wildlife management agencies. The appropriate role of the USFS as a land-management agency is to provide, within their mandate of multiple use-sustained yield, habitat to assure the opportunity for wildlife managers to maintain the viability of a species as defined by that state agency. The sole exception to this principle should be Endangered Species Act listed or candidate species. I believe the 2012 Rule fails to provide state wildlife agencies their rightful role to play in wildlife management on national forest lands. By making the identification of species of conservation concern a separate process that occurs prior to the development of plan components and by placing the authority for this designation with the Regional Forester, the Rule further reduces the meaningful engagement of the state agency and knowledgeable local individuals.

During our final year, the FACA Committee devoted significant time to the challenges posed by the objections process both within the context of the Planning Rule and as applied on a project basis. Although there was, I perceived, full support for the effort to move administrative resolution of conflicts ahead of issuance of a final decision, this structure poses challenges for the agency and public. Changes made to a proposed decision as a result of the objections process are not known to the public until a final plan is released. At this point, administrative remedies have been exhausted. This structure encourages parties who have been engaged in the planning process and who otherwise support the proposed action to file an objection for the sole purpose of having a seat at the table during the objections process. Further efforts by the agency are needed in this area.

The need to sustainably manage our national forest resources in a time of increasing demands for their use and shrinking agency resources demands flexibility. The emphasis in the 2012 Rule on adaptive management is a step in this direction. The catch, however, is that resource users such as the grazing industry I represent need greater certainty and stability. Achieving the appropriate balance between the rigidity delivered by standards and the greater flexibility provided by a focus on desired future conditions was a challenge to the Committee. This balance will most appropriately be achieved on an individual forest plan basis considering factors that include resource conditions and the strength of public engagement.

As I reflect back on the successes of the Committee, I am particularly proud of the *Citizen's Guide* and *State & Local Government Guide* that we crafted during the second committee charter (available at <https://www.fs.usda.gov/main/planningrule/committee>). These documents may be our finest discernible product. However, it is my hope and belief that the true legacy of this FACA Committee will be our demonstration of the ability of committed individuals from diverse and often feuding interests to come together to offer meaningful recommendations based on a common commitment to protection and enhancement of a valuable public resource.

Jim Magagna is Executive Vice President of the Wyoming Stock Growers Association and a former President of the National Public Lands Council and the American Sheep Industry Association. He was, for many years, a grazing permittee on National Forests in Wyoming.

Martin Nie Science Community Representative

Six years after its promulgation, it is uncertain as to whether forest plan revisions will reflect the promise of the 2012 Planning Rule. Though far from perfect, the 2012 Rule provides the USFS with the tools and framework to potentially transform National Forest management and the agency's interaction with the public.

How the Rule fares in today's political context—formulated in the Obama Administration and implemented in President Trump's—is anyone's guess. In no way will planning spare the USFS from political attack, but the plan revisions

currently under way offer a more bottom-up, participatory, and science-informed alternative than some of the more ideological and deregulatory measures being offered in the 115th Congress. My hope is that Congress, the Executive, and the participating public give the Rule—and the planning teams implementing it—a chance to succeed. Already, there are cases of innovation on some early-adopter forests, and we need to provide those forests next in the queue with the capacity to do even more. The intersection of wildland fire and forest planning provides one example. The first national forest to revise its plan using the 2012 Rule, the Francis Marion in South Carolina, took a bold step in designating two broad management areas distinguishing where prescribed fire will be used as a management tool. Other forests, such as the Inyo, Sequoia, and Sierra in California, developed strategic fire-management zones that will help guide fire-based decisionmaking down the road.

The NFMA requires integrated forest planning, and the 2012 Rule provides the agency with an opportunity to create management efficiencies, not just in the planning context, but in forest management generally. A sufficiently detailed and NEPA-analyzed forest plan could, for example, facilitate project-level decisionmaking, guide fire management, promote the recovery of Endangered Species Act-listed species, and establish restoration and conservation priorities, among other potential benefits. My message to the agency is that if it must plan, then go all in and use the process in a more systematic fashion. As I see it, the agency has a problematic tendency to postpone the hard decisions and defer to the project-level—an affinity to plan now to plan again later. Some members of our Committee expressed fatigue in fighting the same battles over and over again at the project level and instead preferred to make the hard decisions and tradeoffs at the plan level. A “big picture” forest plan can expedite the projects tiering to it, thus providing a higher degree of regulatory certainty and clear expectations for the public and decisionmakers.

Another enduring concern of mine is the use of plan components. Along with management area designations, plan components—such as desired future conditions, objectives, standards, and guidelines—are at the core of forest plans. They establish

the vision of a plan, set forth the strategy to achieve it, and provide the constraints on subsequent management. If written as intended by the Rule and the Directives, plan components are also enforceable because the Rule requires all future management actions to be “consistent with the applicable plan components” (36 CFR §219.15[b]).

Perhaps no issue challenged the Committee so much, philosophically and technically, as that of how best to write plan components. On one end of the continuum were those on the Committee who prioritized the writing of measurable, monitorable, unambiguous, and enforceable plan components. Arguments of regulatory certainty and accountability were made in this context, so as to provide the public clear expectations about the decisions and commitments made in a plan. On the other end of the continuum were those individuals who emphasized the need for more discretion and flexibility in the writing of plan components, partly because of the uncertainty and complexity inherent in national forest management. The Committee and USFS planners were working through these complicated issues in a constructive fashion, building a potential bridge between the two camps, before we were disbanded.

Adaptive planning and the use of best available science are anchor points of the 2012 Rule. My motivation to be on the Committee was largely driven by wanting to see the USFS attempt a science-driven approach to adaptive management, starting at the plan level. To date, forest plan revisions are not fully utilizing the Rule’s potential in this regard. As noted in our final recommendations to the Secretary and Chief, “[I]t appears as though there remains an entrenched adherence to the old way of developing forest plans under prior planning rules” (Federal Advisory Committee 2018, 34).

Multiple steps must be taken to remedy this problem. But at the crux, the USFS must acknowledge what it does not know and commit itself to finding the answers through a system of monitoring that is tied back into decisionmaking; and the best chance of success will be conducting this monitoring with the public and other stakeholders. The agency must commit itself to learning, not just using the language of adaptation as a way to avoid making tough decisions and maximize agency discretion.

In return, the public must cut planning teams some slack, appreciate the complexity of modern resource management, and partner with the agency as a way to make the promise of the 2012 Planning Rule a reality. *Martin Nie is Director of the Bolle Center for People and Forests, and Professor of Natural Resources Policy in the W.A. Franke College of Forestry and Conservation at the University of Montana. He served as the Committee’s “Science Community” representative from 2012 to 2018 and in 2010 was part of the USFS’s National Science Panel focused on the development of the planning rule.*

Peter Nelson **Environmental Organization** **Representative**

I was fortunate to serve as a conservation community representative on the USFS’s federal advisory committee established to inform implementation of the 2012 Planning Rule. A group of thoughtful stakeholders comprised the Committee, representing multiple interests, each committed to the public values that make federal lands management in the United States one of the clearest expressions of our democracy. This was no “rubber stamp” advisory group; the committee waded into the weeds on planning policy, pioneering the notion that a regulation can be collaboratively interpreted and implemented by its citizen stewards. I credit the USFS for having the self-assurance to open the forest planning policy-making process to a diverse mix of citizen stakeholders; we may not see anything that refreshingly democratic at the federal regulatory level anytime soon.

Conservationists engage in forest planning because of the critical role the NFS plays in supporting biodiversity. National forests and grasslands provide habitat essential for the recovery of hundreds of species listed under the Endangered Species Act and thousands more species that warrant conservation concern. The USFS is also on the frontlines in the race to restore diversity and resiliency to our forests and reverse the negative effects of historical wildfire suppression, road-building and riparian degradation, which have come to haunt us and our forests, particularly in the era of climate-driven mega-fires.

The Planning Rule is designed to address these challenges and improve

conditions on the ground. Forest plans, which cover large landscapes and can be tailored to suit the needs of particular geographic areas, watersheds, or communities, are the optimal scale at which to build comprehensive place-based conservation and management programs. Effective forest plans provide clear direction to locate, design, and implement projects to sustain wildlife populations, restore ecosystem resiliency, provide for sustainable fire regimes, and protect public safety and communities. The Rule also executes the NFMA's landmark "diversity" provision, establishing a flexible yet enforceable conservation planning approach that manages for sustainable ecosystem and habitat conditions while being responsive to the viability needs of individual at-risk species. The Rule's adaptive management framework, including a robust monitoring program, is designed to evaluate the effectiveness of forest plans in meeting these objectives.

Although the Rule was finalized in 2012, evaluating its implementation is premature. Only one plan is complete to date, with many more working through the process. That the multifaceted forest planning process takes time should not be construed as a negative. So long as the plans lead to measurable results on the ground—evaluated as watersheds restored, species recovered, or tangible benefits to communities—the work on the front end is worth the investment. The belief that forest plans should provide for certain outcomes was strongly held by members of the Committee. And whereas conflicts between user groups are inevitable, the Committee agreed that resolving them through the planning process is a better way to secure certain outcomes than attempting to do so on a project-by-project basis.

Conservationists have observed several emerging concerning tendencies in forest planning. For example, my organization has seen significant variation in how forests are applying science information when evaluating risks to species. We worry that the USFS is attempting to minimize conservation obligations, whereas the Rule encourages it to take an "all lands" approach to management and recognizes the critical conservation role that national forests play within landscapes. Similarly, the USFS should work more closely with the US Fish and Wildlife Service to develop clear strategies within forest plans that make affirmative

contributions to the recovery of species listed under the Endangered Species Act, as envisioned in the Rule, rather than managing only to maintain baseline conditions.

We are also troubled by a trend in forest plans conflating "adaptive management" with "flexibility," which builds undesirable uncertainty into plans. People vary in where they stand on the "discretionary vs. regulatory" forest plan spectrum; however, the USFS may be electing to avoid developing plans that provide for certainty in the name of adaptive management. This would be a mistake. The natural resource management community—from academics to policymakers to practitioners—has been trying to crack the code on adaptive management for decades. The Planning Rule gave the USFS the opportunity to develop forest plans that are both adaptive *and* accountable by directing science-based assessments, measurable plan direction, targeted monitoring, and a method to update plans. Building and implementing a robust adaptive management program presents challenges, but we cannot afford to pass on the opportunity to effectively improve the condition of our forests.

Peter Nelson is the director of the federal lands program at Defenders of Wildlife. He represented national environmental organizations on the federal advisory committee from 2012 to 2018.

Susan Jane M. Brown **Watershed Association Representative**

Land and resource management planning on the national forests has been fraught with peril and has generally left stakeholders dissatisfied with the process and distrustful of the USFS. The 2012 Planning Rule was drafted to be different: this Rule places a new emphasis on collaboration and public engagement in the planning process, the role and value of science in planning, monitoring and adaptive management, ecological resilience and sustainability, and responding to a changing climate. The 2012 Rule also includes a robust process for using the new information generated through monitoring to amend forest plans to better achieve desired conditions and deliver on stakeholder expectations, effectively closing the adaptive management loop. Many practitioners see this aspect of the 2012 Rule as offering great promise for operationalizing

adaptive management, but based on early use of the 2012 Rule amendment process, making good on this promise may remain elusive.

As finalized, the 2012 Rule contained direction regarding the amendment process, but the need for additional regulatory language regarding how to amend forest plans using the new Rule became evident as agency planners and stakeholders began to implement it. In particular, direction for how to amend forest plans developed using prior planning rules was necessary to address a concern raised by FACA Committee members working with older plans: under a strained reading of the 2012 Rule, it could be argued that a 1982-era forest plan could be amended to remove substantive forest plan components to authorize projects that otherwise would be inconsistent with those substantive provisions. Given that dozens of national forests are operating under old forest plans and may not be scheduled to revise their plan for quite some time, the need for the ability to amend old plans to reflect new ecological realities while also ensuring substantive protections for natural resources was acute.

Embracing the concept of adaptive management, the FACA Committee brought this developing issue to USFS leadership for discussion and resolution. In 2016, together we worked to craft new regulatory and explanatory language to codify the intent of the 2012 Planning Rule that amendment of forest plans should be a swift but informed process, and that amendments were not to be used to skirt substantive regulatory requirements or exempt projects from forest plan provisions. The 2016 final rule (81 Fed. Reg. 90,723) clarifies that when a forest plan is amended to add, modify, or remove plan content, the USFS must determine what substantive requirements of the 2012 Planning Rule (36 CFR §§ 219.8—219.11) are "directly related" to the changed plan content and apply those substantive provisions of the 2012 Rule to the proposed plan change. For example, if an amendment was proposed to add plan content to limit soil disturbance to 10 percent of a timber harvest area when the existing forest plan lacked such a limitation, then USFS planners would apply the requirements of 36 CFR § 219.8 ("sustainability") to create plan content that maintains or restores soils and soil productivity as the Rule requires. The substantive Rule

requirement to maintain or restore the soil resource is “directly related” to the proposed amendment that seeks to add exactly this protection to a plan without such a provision.

The need to amend the 2012 Planning Rule pertaining to amendments was borne out of the practical experience of working on forest plan revision and implementation, and a sincere desire on the part of the Committee and USFS that the 2012 Rule live up to its lofty expectations. Unfortunately, early implementation of the 2016 amendment language leaves something to be desired. For example, in 2017, the Federal Energy Regulatory Commission approved the Mountain Valley Pipeline, 3.6 miles of which would cross the Jefferson National Forest in Virginia. Forest plan provisions for the protection of water and soil quality would prohibit the construction of the pipeline, so USFS planners developed plan amendments to eschew those requirements in favor of mitigation measures the agency claims will protect sensitive resources during pipeline construction. In effect, the USFS exempted this project from a number of forest plan requirements, even though the 2016 amendment to the 2012 Rule was designed specifically to foreclose exactly this kind of shell game. Unsurprisingly, opponents of the pipeline have challenged the USFS’s decision (*Sierra Club v. United States Forest Service*, Nos. 17–2399 [L], 18–1012, 18–1019, 18–1036 [4th Cir. Filed Dec. 6, 2017]).

On one hand, the USFS’s actions on the Mountain Valley Pipeline could be chalked up to agency planners’ inexperience with the 2012 Rule and the 2016 amendments language. On the other hand, it is disappointing to see such a misuse of the amendments process, which in and of itself is a beneficial tool because it serves to keep forest plans current and meaningful. Delivering on the promise of consequential forest plans thus remains elusive, despite a framework developed to give planners and the public the tools they need to better address modern natural-resource challenges. *Susan Jane M. Brown is a staff attorney and Public Lands Director for the Western Environmental Law Center, and served as a “watershed organization” representative on the Planning Rule FACA Committee as well as Co-Chair (2015–2016). She also successfully represented several conservation organizations*

in federal court to defend the 2012 Planning Rule against legal challenge.

Ray Vaughan **Public-at-Large Representative**

Decades ago, when I was a young man, I was cross-country hiking through my favorite National Forest. I came across a canyon, small but deep and shadowy, with a clear stream that started in a beautiful little waterfall. Descending into the cooler air inside, I had found a tiny oasis from the summer heat. Not grand or spectacular, not even shown on my map, this canyon was still one of the most beautiful places I have ever seen in my life.

I returned to that hidden canyon often when my life needed a recharge. I cannot go there any longer. It no longer exists. The canyon fell victim to strip mining for coal. I filed the lawsuit that stopped coal mining on that forest but not before my canyon was destroyed.

For many years, I waged litigation war on the USFS and raged against the politicians in DC. They constantly bickered yet always seemed to agree on a course of action that led to the destruction of special places and the displacement of people who loved those places or made their living from them.

Over time, I got to know the other people stuck in the trenches of the political and litigation warfare being fought over these national treasures. I learned that, regardless of their positions in the legal battles, whether agency personnel or industry spokesmen, these people cared about the forests and knew what they were talking about. As we spent more time talking together and less time fighting over the positions politicians and powerful special interests had put us in, we learned about each other, and from each other. Then, almost simultaneously, we all came to the realization that we were not each other’s enemies.

Starting small with single projects, we worked together to find solutions to problems on individual forests while meeting at least the most important of each other’s needs. Eventually, we were finding agreement on how to manage entire forests for decades into the future. Though some “hard liners” on all sides warned us that cooperation and compromise would lead only to loss, it instead led to new solutions and

demonstrably better management of the public lands. Litigation and conflict over these forests significantly decreased as a result.

Eventually, the leadership of the agency changed to the people who believed in such cooperative conservation, and enough politicians realized that we had something that worked and wanted to see if it could grow. Federal advisory committees started to form around major issues for the USFS; all were successful beyond their founders’ hopes. That led to the Planning Rule FACA Committee, which was tasked with finding national solutions to problems and changing the entire management of the NFS through the new 2012 Planning Rule.

For six years, despite difficulties and disagreements, this Committee made amazing progress on issues that had bedeviled the agency and the public lands for decades. The Committee became a welcoming oasis in an ever hotter, more contentious political landscape; more and more people inside and outside the agency wanted the Committee to help them find new solutions to their problems.

The Committee had found a new way to govern. It was a way that left no one out. We found solutions to problems that had stymied our country for more than 50 years. We found respect for each other. We found hope, not just for the USFS but for our nation. I believed in the future of America. But that was before our FACA Committee, like others used across the federal bureaucracy, was disbanded or had its charters not renewed.

Truly democratic methods of governance exist; their record of breaking through gridlock and finding solutions is proven. But such methods require cooperation from all instead of unquestioning loyalty to one. They require listening and learning with respect rather than dictating from ignorance and prejudice. They require more work than just watching your favorite cable news network and voting as you are told to every four years.

Not so long ago, we found a way to govern together in America, with fairness and success. That way is now gone. Maybe it can be brought back again. Or perhaps it was like that lovely little canyon—once gone, it will be gone forever.

After 25-plus years as an environmental litigator and serving 13 years on three national

FACA committees working on cooperative solutions to issues on public lands, Ray Vaughan now sits on his porch on his small ranch, contemplating the meaning of life and watching the foxes that play in his yard.

Angela C. Sondenaa **Local Watershed and Conservation** **Community Representative**

The 2012 Planning Rule (Rule) is revolutionary in that it calls for an adaptive management framework for decisionmaking using the “best available scientific information” (BASI) (36 CFR §219.3). It is clear that the crafters of the Rule wanted managers to use the logic and rigor of the scientific method and a clear framework of decision-making to guide forest management. What is not so clear is if the agency has the capacity (both staff expertise and budget allocations), and the socio-political fortitude, to actually implement the science-based approach called for by the Rule.

In the course of the Committee’s work with early-adopter forests, it quickly became apparent that the status of ecological data and scientific analysis were going to be significant obstacles to developing adaptive management plans for our National Forests. Early feedback from the FACA to strengthen the decisionmaking framework based on “triggers” or “thresholds” of key ecological conditions was met with the response that “we don’t have enough information to build such a framework.” Without a greater breadth and depth of scientific understanding of how our national forests and grasslands function, these new plans will fall short of the vision captured in the Rule.

It also became apparent that research results and BASI for some resource areas are more robust than others. A legacy of prioritization by forest managers has left

the USFS with large discrepancies in their knowledge base. For example, the ecology of forest communities is better researched, monitored, and understood than the ecology of shrub-steppe or grassland communities on the same planning unit. At an even finer scale, the tree component of forest communities has been better studied and monitored than the understory vegetation or wildlife populations found in those same forested communities. These discrepancies will likely result in plans with a disproportionate emphasis on specific ecological communities or components over others. As a result, it may be hard for the agency to meet its required mandates to manage for multiple use and the conservation of biodiversity because of the paucity of information on these lesser-studied ecosystems.

A case in point is how the agency has approached the identification and incorporation of species of conservation concern. The Rule requires each Regional Forester to identify species of conservation concern when “the best available scientific information indicates substantial concern about the species’ capability to persist over the long-term in the plan area” (36 CFR §219.9[2][ii][c]). But what happens when the agency does not have the BASI to make a determination on a species’ capability to persist? According to the Directives, the USFS would not list that species as a species of conservation concern because there is no scientific basis for the determination. Although this interpretation may be valid on its surface, it basically gives the USFS a free pass and incentivizes a lack of scientific rigor, which is a dangerous perspective for an agency mandated to conserve biodiversity.

While the Rule does not call for identification and prioritization of additional research as part of new forest plans, there is a clear need to do so. Especially important is improving our understanding of how management actions influence the

ecological trajectory of plant communities in the face of climate change. For example, is rest-rotation grazing an appropriate management approach for allotments within the arid grasslands of the interior Northwest in light of changing moisture regimes that harm native plants while benefitting exotic weeds? Would a change in seasonal timing or grazing intensity be more appropriate to mitigate impacts from the shift from winter moisture to more spring/summer moisture predicted by climate scientists? Without further scientific research and robust monitoring programs, USFS managers will be unable to appropriately answer even such basic questions. More importantly, this scientific ignorance could result in mismanagement of public resources with far-reaching ecological impacts long into the future. This has already happened on public lands with the historical lack of fire ecology research, which resulted in an inadequate understanding of the role of fire in maintaining specific ecosystems.

In conclusion, significant work remains for the USFS in order to fulfill the Rule’s direction to create plans using a science-based and adaptive management decisionmaking framework. There are issues with historic and current data-collection priorities, a paucity of scientific data (both ecological and social), diminished expertise in key areas, costs to obtain the necessary data, and socio-political pressures to limit scientific investigation. Although these challenges are not insurmountable, it will take a dedicated and determined leadership to see the agency achieve the ideals laid out in the 2012 Rule.

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