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Carl Tobias*

Fact, Fiction, and Forest Service Appeals

People who live in the western United States have long considered the United States Forest Service to be a mammoth, hierarchical bureaucracy. The Forest Service has responsibility for managing the national forests, which in some western states comprise substantial components of the total land base. The Forest Service administers the national forests pursuant to numerous congressional mandates. Perhaps the most important and most difficult task that Congress has assigned the Forest Service is to manage the national forests for multiple uses, including resource (timber, mineral, oil and gas) extraction, recreation, fish and wildlife, and water quality. Implementation of this multiple-use mandate constantly embroils the Forest Service in controversy.

The long, bitter fight in the Pacific Northwest involving the spotted owl and old growth timber is one such controversy that has national implications and has gained national attention. Another compelling controversy that continues to fester unresolved involves use of the Forest Service appeals process. Some observers say that the procedure, which provides for administrative appeals of many Forest Service decisions, has been abused. The controversy has long been attended by charges and countercharges. Representatives of the timber industry frequently accuse environmentalists of using the appeals process to exploit substantive or procedural technicalities, thereby delaying timber sales on national forest lands. The environmentalists allege that the Forest Service authorizes timber cutting without adequately considering environmental factors in violation of the agency's statutory mandate and that the industry cuts timber with no concern for the environment. The Forest Service remains, more or less, in the middle of these disputes, attempting to implement unclear and often conflicting congressional commands and making decisions that frequently are appealed.

Those industries engaged in extracting resources from the national forests, certain recreational users of the forests, a number of western senators and representatives and officials of the Forest Service have advocated for some time that the appeals process be abolished or trun-

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cated. Environmentalists, conservationists, other recreational users, and a number of senators and representatives have argued that such modification of the appeals process would sharply reduce Forest Service accountability to the public and increase exploitation of the national forests.

In mid-November, 1991, Senator Dale Bumpers, D-Arkansas, Chair of the Senate Energy and Natural Resources Subcommittee on National Parks and Forests, held a hearing on the issue. Bumpers did so to determine what is myth and what is fact and to ascertain what, if anything, is broken before the Congress attempts to fix it.

Dale Robertson, Chief of the Forest Service, complained that overly technical conservationists have been unnecessarily delaying timber production. He claimed that everyone is suing the agency and that it can be 99.9 percent correct, yet lose on a minor detail, usually implicating some procedural nicety. Robertson added that the plethora of procedural and substantive requirements, which individuals demand that the Forest Service satisfy perfectly, have created a difficult working environment.

Senator Mark Hatfield, R-Oregon, and other Republicans from the West, requested modification of the appeals procedure, accusing environmentalists of employing the appeals to delay timber sales. Senator Conrad Burns, R-Montana, characterized the appeals process as the most important mechanism that preservationists have for securing, for example, increased acreage in the national wilderness system.

Unfortunately, much debate over use of the Forest Service appeals process has been accompanied by considerably more heat than light. Unsubstantiated accusations and counterclaims have been hurled by all entities involved. Many horror stories are recounted by each participant in the imbroglio; however, practically all of this evidence is anecdotal in nature.

It is now incumbent upon Congress to attempt to resolve this continuing controversy, which pits neighbor against neighbor in many western states. Although the controversy may not lend itself to easy resolution, it is possible to conduct a much more systematic empirical evaluation of the appeals process than has been undertaken to date. Numerous entities could efficaciously collect, analyze, and synthesize the relevant data regarding this controversy. There are several expert governmental agencies. One is the Administrative Conference of the United States which is charged by statute with studying agency practices and procedures and making suggestions for improvement. For more than a quarter-century, the Conference has performed many excellent studies that have been widely respected within and outside the government. The Comptroller General and the General Accounting Office are watchdog agencies established by Congress that have undertaken numerous assessments of

administrative processes. The Congress also might consider appointment of a commission comprised of members of Congress, agency representatives and individual citizens. In any event, Congress should act promptly in an effort to resolve this controversy by separating reality from rhetoric and fact from fiction in the Forest Service appeals process.¹

1. When this essay was in press, two government entities issued studies that treat the Forest Service appeals process. See Pamela Baldwin and Ross W. Gorte, *Administrative Appeals of Forest Service Timber Sales* (Congressional Research Service, April 8, 1992); U.S. Congress Office of Technology Assessment, *Forest Service Planning: Accommodating Uses, Producing Outputs, and Sustaining Ecosystems* 95-1-1 (OTA-F-505, Feb. 1992). Both studies include much helpful information. Neither study, however, is the type of comprehensive empirical study that I envision.