

**Between Community Stability and the  
“Greatest Good”: Legal Obligations of the U.S.  
Forest Service Toward Rural Communities,  
1891–2016**

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There is, perhaps, no more sensitive issue for public land administering agencies to consider than how management decisions affect people who live near or are dependent on resource-based activities. Of all publics affected, the local public has the most direct interest in these decisions—it must exist within the physical environment. The local water supply may be affected; the local wood products industry, its workers, their families have vested

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interest; local recreation activities and other aspects of community life depend, more or less, on these decisions. . . . [T]he Forest Service must consider these impacts in its decision-making processes . . . [A]n evaluation of impacts on local economies is mandated.<sup>1</sup>

### INTRODUCTION

Analyses of the United States Forest Service's political and legal evolution tend to emphasize two primary themes. The first of these two themes is the tension between timber production and nature preservation. This tension was exemplified by the bitter disagreement between Sierra Club founder John Muir and the first chief of the Forest Service, Gifford Pinchot. Muir wanted the national forests to be managed to protect nature's grandeur, but Pinchot saw the federal forests as experimentation sites for progressive forestry practices and as bulwarks against destructive practices on private lands.<sup>2</sup> This tension would resurface continuously throughout the agency's history, boiling over in conflicts over wilderness areas, old-growth forest protection, and endangered species preservation.

The second traditionally emphasized theme concerns the Forest Service's role in attempting to control wildfire across highly fire-prone western landscapes. Wildfire suppression has long been central to the agency's mission and has served to justify agency budgets and control over large expanses of western lands.<sup>3</sup> The traditional emphasis on these two themes misses a third theme running through the history of United States federal forest policy: the Forest Service's relationship with the rural communities situated amongst vast stretches of federally owned land. Many of these rural communities necessarily depend on federal lands for economic and cultural sustenance. Since the creation of the first federal forest reserves in 1891 and the advent of the Forest Service's stewardship over them, the federal government has grappled with its obligations toward the people living near federally owned forests. This third theme has received far less attention than the others, despite its increasing relevance to contemporary legal and managerial debates.

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<sup>1</sup> ERVIN G. SCHUSTER, LOCAL ECONOMIC IMPACT: A DECISION VARIABLE IN FOREST RESOURCES MANAGEMENT 1-2 (1976).

<sup>2</sup> SAMUEL P. HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 1890-1920 38-48 (1959).

<sup>3</sup> STEPHEN J. PRYNE, FIRE IN AMERICA: A CULTURAL HISTORY OF WILDLAND AND RURAL FIRE 103-06 (1982).

Tracing the history of United States forest policy from the late nineteenth century into the start of the twenty-first century reveals subtle but important changes in the Forest Service’s treatment of nearby rural communities. The Forest Service’s early focus on maintaining resource access for local individuals and small businesses evolved by the mid-twentieth century to the pursuit of “community stability,” as measured in terms of the predictable flow of timber to area mills.<sup>4</sup> In the aftermath of the “Spotted Owl Wars” of the late 1980s and early 1990s and the ensuing collapse of the production forestry model nationwide, support of forest communities regained a central place in Forest Service policy. This time, the Forest Service focused on collaborative planning and restoration of degraded lands and reducing exposure to wildfire risk.<sup>5</sup> This Article analyzes the Forest Service’s evolving relationship with rural communities by reviewing the dynamics of community policy-making as it has changed from the creation of the first forest reserves in 1891 to the present.

## I

### ROOTS OF THE FOREST SERVICE AND NATIONAL FORESTS

Today’s National Forest System consists of 154 national forests comprising almost 193 million acres.<sup>6</sup> The National Forest System traces its legal roots to 1891, when Congress passed legislation empowering the President of the United States to set aside forest reserves.<sup>7</sup> This legislation, known as the “Forest Reserve Act,”<sup>8</sup> was motivated by “[w]idespread forest destruction, fraud under federal

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<sup>4</sup> Michael Williams, “*The End of Modern History?*,” 88 GEOGRAPHICAL REV. 275 (1998).

<sup>5</sup> Steven E. Daniels et al., *Distributive Effects of Forest Service Attempts to Maintain Community Stability*, 37 FOREST SCI. 245 (1991); James J. Kennedy et al., *Evolving Forestry and Rural Development Beliefs at Midpoint and Close of the 20th Century*, 3 FOREST POL’Y & ECON. 81 (2001); William S. Prudham, *Timber and Town: Post-War Federal Forest Policy, Industrial Organization, and Rural Change in Oregon’s Illinois Valley*, 30 ANTIPODE 177 (1998); Con H. Schallau & Richard M. Alston, *The Commitment to Community Stability: A Policy or Shibboleth?*, 17 ENVTL. L. 429 (1987).

<sup>6</sup> U.S. Forest Service, *By the Numbers*, USDA, <http://www.fs.fed.us/about-agency/newsroom/by-the-numbers> (last updated Nov. 2013).

<sup>7</sup> Act of March 3, 1891, ch. 561, § 24, 26 Stat. 1095, 1103 (repealed 1976).

<sup>8</sup> James L. Huffman, *A History of Forest Policy in the United States*, 8 ENVTL. L. 239, 259 (1978).

land law, and growing fear of timber famine.”<sup>9</sup> The Forest Reserve Act was “intended only to preserve federal forestland, and provided no means for its administration or management.”<sup>10</sup> Within a month of enactment of the Forest Reserve Act, President Benjamin Harrison established two reserves totaling nearly 2.5 million acres.<sup>11</sup> By the end of his term in 1893, President Harrison “established 15 reserves covering more than 13 million acres.”<sup>12</sup> His successor, Grover Cleveland, established two reserves in 1893 in Oregon covering a combined total of 4.5 million acres.<sup>13</sup> President Cleveland then refused to designate more reserves until Congress passed legislation providing for administration and management (and effective protection) of the reserves.<sup>14</sup> That legislation, the Organic Administration Act of 1897, provided in part that new reserves could not be established “except to improve and protect the forest within the reservation, or the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.”<sup>15</sup> The Organic Act “turned out to be the basis of federal forest reserve management for sixty-three years until supplemented by in 1960 by the Multiple Use-Sustained Yield Act.”<sup>16</sup> The Forest Reserve and Organic Acts were partly motivated by “concern for communities, many of which had suffered from boom-and-bust economies created by the rapid logging and destruction of forests in the East and the Lake States.”<sup>17</sup> While Congress did not explicitly address this concern in the Organic Act,

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<sup>9</sup> B. Thomas Parry et al., *Changing Conceptions of Sustained-Yield Policy On The National Forests*, 81 J. FORESTRY 150, 150 (1983).

<sup>10</sup> *Id.*

<sup>11</sup> Huffman, *supra* note 8, at 260.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> HAROLD K. STEEN, *THE U.S. FOREST SERVICE: A HISTORY* 28 (1976).

<sup>15</sup> Act of June 4, 1897, ch. 2, § 1, 30 Stat. 34, 34 (codified at 16 U.S.C. § 475 (2012)). This legislation was not referred to as the “Organic Act” (or any variation thereof) until around the 1950s and 1960s. Robert L. Fischman, *The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation*, 29 *ECOLOGY L.Q.* 457, 506 (2002) (citation omitted).

<sup>16</sup> STEEN, *supra* note 14, at 36.

<sup>17</sup> D. Henderson & L. Krahl, *Public Management of Federal Forest Land in the United States*, 47 *UNASYLVA* 1 (1996), <http://www.fao.org/docrep/v9122e/v9122e10.htm>. “The Organic Act also recognized the needs of local people and communities in its provisions for settlers’ rights of access to privately owned land within forest reserves and for the use of national forest land for schoolhouses and churches.” *Id.*

“the Forest Service certainly interpreted its mandate to include emphasis on local industry and community stability.”<sup>18</sup>

The Organic Act refers to “the use and necessities of citizens of the United States” (i.e., citizens generally, without any apparent special consideration for citizens residing in close proximity to the forests covered by the act).<sup>19</sup> However, there is a thread of special consideration for local forest communities extending from the passage of the Organic Act to the present day. Perhaps the earliest example of formal legal expression of this is in the 1902 *Forest Reserve Manual*, which provides the following regarding timber sales: “In the disposition of this material the local demand will have preference, and, in localities where this local demand is so great that all available timber is likely to be needed, applications involving the export of the material to distant points will be refused.”<sup>20</sup>

Special consideration for local forest communities continued with the 1905 “Use Book,” which listed “protecting local residents from unfair competition in the use of forest and range” as one of the purposes of the forest reserves, and characterized “the welfare of every community” as “dependent upon a cheap and plentiful supply of timber.”<sup>21</sup> The Use Book characterized “protection of forest resources” as “a matter of urgent local and national importance.”<sup>22</sup> The Use Book also described that creating the forest reserves “without provision for their administration” was “annoying to local interests dependent upon their resources.”<sup>23</sup> Finally, the Use Book quotes Gifford Pinchot’s famous 1905 letter proclaiming: “In the management of each reserve local questions will be decided upon local grounds . . . .”<sup>24</sup>

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<sup>18</sup> Con H. Schallau & Richard M. Alston, *The Commitment to Community Stability: A Policy or Shibboleth?*, 17 ENVTL. L. 429, 436 (1987).

<sup>19</sup> 16 U.S.C. § 475 (2012).

<sup>20</sup> U.S. DEPARTMENT OF THE INTERIOR, FOREST RESERVE MANUAL (1902), [http://www.foresthistory.org/ASPNET/Publications/reserve\\_manual/sec4.htm](http://www.foresthistory.org/ASPNET/Publications/reserve_manual/sec4.htm).

<sup>21</sup> U.S. FOREST SERVICE, THE USE OF THE NATIONAL FOREST RESERVES 7 (1905).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 11.

## II

## 1905–1990: TIMBER HARVEST AS SURROGATE FOR COMMUNITY STABILITY

## A. “Sustained Yield” of Timber as a Source of Community Stability

Gifford Pinchot, author of the aforementioned “Pinchot letter,” became the first chief of the Forest Service in 1905.<sup>25</sup> Pinchot brought with him a conception of “sustained yield” forestry better suited to European forests than to American forests (due to the presence of old growth in American forests).<sup>26</sup> Pinchot’s approach translated to an allowable annual cut restricted to annual growth for each respective forest.<sup>27</sup> This sustained yield policy supported local sawmills by providing for “many short-term, small volume timber sales on a sustained yield basis.”<sup>28</sup> The Forest Service broadened its conception of sustained yield by the early 1920s, redefining it to also allow for “orderly liquidation of old growth” (i.e., no longer limited to just annual growth).<sup>29</sup> This resulted in a shift from “short-term, small volume sales” to “long-term, large volume sales,” and this shift in turn resulted in more sales favoring large sawmills over smaller ones, and in “greater fluctuations in timber flows.”<sup>30</sup> The Forest Service increasingly incorporated local community needs in its planning around this time. William Greeley, Chief of the Forest Service for most of the 1920s, expressed the Forest Service’s position as follows: “We believe that as far as practicable the government should get down to the specific considerations and needs of the locality in laying out its schemes of management; and this factor has been given more and more weight as our general policy has developed.”<sup>31</sup>

Forest communities received further express congressional help in 1937, when Congress authorized the Secretary of the Interior to establish sustained yield units, “for support of dependent communities

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<sup>25</sup> The Forest Service began administering the forest reserves in 1905 after Congress transferred administration from the Department of the Interior to the Department of Agriculture. Charles F. Wilkinson & H. Michael Anderson, *Land and Resource Planning in the National Forests*, 64 OR. L. REV. 1, 18 (1985).

<sup>26</sup> Parry et al., *supra* note 9, at 151.

<sup>27</sup> *Id.*

<sup>28</sup> Lane Krahl & Doug Henderson, *Uncertain Steps Toward Community Forestry: A Case Study in Northern New Mexico*, 38 NAT. RESOURCES J. 53, 56 (1998).

<sup>29</sup> *Id.* at 56–57.

<sup>30</sup> *Id.*

<sup>31</sup> W.B. Greeley, *Forest Management on Federal Lands*, 23 J. FORESTRY 223, 229 (1925).

and local industries,”<sup>32</sup> however, no such units were established pursuant to this legislation until after World War II.<sup>33</sup> While the Secretary designated twelve “marketing areas” in 1946 and 1947 pursuant to this legislation, they were abolished in 1959.<sup>34</sup>

Congress passed at least four laws in the 1940s that expressed support for forest communities. The best-known of these laws is the Sustained-Yield Forest Management Act of 1944, which allowed for the creation of cooperative sustained yield units (involving both federal and private land) and sustained yield units (involving just federal land).<sup>35</sup> While this law was intended to promote industrial and community stability,<sup>36</sup> industry and communities “often opposed creation of both types of sustained yield units,”<sup>37</sup> and only one cooperative unit and five federal units were established pursuant to the law.<sup>38</sup> The concept of sustained yield was evolving around this time from being considered primarily a technical matter to being considered a “social issue as well,” as a result of the fact that sustained yield “became equated in the public mind with community stability.”<sup>39</sup> The Forest Service’s legal obligations to communities increasingly reflected a concern with maintaining or increasing federal harvests, especially after World War II, as the timber industry grew ever more dependent on federal supplies.<sup>40</sup>

Other laws from the 1940s expressing support for forest communities include a law “authorizing the Secretary of Agriculture to fund white pine blister rust control efforts in order to ‘promote the stability of white-pine forest-using industries, employment, and communities’”; a law “declaring a federal policy to control and eradicate forest pests ‘in order to protect and preserve forest resources

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<sup>32</sup> SAMUEL TRASK DANA, *FOREST AND RANGE POLICY* 411 (1956).

<sup>33</sup> Con H. Schallau, *Evolution of Community Stability as a Forestry Issue: Time for the Dry Dock*, in *COMMUNITY STABILITY IN FOREST-BASED ECONOMIES: PROCEEDINGS OF A CONFERENCE IN PORTLAND, OREGON, NOVEMBER 16–18, 1987* 6 (Dennis C. Le Master & John H. Beuter eds., 1989) (citing DANA, *supra* note 32, at 285).

<sup>34</sup> *Id.*

<sup>35</sup> 16 U.S.C. §§ 583–583i (1944).

<sup>36</sup> 16 U.S.C. § 583.

<sup>37</sup> Krahl & Henderson, *supra* note 28, at 58.

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

<sup>39</sup> Parry et al., *supra* note 9, at 153.

<sup>40</sup> PAUL W. HIRT, *A CONSPIRACY OF OPTIMISM: MANAGEMENT OF THE NATIONAL FORESTS SINCE WORLD WAR TWO* xx–xxii (1994).

. . . [and to thereby] promote the stability of forest-using industries and employment associated therewith . . . .”]; and a law “declaring [the] policy of Congress to accelerate reforestation of national forest lands in order to ‘increas[e] opportunity for local employment [and] bring greater stability to local communities . . . .’”<sup>41</sup>

Official Forest Service documents and regulations, as well as statements by Forest Service officials, reflect the linkage between sustained yield and community stability emphasized during this time period. In 1947, Forest Service Chief Lyle Watts stated that the Forest Service was

emphasizing consideration of community aspects whenever it is possible to do so. We hope to have milling or logging communities so located with respect to the merchantable timber so that the woodworkers will have an opportunity to live at home in permanent communities and to commute to and from work.<sup>42</sup>

The Forest Service’s 1948 publication, *Forests and National Prosperity*, signaled a move towards a new definition of sustained yield.<sup>43</sup> Just two years earlier, the Forest Service’s conception of sustained yield involved fluctuating harvest levels.<sup>44</sup> The 1948 approach relied instead on evenness of harvest (also referred to as “even flow”).<sup>45</sup> Even harvest or flow by its own terms is more stable than fluctuating harvest/flow, and therefore better supports community stability. In December of 1948, the Forest Service issued regulations requiring that timber management plans “[p]rovide, so far as feasible, for the stabilization of communities and of opportunities for employment.”<sup>46</sup> The Forest Service’s support for even harvest rates and associated community stability was demonstrated by its Timber Management Division chief in 1950, who expressed support for continued harvest when it supported community stability.<sup>47</sup> “Community stability was becoming the cornerstone of Forest Service sustained-yield policy,” and increasing harvest levels (including a

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<sup>41</sup> Schallau & Alston, *supra* note 18, at 440 n.37.

<sup>42</sup> Letter from Forest Service Chief Lyle Watts to George H. Cecil (Jan. 16, 1947), *quoted in* DAVID A. CLARY, *TIMBER AND THE FOREST SERVICE* 130 (1986).

<sup>43</sup> Parry et al., *supra* note 9, at 153.

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

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

<sup>46</sup> Revision of Regulations Permitting Use of Timber Resources on National Forests, 13 Fed. Reg. 7710, 7711 (Dec. 14, 1948) (to be codified at 36 C.F.R. § 221.3(b)).

<sup>47</sup> L.S. GROSS, *TIMBER MANAGEMENT PLANS ON NATIONAL FORESTS* 7–8 (1950).

near-tripling between 1952 and 1959) would “cement it firmly into place.”<sup>48</sup>

Increased timber harvest on national forests lands was not solely attributable to increased demand for wood products. The declining levels of timber harvest on private lands induced the Forest Service to increase harvest on federal lands to stabilize timber-dependent communities.<sup>49</sup> The Forest Service formally adopted a regulatory even flow policy in early 1963,<sup>50</sup> many years after it first implemented even flow on the ground.<sup>51</sup> Although not indicative of an actual change in practice, the formal adoption of even harvest signaled the increasing importance of community stability as well as the increasing dependence of industry on federal timber.<sup>52</sup> At the same time the Forest Service adopted even flow, the agency internally questioned the connection between even flow and community stability.<sup>53</sup>

It turned out that timber supply prediction methods at the time were unable to accurately project supplies after old growth liquidation, resulting in misplaced confidence on the part of the Forest Service in perpetual timber supplies.<sup>54</sup> This misplaced confidence by the Forest Service “shattered” in 1969 by the agency’s “Douglas-Fir Supply study,” which brought to light the unsustainability of harvest levels post-old growth liquidation.<sup>55</sup> The Forest Service responded to the Douglas-Fir Supply Study by publishing “Emergency Directive No. 16.”<sup>56</sup> Issued in May of 1973, the directive abandoned even flow in

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<sup>48</sup> Parry et al., *supra* note 9, at 153.

<sup>49</sup> *Id.*

<sup>50</sup> See 28 Fed. Reg. 723 (1963) (codified at 36 C.F.R. § 221.3(a)(3)) (substituting “an even flow of national forest timber” for language in the 1948 version).

<sup>51</sup> Parry et al., *supra* note 9, at 153.

<sup>52</sup> *Id.*

<sup>53</sup> Schallau & Alston, *supra* note 18, at 444 (discussing the unpublished portion of a Forest Service study on timber trends characterizing the connection between even flow and community stability as “little more than forestry lore”).

<sup>54</sup> Parry et al., *supra* note 9, at 154.

<sup>55</sup> Wilkinson & Anderson, *supra* note 25, at 151–52 (citing a 1969 Forest Service Douglas-Fir Supply Study). The Douglas-Fir Supply Study was “the first analysis which employed computer techniques to project Forest Service timber supply on a regional basis.” Parry et al., *supra* note 9, at 154.

<sup>56</sup> FOREST SERV., U.S. DEP’T OF AGRIC., EMERGENCY DIRECTIVE No. 16 [to FOREST SERVICE MANUAL 2410.3-1] (1973) [hereinafter EMERGENCY DIRECTIVE No. 16].

favor of *non-declining* even flow.<sup>57</sup> Non-declining even flow involves “schedul[ing] harvest in such a way that the yield is sustainable in perpetuity without downward variation.”<sup>58</sup> The Forest Service adopted non-declining even flow to achieve long-term sustained harvest levels, but the emergency directive also stated that, where non-declining even flow would result in reduced harvest levels with a “significant local impact, they should be phased in to provide an orderly adjustment period.”<sup>59</sup>

Three years later, Congress included non-declining even flow in the National Forest Management Act (NFMA).<sup>60</sup> The Forest Service provided Congress with the community stability context for non-declining even flow during deliberations, stating that non-declining even flow “tends to support income flows and community stability, and minimizes chances of community disruption caused by significant reduction or acceleration in timber harvest.”<sup>61</sup> Six years after NFMA’s passage, the Forest Service characterized the relationship between non-declining even flow and community stability as follows:

The purpose of [non-declining even flow] is to ensure community stability . . . .

. . . .

Community stability is aided by this policy since those economies dependent on logging and milling of timber will have available at least a minimum amount of their basic resource, timber. The boom and bust economic cycle experienced by lumber towns should be eliminated.<sup>62</sup>

The non-declining even flow provision of NFMA includes a mechanism for departure from rigid adherence to non-declining even

<sup>57</sup> Parry et al., *supra* note 9, at 154.

<sup>58</sup> SAMUEL TRASK DANA & SALLY K. FAIRFAX, *FOREST AND RANGE POLICY* 331 (1980).

<sup>59</sup> EMERGENCY DIRECTIVE No. 16, *supra* note 56, at 2.

<sup>60</sup> 16 U.S.C. § 1611(a) (1976) (explaining that the sale of timber is limited “to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis”). See Parry et al., *supra* note 9, at 154 (“Forest Service concept of nondeclining even flow was embodied in law in 1976 with the adoption of the National Forest Management Act”); Schallau & Alston, *supra* note 18, at 450.

<sup>61</sup> 122 CONG. REC. 27, 613 (daily ed. Aug 24, 1976), *reprinted in* SENATE COMM. ON AGRIC., NUTRITION, AND FORESTRY, *COMPILATION OF THE FOREST AND RANGELAND RENEWABLE RESOURCES ACT OF 1974*, at 424.

<sup>62</sup> CHARLES P. BUBANY ET AL., *FEDERAL STATUTES AFFECTING THE LAND MANAGEMENT PLANNING FUNCTIONS OF THE FOREST SERVICE, VOLUME II: ANALYSIS AND DISCUSSION* 32 (1982).

flow.<sup>63</sup> The year after NFMA became law, the Forest Service sought guidance from the Department of Agriculture’s Office of General Counsel regarding this departure provision.<sup>64</sup> The Forest Service wanted to know whether the departure provision permitted “departures to meet social or economic objectives in general and to maintain community stability in particular,”<sup>65</sup> i.e., departures along the lines of those allowed by Emergency Directive No. 16.<sup>66</sup> The Office of General Counsel responded that social and economic objectives were valid considerations for purposes of determining multiple-use objectives, and that social and economic objectives were therefore a valid consideration for purposes of evaluating departures if social and economic considerations were encompassed by multiple-use objectives.<sup>67</sup> The Forest Service subsequently adopted a departure regulation that *required* evaluation of departures “if the nondeclining even-flow harvest schedule ‘would cause a substantial adverse impact upon a community in the economic area in which the forest is located.’”<sup>68</sup> NFMA also “emphasized decentralized planning and local priorities,” which “sparked renewed interest in community stability.”<sup>69</sup>

By midcentury, the Forest Service’s timber program became closely hitched to the needs of the timber industry.<sup>70</sup> The industries, the Forest Service itself, and the congressional representatives overseeing it were known as the “iron triangle” of influence.<sup>71</sup> As a result, community stability was narrowly defined as the provision of a steady supply of timber to industries, which were supposed to provide steady employment in return.<sup>72</sup>

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<sup>63</sup> 16 U.S.C. § 1611(a) (2012).

<sup>64</sup> Schallau & Alston, *supra* note 18, at 454.

<sup>65</sup> *Id.*

<sup>66</sup> See note 58 and accompanying text.

<sup>67</sup> Schallau & Alston, *supra* note 18, at 455 n.101.

<sup>68</sup> *Id.* at 454 (quoting 36 C.F.R. § 219.16(a)(3)(iii) (1986)).

<sup>69</sup> *Id.* at 451–52.

<sup>70</sup> See Ronald L. Trosper, *Policy Transformations in the U.S. Forest Sector, 1970–2000: Implications for Sustainable Use and Resilience*, in NAVIGATING SOCIAL-ECOLOGICAL SYSTEMS: BUILDING RESILIENCE FOR COMPLEXITY AND CHANGE 334 (Fikret Berkes et al. eds., 2003).

<sup>71</sup> Zygmunt J.B. Plater, *From the Beginning, A Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law*, 27 LOY. L.A. L. REV. 981, 988 (1994).

<sup>72</sup> See Louise P. Fortmann, *Community stability: The Forester’s Fig Leaf*, in COMMUNITY STABILITY IN FOREST-BASED ECONOMIES: PROCEEDINGS OF A

***B. Payments to Local Jurisdictions as a Source of Community Support***

Timber supports communities via the jobs associated with timber harvest and processing, but the Forest Service also provided direct support in the past. There is a long history of direct payments to local jurisdictions based off of a percentage of Forest Service timber sale revenue. Congress explicitly acknowledged the unique position of local communities in 1906, when it passed legislation requiring “ten percent of the receipts from the sale of forest products” go to “local governments for support of public schools and roads.”<sup>73</sup> Two years later, Congress increased the percentage of receipts going to local governments to twenty-five percent.<sup>74</sup> In 1976, Congress passed Payment in Lieu of Taxes (PILT) legislation “intended to increase federal land revenue sharing, to compensate certain communities that did not derive revenues from federal lands within their boundaries because those lands were nonproducing (e.g., wilderness areas), and to help stabilize fluctuating revenues received by communities benefitting from revenue-producing federal lands.”<sup>75</sup> The Alaska National Interest Lands Conservation Act (ANILCA) took a similar payments/appropriations approach to community stability, authorizing \$40 million a year “or as much as the Secretary of Agriculture finds is necessary to maintain the timber supply from the Tongass National Forest to dependent industry.”<sup>76</sup> Congress addressed “the impact of falling prices on existing contracts” with the passage of the Federal Timber Contract Payment Modification Act in 1984.<sup>77</sup>

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CONFERENCE IN PORTLAND, OREGON, DECEMBER 16–18, 1987 (Dennis C. Le Master & John H. Beuter eds., 1988); see also James J. Kennedy et al., *Evolving Forestry and Rural Development Beliefs at Midpoint and Close of the 20th Century*, 3 FOREST POL’Y & ECON. 81 (2001).

<sup>73</sup> Huffman, *supra* note 8, at 270 (citing Act of June 30, 1906, ch. 3913, 34 Stat. 669).

<sup>74</sup> 16 U.S.C. § 500 (2012).

<sup>75</sup> Michael E. Shapiro, *Sagebrush and Seaweed Robbery: State Revenue Losses from Onshore and Offshore Federal Lands*, 12 ECOLOGY L.Q. 481, 487 (1985) (citations omitted).

<sup>76</sup> Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, § 705(a), 94 Stat. 2371, 2420 (1980) amended by Sec. 101 of the Tongass Timber Reform Act, Pub. L. 101-626, title I, Nov. 28, 1990, 104 Stat. 4426.

<sup>77</sup> Marla E. Mansfield, *A Primer of Public Land Law*, 68 WASH. L. REV. 801, 841 n.256 (1993).

### III

#### 1990 TO PRESENT: BEYOND TIMBER HARVEST AS SURROGATE FOR COMMUNITY STABILITY (DIVERSIFICATION, RESTORATION, COLLABORATION, AND HAZARD REDUCTION)

Timber harvest nearly exclusively provided the context for community stability from midcentury until the late 1980s; community stability was practically synonymous with timber harvest and sales:

Congress continue[d] to reaffirm the broad historical precedence of a Forest Service obligation to maintain community stability. For instance, in 1986 the Senate Appropriation Committee . . . stated that this commitment was not new, having been expressed in numerous statutes before. The committee report singled out ‘the importance of Forest Service timber sales, and the related road program, to the economic stability of such communities and states.’<sup>78</sup>

Within four years of this committee statement, community stability started looking markedly different from how it had looked over the previous century.

The adverse effects of timber harvest on the old-growth-dependent northern spotted owl led to litigation by environmental groups in the Pacific Northwest, resulting in court injunctions prohibiting new timber harvest on federal lands that provided habitat for the owl.<sup>79</sup> The injunction likely contributed significantly to an eighty percent decline in timber harvest levels on federal land in the region between 1989 and 1994.<sup>80</sup>

The Forest Service established its National Rural Development Task Force in 1989.<sup>81</sup> The Task Force issued a strategic plan in 1990 signaling “maintaining timber-related employment should be a less important goal than diversifying a local economy and building

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<sup>78</sup> Schallau & Alston, *supra* note 18, at 456 (citing and quoting S. REP. NO. 99-141, at 66 (1986)).

<sup>79</sup> Jonathon Kusel et al., *Institutional Analysis in the Evaluation of the Northwest Economic Adjustment Initiative*, 10 INT’L J. ORG. THEORY & BEHAV. 476, 477 (2007).

<sup>80</sup> See TERRY L. RAETTIG & HARRIET H. CHRISTENSEN, U.S. DEP’T OF AGRIC., TIMBER HARVESTING, PROCESSING, AND EMPLOYMENT IN THE NORTHWEST ECONOMIC ADJUSTMENT INITIATIVE REGION: CHANGES AND ECONOMIC ASSISTANCE 3 (1999) (giving the percentage decrease in timber harvest from public lands).

<sup>81</sup> Sarah F. Bates, *Public Lands Communities: In Search of a Community of Values*, 14 PUB. LAND L. REV. 81, 98 (1993).

alternative sources of income and employment.”<sup>82</sup> This strategic plan included the following policy statement:

The Forest Service will provide leadership in working with rural people and communities on developing natural resource-based opportunities and enterprises that contribute to the economic and social vitality of rural communities. The Forest Service can make lasting improvements in rural America by helping people solve their local problems in ways that enhance the quality of the environment in accordance with our existing authorities.<sup>83</sup>

The National Forest-Dependent Rural Communities Economic Diversification Act of 1990<sup>84</sup> provided for establishment of “rural natural resources and economic diversification action teams” intended to provide Forest Service expertise to rural communities.<sup>85</sup> The action teams would prepare action plans “identify[ing] opportunities to promote economic diversification and enhance local economies now dependent upon National Forest System land resources.”<sup>86</sup> In 1992, Congress enacted authorization for stewardship contracting “reflect[ing] Congress’s anticipation that the stewardship contracts would . . . help build stronger relationships between the Forest Service and local communities.”<sup>87</sup> Congress authorized pilot projects under this new authority before authorizing stewardship contracting more broadly in 1999, “in order ‘to perform services to achieve land management goals for the national forests that meet local and rural community needs.’”<sup>88</sup> One of the primary legal mechanisms allowing stewardship contracting to meet local and rural community needs is the stewardship authority’s requirement that stewardship contracts “shall be selected on a best-value basis.”<sup>89</sup> Congressional legislation doesn’t define “best-value basis,” but the Forest Service interprets this term to allow for consideration of “benefits to the local community,”<sup>90</sup>

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<sup>82</sup> *Id.* at 99.

<sup>83</sup> U.S. DEP’T OF AGRIC., FOREST SERV., A STRATEGIC PLAN FOR THE 90’S: WORKING TOGETHER FOR RURAL AMERICA 5 (1990).

<sup>84</sup> Rural Revitalization Through Forestry, Pub. L. No. 101-624, § 2371, 104 Stat. 4045 (codified at 7 U.S.C. § 6601 (1994)).

<sup>85</sup> 7 U.S.C. § 6613(b) (2012).

<sup>86</sup> *Id.*

<sup>87</sup> Kimberly Hausbeck, *The Little Engine that Could: The Success of the Stewardship Contracting Authority*, 32 WM. & MARY ENVTL. L. & POL’Y REV. 33, 36 (2007).

<sup>88</sup> *Id.* at 37 (quoting Omnibus Consolidated and Emergency Appropriations Act of 1999, Pub. L. No. 105-277, § 347, 112 Stat. 2681, 2698 (1998)).

<sup>89</sup> 16 U.S.C. § 6591c(d)(1) (2012).

<sup>90</sup> U.S. Forest Service, Forest Service Handbook 2409.19, Renewable Resources Handbook, Chapter 60, Stewardship Contracting § 60.5 at 18 (2016).

in particular, “[t]he number and types of jobs created for local employment.”<sup>91</sup>

President Clinton convened a “Forest Summit” in Portland, Oregon, in April of 1993, to start resolving the forest management crisis associated with the northern spotted owl timber harvest injunctions. In July of 1993, the Forest Summit devised what came to be called the Northwest Forest Plan.<sup>92</sup> Recognizing “that the natural resource policy changes in the Pacific Northwest have significant social and economic impacts,” the Northwest Forest Plan included an economic development component called the Northwest Economic Adjustment Initiative (NWEAI).<sup>93</sup> NWEAI “was designed to provide for the immediate needs of workers and families as a result of reduced timber harvest and to address longer term community development issues,”<sup>94</sup> and “br[ought] together the rural community and economic development programs from five Federal departments and two independent agencies to provide a focused effort to mitigate the adverse impacts of the changing natural resource management policies and provide for comprehensive development regionally.”<sup>95</sup> The NWEAI was supposed to provide \$1.2 billion in federal funding over five years.<sup>96</sup>

By 1999, because of the sharp and sudden drop in federal timber harvest following successful lawsuits over the northern spotted owl and other sensitive species, National Forest timber receipts had declined by seventy percent.<sup>97</sup> At the same time, federal payments made to counties (under the 1908 law directing twenty-five percent of receipts to local governments) declined by thirty-six percent.<sup>98</sup> Congress responded with the Secure Rural Schools and Community Self-Determination Act of 2000, which was aimed at stabilizing county payments and creating employment via projects that “improve

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<sup>91</sup> *Id.* at § 63.11 at 60.

<sup>92</sup> CHRISTOPHER E. DEFOREST, U.S. DEP’T OF AGRIC., FOREST SERV., WATERSHED RESTORATION, JOBS-IN-THE-WOODS, AND COMMUNITY ASSISTANCE: REDWOOD NATIONAL PARK AND THE NORTHWEST FOREST PLAN 15 (1999).

<sup>93</sup> RAETTIG & CHRISTENSEN, *supra* note 80, at 1.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 11.

<sup>96</sup> *Id.*

<sup>97</sup> Susan Anderson et al., *The National Forest Management Act: Law of the Forest in the Year 2000*, 21 J. LAND RESOURCES & ENVTL. L. 151, 164 (2001).

<sup>98</sup> *Id.*

the maintenance of existing infrastructure,” “implement stewardship objectives that enhance forest ecosystems,” and “restore and improve land health and water quality.”<sup>99</sup> Included within the act was the Community Forest Restoration Act, which created the Collaborative Forest Restoration Program (CFRP), “a cooperative forest restoration program in New Mexico” created “to provide cost-share grants to stakeholders for experimental forest restoration projects . . . designed through a collaborative process.”<sup>100</sup> The legislation allows for up to an eighty percent federal share for these projects.<sup>101</sup> The stated purposes of the program are as follows:

- (1) to promote healthy watersheds and reduce the threat of large, high intensity wildfires, insect infestation, and disease in the forests in New Mexico;
- (2) to improve the functioning of forest ecosystems and enhance plant and wildlife biodiversity by reducing the unnaturally high number and density of small diameter trees on Federal, Tribal, State, County, and Municipal forest lands;
- (3) to improve communication and joint problem solving among individuals and groups who are interested in restoring the diversity and productivity of forested watersheds in New Mexico;
- (4) to improve the use of, or add value to, small diameter trees;
- (5) to encourage sustainable communities and sustainable forests through collaborative partnerships, whose objectives are forest restoration; and
- (6) to develop, demonstrate, and evaluate ecologically sound forest restoration techniques.<sup>102</sup>

While limited to the state of New Mexico, the CFRP represented a model of collaborative and community-based national forest governance that would become more prominent in the coming years. Key elements of this model include emphases on collaboration, removal of small-diameter timber, restoration, and reduction of the risk of uncharacteristically severe wildfires. The Secure Rural Schools and Community Self-Determination Act also “established resource advisory committees (RAC) that organized projects at the local level.”<sup>103</sup>

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<sup>99</sup> 16 U.S.C. § 7101(2)(A).

<sup>100</sup> Pub. L. 106–393 at Sec. 605(a), 114 Stat. 1626 (2000).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at § 603., 114 Stat. 1625–26.

<sup>103</sup> Michael C. Blumm & Tim Wigington, *The Oregon & California Railroad Grant Lands' Sordid Past, Contentious Present, and Uncertain Future: A Century of Conflict*, 40 B.C. ENVTL. AFF. L. REV. 1, 49 (2013).

The 2000 fire season was “one of the worst wildland fire seasons in modern history.”<sup>104</sup> Congress recognized the threat to community stability posed by forest fires in the Secure Rural Schools and Community Self-Determination Act, which “ma[de] federal funds available for homeowner education in fire-sensitive ecosystems and for county planning efforts ‘to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.’”<sup>105</sup>

The 2000 fire season also prompted President Clinton to ask the Secretary of Agriculture and the Secretary of the Interior to “prepare an overarching analysis of the wildland fire situation.”<sup>106</sup> In response, the two departments prepared a report,<sup>107</sup> along with “its accompanying budget request, congressional direction for substantial new appropriations for fire management, and several resulting action plans and agency strategies [that] have collectively become known as the National Fire Plan.”<sup>108</sup> The National Fire Plan led to a long-term fire strategy, and one of the primary objectives in the development of this strategy was to “[p]romote a collaborative, community-based approach to address wildland fire issues that recognizes the importance of making key decisions at the local level.”<sup>109</sup> This emphasis on community involvement in fire-related planning is reflected legislatively in the Healthy Forests Restoration Act of 2003,<sup>110</sup> which provides for collaboratively-written “community wildfire protection plans” (CWPPs) and prioritizes hazardous fuel reduction

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<sup>104</sup> Kate D’Ambrosio, *The Case for a Systemic Approach to Forest Health, Wildland Fire Risk, Stewardship Contracting, and Federal Procurement Policy*, 43 PUB. CONT. L.J. 145, 157–58 (2013).

<sup>105</sup> Robert B. Keiter, *The Law of Fire: Reshaping Public Land Policy in an Era of Ecology and Litigation*, 36 ENVTL. L. 301, 363 (2006) (quoting Pub. L. No. 106-393, 114 Stat. 1607, § 302(a)(5)(B)).

<sup>106</sup> Sara Elizabeth Jensen, *Policy Tools for Wildland Fire Management: Principles, Incentives, and Conflicts*, 46 NAT. RESOURCES J. 959, 966 (2006).

<sup>107</sup> U.S. DEP’T OF AGRIC. & U.S. DEP’T OF THE INTERIOR, *MANAGING THE IMPACT OF WILDFIRES OF COMMUNITIES AND THE ENVIRONMENT: A REPORT TO THE PRESIDENT IN RESPONSE TO THE WILDFIRES OF 2000* (2000), <http://www.forestsandrangelands.gov/resources/reports/documents/2001/8-20-en.pdf>.

<sup>108</sup> Keiter, *supra* note 105, at 311–12 n.55.

<sup>109</sup> PINCHOT INSTITUTE FOR CONSERVATION, *AN INTRODUCTION TO THE NATIONAL FIRE PLAN: HISTORY, STRUCTURE, AND RELEVANCE TO COMMUNITIES* 8 (2002).

<sup>110</sup> Healthy Forests Restoration Act of 2003, Pub. L. No. 108-148, 117 Stat. 1887 (2003) (codified at 16 U.S.C. §§ 6501–91).

projects that protect “at-risk communities or watersheds” or that implement CWPPs.<sup>111</sup> The act also relaxes National Environmental Policy Act (NEPA) requirements for CWPPs and for projects under the act.<sup>112</sup> CWPPs themselves are exempt from NEPA,<sup>113</sup> and while projects on national forestlands under the act are subject to NEPA analysis, the act allows for analysis of fewer alternatives than NEPA would normally require.<sup>114</sup> Additionally, the Forest Service is required to use at least fifty percent of funds allocated for hazardous fuel reduction projects for projects in the wildland-urban interface.<sup>115</sup>

The shift away from timber harvest as the nearly exclusive source of community stability (and toward restoration and fuels reduction) continued with the Collaborative Forest Landscape Restoration Act in 2009.<sup>116</sup> The Act states its purpose is to:

“encourage the collaborative, science-based ecosystem restoration of priority forest landscapes through a process that—

(1) encourages ecological, economic, and social sustainability;

(2) leverages local resources with national and private resources;

(3) facilitates the reduction of wildfire management costs, including through reestablishing natural fire regimes and reducing the risk of uncharacteristic wildfire.”<sup>117</sup>

Projects under this law must “benefit local economies by providing local employment or training opportunities.”<sup>118</sup>

### CONCLUSION

Because of its status as the largest single forest landowner in the nation, the U.S. Forest Service has, since its inception, had an outsized ability to influence the lives of people living in nearby communities. Although not as well recognized as its roles in managing timber or wildfire, the Forest Service has had longstanding legal obligations to contribute to rural community well-being—obligations that intersected with both timber and fire policies throughout the agency’s history. Forged from a Progressive Era vision

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<sup>111</sup> *Id.* § 103(a).

<sup>112</sup> *Id.* § 103(c)(1).

<sup>113</sup> *Id.* § 103(c)(1).

<sup>114</sup> *Id.* § 104(d).

<sup>115</sup> *Id.* § 103(d).

<sup>116</sup> 16 U.S.C. § 7303 (2012).

<sup>117</sup> *Id.* § 7301.

<sup>118</sup> *Id.* § 7303(b)(7).

in which trained government scientists would serve the public good better than the rapacious and migratory timber industry of the early twentieth century, the Forest Service began its tenure with explicit direction to provide not only for forest and watershed protection but also to serve the needs of local industries and communities. As the postwar years saw federal forestlands become vital sources of softwood timber for a consolidated and sophisticated timber industry, the Forest Service's role in providing for community stability became increasingly wrapped up in policies of sustained timber yield and non-declining even flow. Under this model, community stability and timber harvest stability were assumed to be one and the same.

When the agency's production-oriented timber model ground to a halt in the 1990s in response to successful lawsuits by a variety of environmental advocacy organizations, so did the midcentury model of community stability. Out of this abrupt policy shift came a new orientation towards rural communities, with emphases on collaboration, restoration, wildfire risk reduction, and the harvest of overabundant small-diameter trees rather than the larger trees traditionally favored by industry. Given that not all communities would remain wedded to a timber economy as recreational and service-oriented economic activities came to dominate much of the rural West, the Forest Service increasingly found itself expected to contribute to diverse models of rural community development with decreasing budgets and staff capacity.

Our review of community-oriented policies for the Forest Service reveals a continuous, if uneven, thread of concern and activity towards rural communities by the agency. The changing faces of the agency-community relationship are reflective of broader transformations in the agency's forest management role as well as changes in rural communities and American environmental values. While no longer as closely tied to the timber economy as they once were, many rural communities continue to be deeply affected by Forest Service management direction. Recent policy shifts toward collaboration and restoration suggest opportunities for those communities to exercise greater agency in their relationships with the Forest Service and the lands they manage.

