NATURAL RESOURCE POLICY

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Natural Resource Participation, Collaboration, and Partnerships

Chapter Highlights

This chapter was written by Kathleen McGinley, USDA Forest Service, International Institute of Tropical Forestry.

Discourage litigation, persuade your neighbor to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees, expenses, and waste of time.

—Abraham Lincoln, 1851

Coming together is a beginning, staying together is progress, and working together is success.

—Henry Ford

Never doubt that a group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has.

—Margaret Meade

The ability of people to participate in the decisions that affect their lives is a tenet of democratic governance. In the broadest sense, public participation pertains to processes by which people engage in the development and implementation of public policies and programs. Fung (2006) stated that participation serves the democratic values of legitimacy and justice and improves the effectiveness of public action. Public participation can be carried out in a variety of ways, from casting votes at the ballot box, to testifying in court, to demonstrations and protests. It is also accomplished through long-term partnerships and other collaborative arrangements that address the management of natural resources and the provisions of other public goods and services.

The ways in which people participate in natural resource decision making and management have changed considerably over the past century or so. Early decisions about public goods and services were largely made by government administrators who were entrusted to identify the common good and pursue it, generally from the top down (Beierle and Cayford 2002). Before the 1930s, citizen participation in public decisions was indirect at best and largely limited to the ballot box and demonstrations. These forms of public participation rarely represent all affected members of the public and often are inadequate in meeting the fundamental principles of democracy (Fiorino 1990). Dissatisfaction with and conflicts over top-down, technocratic approaches to public goods triggered demands for greater access to decision making and management. In turn this resulted in the development of laws, policies, and programs requiring not only participation in public decision processes but also openness and transparency in the processes themselves.

As closed processes of decision making gave way to the inclusion of a wider range of stakeholders and more open and deliberative policy-making forums, newer forms of citizen involvement based on collaboration and partnerships at local to global levels emerged. Today, citizens wield significant influence on policy, decisions, and management through participation in natural resource advisory committees, stakeholder groups, and collaborative partnerships, among many other forms of participation and involvement. These newer approaches supplement traditional participatory forms (voting, forming interest groups, demonstrating, lobbying) by directly involving the public in executive functions traditionally delegated to administrative agencies.

Citizens working together can foster practical and political support for natural resource management, reduce the propensity for conflict over resource uses, and in some cases result in better environmental outcomes (Dietz and Stern 2008). The benefits of public involvement and collaboration in natural resource decisions and management are all the more important as agency budgets stagnate and in many cases decline, as decision authority is devolved or decentralized, and as complex or "wicked" problems continue to challenge traditional management approaches (Conley and Moote 2003, Cheng 2006, Burke 2013).

Recall that chapter 11 discussed the various ways that policy may be implemented with different levels of obligation and different levels of approaches. Policies may be mandatory or voluntary and may use prescriptive, process-based, or performance-based methods (McGinley et al. 2012). Public participation, collaboration, and partnerships may be mandatory (required by a specific law or regulation) or voluntary (implemented to achieve better natural resource decisions and management). By their nature, public participation and collaboration tend to be process oriented. When they are mandatory, and if the authorized agency fails to implement them or even fails to do so acceptably, the agency may be sued to stop arbitrary and capricious actions or violations of the required processes.

This chapter details the history of public participation in natural resource decisions and activities in the United States and the slow but continual movement toward collaboration and partnerships regarding natural resources and their uses. We review the administrative and resource-specific policies and laws that prescribe participatory measures and their trajectories over time. Natural resource conflicts and processes for improving the problem situations generated by such conflict are described. We conclude with discussion of the breadth of collaborations and partnerships in the public and private sectors, as well as their associated merits and ongoing challenges.

Origins of Public Involvement and Participation

When policies, programs, and institutions were developed to address natural resources in the late 19th and early 20th centuries, civil servants were given the authority to make decisions about public goods and services on society's behalf. These policies and programs were part of broader Progressive Era reforms that began in the 1890s. Part of that reform sought to separate politics from professional administration within the government in response to widespread corruption and socioeconomic injustices associated in large part with the country's rapid pace of industrialization (Gould 2001). Social activists, politicians, and the press pushed for these reforms at all levels of government, which curbed corporate influence on policy making but also created barriers between citizens and bureaucrats—essentially limiting access for citizen input to the ballot box, public rallies, and protests (Beierle and Cayford 2002, Dietz and Stern 2008).

Progressive Era reforms continued up to the Great Depression (1929–1933). Then governmental influence on the economy and across the landscape expanded significantly with efforts to provide jobs, economic relief, recovery, and further reform, particularly under President Franklin D. Roosevelt's "New Deal" policies and programs (1933–1938). Top-down, managerial styles of decision making and governance

were the norm, but access to policy development and implementation slowly opened to individuals and groups as these policies and programs were put into place.

For example, groups were organized to become engaged in the design and operation of jobs programs like the Civilian Conservation Corps and the Works Progress Administration. Likewise, organized groups of farmers and local citizens participated in forming the Tennessee Valley Authority, which was created to provide economic development, flood control, electricity generation, and other objectives for the Tennessee Valley—a region that had been particularly affected by the Great Depression. Even so, many people living in the region known as the Land between the Lakes were forced to leave their land so that dams and reservoirs could be built. Although these people were compensated for these takings, some analysts have suggested that consultation processes were largely superficial or insincere (Kirkendall 1968, Smith 1971).

While the public slowly gained access to decision-making processes in the early 20th century, rules or guidelines for fair and effective participation did not exist and citizen participants sometimes were manipulated to create the appearance of public support (Dietz and Stern 2008). Nevertheless, early experiences with citizen participation in public decisions fueled demands for standardized and legitimate access to the policy process that continued into the 21st century. Today, public involvement in natural resource decisions and management emanates from an expansive body of administrative, environmental, and natural resource statutes, regulations and other policy directives, which are identified in Box 16-1 and described in detail in the remainder of this chapter.

Box 16-1 Statutes with Public Participation Requirements Affecting Natural Resources in the United States, with Common Acronyms

- Administrative Procedures Act of 1946 (APA)
- Freedom of Information Act of 1966 (FOIA)
- National Environmental Policy Act of 1969 (NEPA)
- Federal Advisory Committee Act of 1972 (FACA)
- Endangered Species Act of 1973 (ESA)
- Forest and Rangelands Renewable Resources Planning Act of 1974 (RPA)
- Federal Land Policy and Management Act of 1976 (FLPMA)
- Government in the Sunshine Act of 1976
- National Forest Management Act of 1976 (NFMA)
- Clean Water Act Amendments of 1987 (CWA)
- Negotiated Rulemaking Act of 1989
- Administrative Dispute Resolution Act of 1990 (ADRA)
- Clean Air Act 1990 (CAA)
- Healthy Forests Restoration Act of 2003 (HFRA)
- Collaborative Forest Landscape Restoration Act of 2009 (CFLRP)

Policies for Public Participation in Federal Government Decisions

Open Processes and Information

Legally mandated forms of public participation originated with the Administrative Procedures Act (APA) in 1946. It was the first statutory rule of its kind to systematize and open the federal rule-making process. The APA required federal agencies to keep the public informed of their organization, procedures, and rules, as well as provide them with opportunities for public comment and requesting judicial review of the rule-making process. Specifically, the APA granted citizens "the right to petition for the issuance, amendment, or repeal of a federal rule" (5 U.S.C. §551 et seq.).

In its implementation, the APA formally opened governmental decision making to public access and participation for the first time. However, at the time of enactment, professional discretion in public sector decisions and administration was the norm and remained as such for quite some time thereafter. Over the years, demands for greater access to government decisions, rule making, and activities increased as the public declared its "right to know" and demanded greater transparency and openness in governmental organizations and their decision processes.

Congress eventually responded to public demands for greater access and participation in decision making, and in the early 1960s it conducted a number of hearings on the need for enhanced public disclosure (Ginsberg 2014). Then, in 1966—twenty years after the passage of the APA—Congress passed the Freedom of Information Act (FOIA). It affirms that "any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure" through exemptions related to information that would be harmful to governmental or private interests or through exclusions related to law enforcement and national security records (5 U.S.C. § 552).

Together APA and FOIA continue to govern all federal regulatory proceedings and the public's "right to know." Since their establishment, most states also have passed laws, rules, and administrative directives that specifically require public access to state-level decisions and information about public goods and services. Today, all states have open record laws and 49 states have open meeting laws (Hibbard and Ellefson 2005). Over time, APA, FOIA, and their state-level equivalents have substantially influenced public policy in the United States by providing access to the regulatory process and safeguarding citizens' democratic rights of due process (Nylander 2006).

Undoubtedly, APA and FOIA did much to open governmental processes to the public. Yet, a top-down, "managerial" model of decision making remained the norm long after these two laws were enacted. Over time, this approach to decisions about public goods and services resulted in mounting gridlock, conflict, and distrust, particularly as issues involving public resources became ever more complex, crossing political, biophysical, and social boundaries, and as citizens increasingly bore the negative effects from decisions imposed on them by government and/or industry (Vandermeer 1996, Murdock and Sexton 1999).

Although open processes and information sharing have become more common, public agencies and officials still do resist public participation and open records requirements. The decide-announce-defend (DAD) model of policy (Hendry 2004) mentioned in chapter 2 remains a common approach to making decisions about public goods and

services behind closed doors. And agencies still make many decisions without informing the public, such as for ubiquitous development and business plans that materialize without prior informed consent. In addition, federal and state agencies often actively oppose release of information through FOIA or open records acts, forcing requestors such as the media, environmental advocates, and others to go to court, typically at great expense, to obtain such information. So, while open record laws reflect society's desire to restrain government agency autocracy, they do not guarantee agency or official compliance.

Advisory Committees

As demands for greater and more meaningful access to decision making increased, so too did the body of law relating to public involvement and opening access to the public policy processes. For example, in 1972 Congress passed the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), acknowledging "the merits of advisory committees to acquire viewpoints from business, academic, governmental, and other interests" (Ginsberg 2009). FACA was prompted in part by the prevalence of closed committees and interest groups engaging with government at the time and continues to govern federal committees today. Specifically, FACA regulates how the federal government interacts with outsiders, formalizing the process of advice and counsel and imposing various procedural requirements on groups from which advice and counsel are sought. It mandates structural and operational requirements for advisory committees, including openness, transparency, and balance among public and private interests associated with either the issue at hand or the involved agency. Ultimately, FACA aims to strengthen the impartiality of citizen and stakeholder involvement in federal-level decision making to provide more balanced opportunities for individuals and interest groups to influence the final decisions.

In fiscal year 2014, FACA guidelines governed the operation and oversight of 989 active federal advisory committees with a total of 68,179 members and a total annual operating cost of more than $334 million (Ginsberg 2015). Of these committees, 559 (56.5%) were nondiscretionary (i.e., created by Congress [515] or the President [44]) and 431 (43.5%) were discretionary (i.e., created by agency authority [241] or by law [190]). The Department of Health and Human Services operated the most federal advisory committees (264), followed by the Department of Agriculture (166), of which about 80% were operated by the US Forest Service, and the Department of the Interior (113). Federal advisory committees influence natural resource decisions through a variety of means, including resource advisement and management, rule making, and scientific oversight. In fiscal year 2011, for example, the US Forest Service worked with 141 FACA committees at a cost of $5.3 million; the Interior Department worked with 113 FACA committees at a cost of $8.5 million; and the US Environmental Protection Agency worked with 22 FACA committees at a cost of $12.3 million (GSA 2015). Examples of FACA committees focused on natural resources and services include the following:

- Recreation Resource Advisory Committees are required under the Federal Land Recreation Enhancement Act, which gives the Secretaries of Agriculture and Interior authority to establish, modify, charge, and collect recreation fees on public lands.

- Federal Advisory Committee on Climate Change and Natural Resource Science, which advises the Secretary of the Interior on the establishment and operations of the National Climate Change and Wildlife Science Center and Regional Climate Science Centers. The Committee is composed of 25 members that represent federal agencies; tribal, state, and local governments; nongovernment organizations; academic institutions; and the private sector.
- National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule, which provides advice and recommendations on the implementation of the regulations for implementing the National Forest Management Act (now widely known as the "planning rule") that guides the development, revision, and amendment of Forest Service land and resource management plans. The committee is comprised of 21 members who represent a broad range of interests related to management of National Forest System lands and geographically diverse locations and communities.

Environmental, Natural Resource, and Land Management Policies with Public Participation Requirements

While several administrative rules had increased citizen access to public policy processes by the mid-20th century, at the same time environmental issues and concerns were rising to the forefront. Population growth and urban development drove demands for public services and consequent resource scarcities, which fueled increasingly contentious debates and confrontational politics over natural resources and their uses. These conflicts exacerbated the usual tensions between agency expertise and accountability to the public, heightening skepticism of government's capacity to adequately identify the common good in complex social-ecological systems (Beierle and Cayford 2002). Moreover, an increasing number of environmental issues were coming to be seen as "wicked" problems that not only defied resolution, but for which specific criteria for reaching resolution were elusive (Fischer 1993).

By the 1960s, many people had begun to seriously question how well government protected their interests. As noted in chapter 1, some citizens and groups favored individual rights while others favored collective action. Despite these differences, many demanded greater government accountability, greater involvement in public decisions, and greater attention to long-standing problems of conflict and mistrust, particularly when it came to issues over natural resources and their uses. As a result, most of the major environmental statutes of the 1970s were created with provisions for public review and opportunities for appeal and litigation. These provisions ultimately gave individuals and interest groups more bargaining rights with industry and eroded some of the professional autonomy long held by government agents and bureaucrats (Coglianese 1999).

Environmental Policies and Laws

Direct access to environmental policy and decision making first was granted through the National Environmental Policy Act (NEPA) in 1969. As noted in previous chapters, NEPA was spurred by increasing tensions over environmental quality and concomitant demands for greater access to and accountability of government actors and organizations.

Awareness of environmental issues grew significantly after the publication of Rachel Carson's (1962) *Silent Spring*. Then, a major oil spill off the coast of Santa Barbara, California, in 1969 was the trigger mechanism leading to NEPA enactment (Easton 1972).

NEPA is the cornerstone of US environmental laws. It set policy and goals to

> . . . encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation. (42 U.S.C. § 4321)

Its overarching aim is to improve the quality of governmental decision making through procedural requirements intended to result in the identification of actions that meet agreed goals and objectives and that reduce unintended consequences to society and the environment (see chapter 13).

In practice, NEPA establishes an interdisciplinary approach to environmental planning and decision making that considers environmental factors alongside economic and other factors and utilizes the "best available scientific information." It prescribes provisions for public participation through opportunities for review, comment, input, and appeal of governmental decisions. With specific and limited exceptions, all federal agencies must comply with NEPA on a wide range of activities, including federal land management and development, federal construction projects, and federal approval of nonfederal activities associated with federal grants, licenses, and permits.

Since its establishment, NEPA has been instrumental in institutionalizing public participation in environmental decisions made by the federal government, though it has not been without its challenges. For example, during its initial implementation, public participation often occurred so late in the decision-making process that the selection of project alternatives or components was largely determined prior to public input, which then frequently led to decision appeals and litigation (Ortolano and Shepherd 1995). Public participation under NEPA also was often (mis)used as a "public relations" opportunity in which a predetermined decision was promoted or defended, or in which public demands for participation were placated but ultimately dismissed in the final decision (Shepherd and Bowler 1997). Eventually, NEPA amendments and subsequent directives and guidelines bolstered requirements for early and recurrent public participation and did much to strengthen public access to and input on federal-level environmental planning and decision making.

Since the enactment of NEPA in 1969, virtually every important piece of environmental legislation at national and subnational levels has incorporated requirements for public participation (Creighton 2005). For example, the Clean Water Act (CWA) of 1987 and the Clean Air Act (CAA) of 1990—which give the federal government significant authority to impose national standards for environmental protection everywhere, regardless of land ownership—require public participation as a means to better environmental decisions (Fischer and Forester 1993, Dietz and Sterner 2008). The CWA and CAA also include provisions requiring public input and involvement in decision processes, as well as options for the public to appeal decisions and activities that affect society and/or the environment.

Additionally, at least 15 states have enacted state environmental policy acts largely reflecting NEPA in terms of public participation requirements, and several

more states have statutes establishing environmental review procedures for specific activities or activities in specific areas that include public comment and review requirements (see chapter 13). These state requirements, however, vary considerably in their rigor and implementation.

Natural Resource and Land Management Policies and Laws

Numerous laws regarding natural resources and public land management also incorporated public participation mandates in the years following NEPA. This includes the Federal Land Policy and Management Act and National Forest Management Act (see chapter 12) and the Endangered Species Act (ESA) (see chapter 14), all highlighted below.

ESA was passed in 1973 to identify, protect, and recover threatened and endangered (T&E) species. ESA clearly stipulates that identification of species to be protected (i.e., species listing) should be based solely on scientific evidence and information. However, the law and later amendments also authorize public participation through open meetings and records related to species listings and management decisions; availability of endangered species information to the public; and opportunities for the public to comment on listings and management decisions, to propose species listings, and to appeal and litigate related decisions (16 U.S.C. 1531-1536).

The Federal Land Policy and Management Act (FLPMA) of 1976 governs the administration of the 248 million acres of public lands overseen by the Bureau of Land Management. It emphasizes the importance of scientific information in planning and management activities, but it also requires public involvement in land management and decision making. FLPMA defines public involvement as

> the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance. (43 U.S.C. 1702 Sec. 103)

The National Forest Management Act (NFMA) of 1976 governs the administration of the 193 million acres of National Forest System lands. NFMA amended the Forest and Rangeland Renewable Resources Act of 1974 (RPA), mandating a systematic and interdisciplinary approach to forest planning and management of national forests and the development of regulations "under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of land management plans" (16 U.S.C. 1604 [g]). NFMA extended the public's role in forest-related decisions by establishing a participatory planning process for resource allocation decisions associated with national forests with requisite opportunities for citizen comment on national forest land and resource management plans and procedures for appealing or litigating administrative decisions.

Technocratic versus Democratic Decision Making

Legislatively mandated forms of public participation in environmental, natural resource, and land management decisions, including public notice and comment periods, public hearings, appeals processes, and negotiated rule making were intended in part to enhance the democratic process and government responsiveness to local and

other stakeholder concerns. However, when passed, NEPA, ESA, NFMA and other similar laws maintained scientific information and administrative discretion as the prominent poles of power in policy and decision making (Beierle and Cayford 2002, Dietz and Stern 2008). For example, as noted by Czech and Krausman (2001), the ESA protects T&E species but does so with a technocratic program.

Science was considered by many to be the key to solving environmental problems when most of these laws were passed. Accordingly, agency administrators were designated with the singular authority to determine optimal solutions based on the best available scientific information (Fine and Owen 2005). This technocratic approach to decision making ultimately seeks efficiencies in the system. Yet, associated practices can conflict with democratic ideals of accountability, transparency, and openness, particularly when addressing such complex, value-laden issues as those related to the environment and natural resources (Beierle 1998).

Conflicts and Conflict Management

Open-records laws and broad mandates for public participation were prompted by substantial conflicts that were not being resolved by unilateral agency action, pervasive community involvement, or traditional adversarial methods, even if the conflict at hand had expanded to national prominence. Recurring issues eventually led to calls for conflict resolution as a collaborative process that involves many stakeholders in solving environmental and other problems (Daniels and Walker 2001). These efforts were initially termed conflict resolution approaches but have since been more appropriately termed conflict management approaches, because many "wicked" natural resource problems are never entirely resolved. This section examines two broad factors that have prompted conflict management—environmental justice and litigation—and then addresses how contemporary conflict management is applied in natural resource situations.

Environmental (In)justice

Although policies, laws, and programs addressing environmental and social concerns expanded dramatically towards the end of 20th century, problems persisted. While related issues were found across the country, by the 1980s evidence emerged demonstrating strong links between the location of hazardous waste facilities and poor and minority neighborhoods (see, e.g., Correa Bernier, n.d.). Such findings brought together activists from the civil rights and environmental movements and eventually led to the establishment of the Environmental Justice movement. According to the EPA (2015), this movement essentially seeks "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

Environmental injustices gained attention on a nationwide scale with the First National People of Color Environmental Leadership Summit in 1991. By 1992, President George H. W. Bush had established an Environmental Equity Working Group focused on communities living near hazardous waste sites. Then, in 1994, President Bill Clinton issued Executive Order 12898 (Federal Actions to Address Environmental Jus-

tice in Minority Populations and Low-Income Populations), directing federal agencies to incorporate environmental justice in the federal decision-making process and integrate related principles into their core missions. The order specifically recognized the importance of public participation and other procedures under NEPA to identify and address environmental justice concerns (EPA 2015). It remains in effect today, and related policies and procedures are pervasive—on paper, at least—in most federal agencies.

While the environmental justice movement originally focused on alleviating the environmental burdens borne by poor and minority communities, including American Indians, a more recent focus has been on ensuring their rights to environmental benefits, such as accessible parks and other open spaces, and clean air and water near where they live (Getches and Pellow 2002). Bryner and Kenney (2002) argue that environmental inequities go beyond the burdens of hazardous waste siting that initially spurred this movement, particularly as the natural environment and the benefits that it provides are critical to a sustainable society. They go on to say that failure to provide equitable access to natural resources and/or their degradation through human development and use can also constitute an injustice. Ultimately, environmental justice rests on the ability of affected communities to effectively communicate their concerns and to participate in policy processes, as well as the ability of governing bodies to ensure that individual and community needs are addressed and disenfranchised groups' interests are protected (Bryner and Kenney 2002).

Litigation

While public participation requirements in administrative, environmental, natural resource, and land management laws before the 1970s opened policy processes to the public, in many places divisive issues continued to produce conflicting interests and policy and program impasses. Furthermore, evolving participatory processes did not always satisfy all stakeholders or result in the participation of all affected members of the public. Consequently, appeals and litigation over environmental decisions and actions escalated through the 1980s and 1990s.

Opportunities to question decision alternatives, to appeal decisions once they are made, and to contest decisions in the courts were standard requirements in the new environmental, natural resource, and land management laws (Creighton 2005). Challenges, appeals, and litigation can be used by individuals or groups without access to or excluded from the decision process, as well as by those who have participated in the process but have become dissatisfied or deterred somewhere along the way. Additionally, some interests and groups abstain from participatory processes or reject them altogether and simply seem to favor appeals and litigation as their best chance of influencing decisions and outcomes (Gray 1989, Burke 2013).

Prior to the 1970s, the courts had little bearing on natural resource and land management decisions (Coggins et al. 2001). As options to participate in and contest decisions and actions increased under NEPA and other policies requiring public involvement, agency decision making came under greater scrutiny and created opportunities for litigation in the court system, which remains a prominent strategy today for those who disagree with agency decisions. For example, between 2001 and 2010, of the 2,100 environmental impact statements (EISs) filed by three federal land management agencies, 28% were challenged through litigation (Table 16-1, Figure 16-1).

Table 16-1 Environmental Impact Statements (EIS) Filed by Agency, Cases Filed against Filed EISs, and Injunctions or Remands Set against Filed EISs by Agency, 2001–2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Bureau of Land Management										
Filed EISs	24	33	47	33	43	42	52	48	21	57
Cases Filed	20	18	15	19	12	21	7	14	2	17
Injunctions/Remands	2	1	1	5	4	14	8	3	2	5
National Park Service										
Filed EISs	31	22	41	35	43	34	26	25	29	27
Cases Filed	7	4	1	4	4	0	2	6	0	2
Injunctions/Remands	2	1	1	2	0	3	1	1	0	2
US Forest Service										
Filed EISs	119	112	189	174	153	144	139	124	127	106
Cases Filed	40	40	65	76	50	30	40	46	ND	18
Injunctions/Remands	15	14	14	12	26	33	23	13	ND	0

Source: NEPA.gov 2016

Illustration

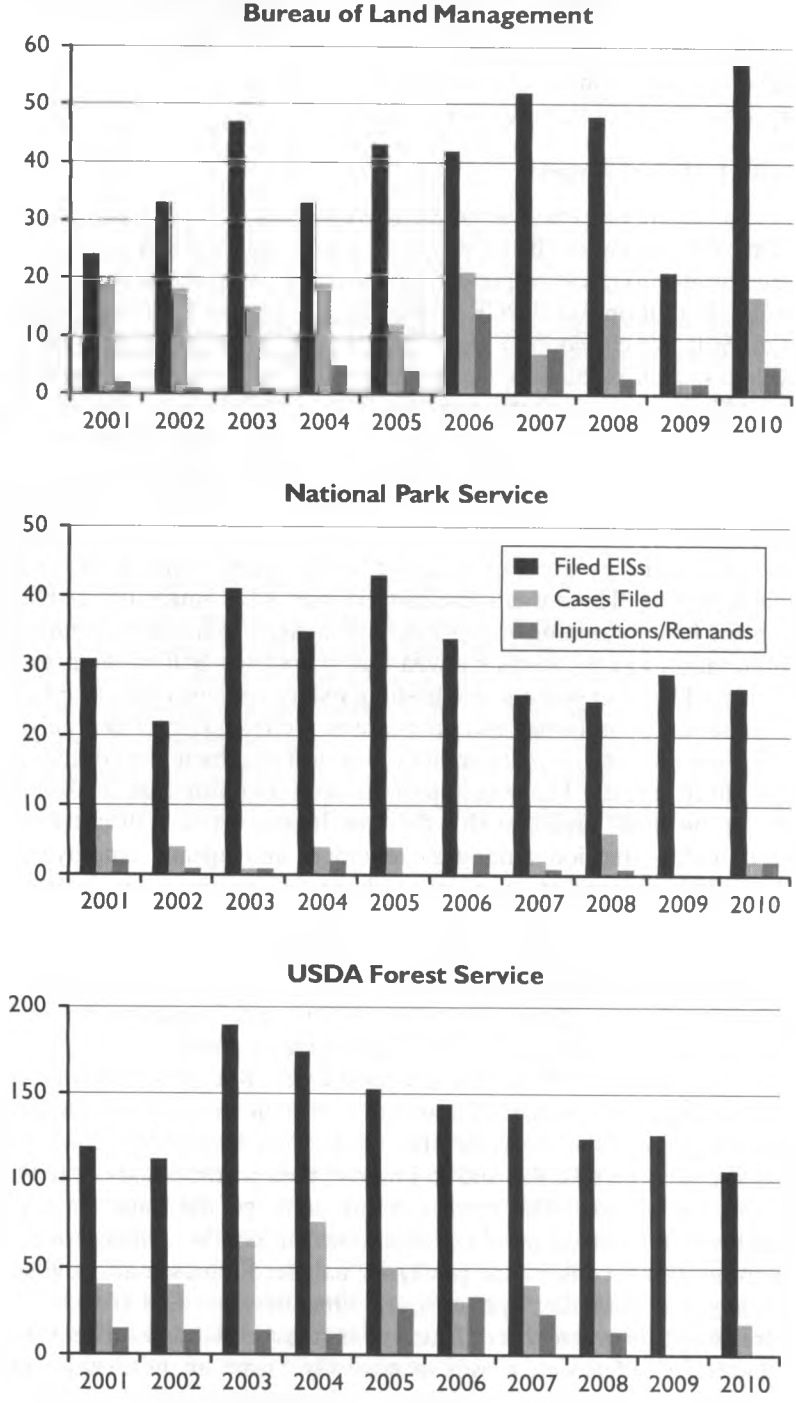
Litigation and the US Forest Service

The US Forest Service prepares more environmental analyses under NEPA than any other US federal agency, including about 140 environmental impact statements per year. Even though only a small percentage of these analyses are contested in court, the Forest Service generally is the agency with the highest number of NEPA-related cases filed against it in any given year (CEQ 2016). Though the agency is required to provide opportunities for participation in and appeal of land and resource planning and management decisions, these processes are not always adequate for managing conflicts or disagreements, particularly in terms of land management alternatives and practices.

Researchers identified 1,160 federal cases challenging a land management decision by the Forest Service from 1989 to 2008 (Miner et al. 2014). The litigation most often related to management of live vegetation, such as logging (24%), management of dead vegetation, such as post-fire salvage logging (8%), and forest planning (5%). The most frequent basis for litigation was NEPA analysis. The majority of litigants suing the agency sought decreased resource use or impacts in national forests, such as less logging or less recreation, although about one-fourth of the litigants sought greater resource use, such as more logging or more recreation opportunities (Keele et al. 2006).

Of the 1,160 cases examined by Miner et al. (2014), the Forest Service won slightly more (53.8%) cases than it either lost (23.3%) or settled (22.9%). There were more lawsuits in the Pacific Northwest (Oregon and Washington) than in any other Forest Service region. Overall, there were fluctuations in the ratio of Forest Service wins and losses over the 20-year period from 1989 to 2008. However, the settlement of cases out of court generally increased over time, indicating a trend toward an increase in court-ordered mediation or other alternative dispute resolution practices for challenges to agency land and resource management decisions.

Figure 16-1 Environmental Impact Statements (EIS) Filed by Agency, Cases Filed against Filed EISs, and Injunctions or Remands Set against Filed EISs by Agency, 2001–2010



Source: NEPA.gov 2016

With 36% of the challenges, BLM faced more litigation than the Forest Service (29%) or National Park Service (10%). Of these challenges, more than a third resulted in a court-issued injunction or remand against the agency (BLM, 31%, Forest Service, 37%, National Park Service, 43%) (see Table 16-1, Figure 16-1). However, federal agencies conduct countless environmental analyses under NEPA in any given year, and relatively few of them are contested in court.

Conflict Management

As litigation of natural resource and other environmental decisions increased, so too did calls for new and better ways to reduce conflicts and manage them to reach better outcomes. Congress responded in part by passing the Environmental Policy and Conflict Resolution Act (EPCRA) of 1988 and the Administrative Dispute Resolution Act of 1990, which required more frequent and effective use of conflict management processes such as mediation, facilitated negotiation, and other alternative dispute resolution (ADR) methods throughout the federal government. Survey research revealed that by 1995 six federal agencies involved in natural resource management and regulation had not established ADR policies or programs. Although 64% of the 1,967 survey respondents said they were willing to try ADR methods, they identified potential barriers limiting the adoption of such methods—namely, that they would interfere with managerial authority, roles of trained natural resource specialists, and science-based decision making. There was some concern that ADR might not be effective, and that employees had no training or experience with ADR techniques (Shumaker et al. 1997). ADR responses in the states showed that more than half of them passed legislation requiring ADR processes and establishing related organizations (see Haring, n.d.).

Subsequent authorities and guidance at the federal level demonstrated a gradual shift from a focus on *ex post* conflict resolution to a focus on conflict prevention and collaboration *a priori*. This was in part due to recognition that environmental conflicts often are "wicked" problems that defy resolution, yet such disputes need to be managed to reduce tension among stakeholders and agency employees. Daniels and Walker (2001) identified practical methods for improving such problem situations through what they called collaborative learning. Meanwhile Congress established new policies, including the reenacted Administrative Dispute Resolution Act of 1996; Executive Order 12988 (Civil Justice Reform) of 1996; the Environmental Policy and Conflict Resolution Advancement Act of 2003; and Executive Order 13352 (Facilitation of Cooperative Conservation) of 2004, among others.

In particular, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued a joint policy memorandum in 2005 directing all federal agencies to increase their use of environmental conflict resolution as required under the EPCRA and to improve their institutional capacity for collaborative problem solving. The memorandum outlined the basic principles of federal engagement in environmental collaboration and conflict management, including the need for informed consent and processes, balanced representation, adequate capacity, autonomy, accountability, openness, and timeliness (see Box 16-2).

Initial efforts to resolve conflicts and increase collaboration between federal agencies and stakeholders were mostly reactive. Over time, an increasing number of related initiatives moved away from top-down technocratic approaches toward more proac-

Box 16-2 Basic Principles for Agency Engagement in Environmental Conflict Management and Collaborative Problem Solving:

- **Informed Commitment**—Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mind-set to new perspectives.
- **Balanced Representation**—Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives.
- **Group Autonomy**—Engage with all participants in the developing and governing process, including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties.
- **Informed Process**—Seek agreement on how to share, test, and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants.
- **Accountability**—Participate in the process directly, fully, and in good faith; be accountable to the process, all participants, and the public.
- **Openness**—Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements, and constraints; uphold confidentiality rules and agreements as required for particular proceedings.
- **Timeliness**—Ensure timely decisions and outcomes.
- **Implementation**—Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement.

Source: OMB and CEQ 2005

tive ways of engaging stakeholders and incorporating local-level, collaborative, flexible decision-making processes. This shift is reflected, in part, in subsequent guidance by the OMB and CEQ explicitly directing federal agencies to use "appropriate and effective up-front environmental collaboration to minimize or prevent conflict and strengthen focus on environmental conflict resolution" and related reporting requirements for all federal agencies (OMB and CEQ 2012).

Environmental collaboration and conflict management processes and practices in the federal government are applied most frequently in the areas of compliance, enforcement, planning, monitoring, and implementation of agreements. They also are used in policy development and rule making. Regulatory agencies such as the EPA primarily use them in enforcement cases, while land and natural resource management agencies use them mainly in planning and policy development. Measured benefits of these processes and practices include "avoided litigation costs, expedited work on projects, innovative, cost-effective solutions, and improved working relationships among stakeholders" (USIECR 2012). Even when agreement cannot be reached, these processes and practices often significantly reduce the scope of issues that end up in litigation.

Collaboration and Partnerships

By the end of the 20th century, opportunities for public participation in decision-making processes were embedded firmly in the law of the land and progressively incorporated into practice. Public agencies were under rising pressure to be more responsive to members of the community they were regulating and less rigid in their regulatory approach (Doremus 1999). Consequently, top-down decision making was giving way to the consideration of multiple values and worldviews and efforts to build consensus.

As public participation evolved to provide substance to policies in addition to accountability from policy makers (Beierle and Cayford 2002), government shifted toward "governance" in many cases and places. Public, private, and civil society roles reorganized and restructured, interacting and engaging in altered and new ways, leading to more involved and enduring collaborative arrangements and formal partnerships (Wondolleck and Yaffee 2000, Bulkeley and Mol 2003, Conley and Moote 2003). While conflicts certainly have persisted into the 21st century, environmental, natural resource, and land management decisions increasingly encompass complex forms of engagement in which consensus-based negotiations, collaborations, and partnerships take place across the landscape and in both the public and private sectors.

Forest Collaboration Mandates

A number of federal laws passed in the 21st century have included specific requirements for public participation and collaboration. Those associated with the forest sector provide useful examples of mandated cooperation in practice.

Healthy Forests Restoration Act of 2003

When he became president in 2001, one of George W. Bush's major conservation priorities was to reverse some of the previous (Clinton) administration's actions. One concern was reversing the decline in the quantity of timber sold from federal forests in the western states; another was addressing the increasing size of wildfires on western federal lands; yet another was setting a more utilitarian focus for federal lands. In 2003, President Bush helped push the Healthy Forests Restoration Act (HFRA) though Congress. HFRA incorporated various means to increase active forest management, timber harvesting, and thinning on federal lands, including reduced environmental laws and more public participation, which were proposed to give more local and utilitarian interests influence in forest decision making.

HFRA applies to lands administered by the Forest Service, and BLM and has a stated purpose to enhance the protection of communities, watersheds, and other public lands at risk from catastrophic fires. HFRA specifies several ways to reduce wildfire risk including ecological restoration, forest disease and pest management, and biomass harvest and utilization. Between 2003 and 2013 the Departments of Agriculture and the Interior treated nearly 50 million acres of federal lands in danger of wildfire risk through prescribed fire, mechanical means, and other activities, more than half of which occurred in the wildland–urban interface.

HFRA also specifically calls for "a collaborative process of planning, prioritizing, and implementing hazardous fuel reduction projects" and prioritizes related funding to communities that

have completed Community Wildfire Protection Plans (CWPPs) (16 U.S.C. §6501). CWPPs must be developed collaboratively and inclusive of all relevant levels of government, tribes, and interested members of the public. Approximately 17,060 at-risk communities were covered by CWPPs in fiscal year 2013, accounting for 3% of the 72,681 at-risk communities across the country, and up from 9,389 communities covered by CWPPs in 2011 (NASF 2013). The effectiveness of CWPPs has been attributed in part to the fact that they permit the development of plans that "fit local social and ecological contexts at a scale where they can make something happen" (Jakes et al. 2011).

Collaborative Forest Landscape Restoration Program

As part of the Omnibus Public Lands Act of 2009, Congress established the Collaborative Forest Landscape Restoration Program (CFLRP) to "encourage the collaborative, science-based ecosystem restoration of priority forest landscapes" (Public Law No. 111-11, title IV, 123 Stat. 991). The program promotes healthy forests, reliable wood supply, economic opportunity, and reduced emergency wildfire costs and risks through landscape-scale restoration projects (greater than or equal to 50,000 acres) comprised primarily of National Forest System lands for a 10-year period and in partnership with local communities and organizations. As observed by Bixler (2014),

> The CFLRP is part of a longer-term shift in National Forest policy that has increasingly emphasized large-scale, collaborative, and adaptive planning [and] is one experiment in the emerging suite of new governance approaches that attempt to implement management activities in ways that are more flexible and adaptive, less hierarchical, and emphasize the role of collaboration and communities in setting goals and objectives on multiple-use landscapes.

As of October 2014, CFLRP supported 23 projects across 14 states that had created an average of 4,360 local community jobs per year and generated more than $661 million in total local income, treated more than 1.45 million acres to reduce the risk of mega-fire, restored 703 miles of fish habitat, improved more than 1.3 million acres of wildlife habitat, and sold more than 1.2 billion board feet of timber (FS 2015).

National Forest System Land Management Planning Rule

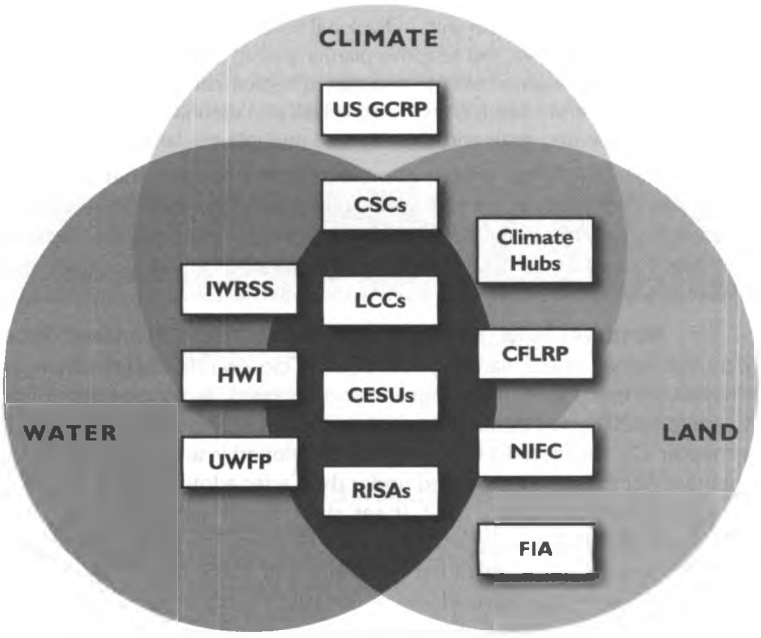
The NFS Land Management Planning Rule also has closely reflected the changing politics and priorities that accompany shifts from conservation-oriented Democratic administrations (Carter, Clinton, Obama) to utilitarian-minded Republican administrations (Reagan, G. H. W. Bush, G. W. Bush; see chapter 12). The first NFS Planning Rule developed in accordance with the National Forest Management Act (NFMA) was created under the Carter administration but was released during the Reagan administration in 1982. It set strict biodiversity, public process, and timber harvest guidelines, which were in effect for almost 20 years. The George W. Bush administration developed and released more utilitarian regulations in 2005, but these were promptly challenged in court, and were then revised and re-released shortly before he left office in 2008. The NFS planning rule revised under G. W. Bush was put on hold by the Obama administration in 2009, returning NFS planning guidelines to the 1982 contents until a new NFS Planning Rule was released in 2012.

The 2012 NFS Planning Rule further codifies the importance of active public engagement in the management of national forests. The rule itself was developed through a collaborative process and refined by nearly 300,000 public comments received in response to the proposed rule and draft EIS (FS 2013). It requires public involvement throughout the planning process via public consultation and collaboration, including cooperatively developed landscape and land management goals, plans, projects, and monitoring (36 CFR §219.12). Public outreach, participation, and collaboration with adjacent agencies and landowners and with interested and affected individuals and communities are requisite activities under the rule and its directives.

Partnerships as a Precursor and Product of Collaboration

The conservation and management of public goods and services in the United States has benefited from a long history of partnership development among public entities, civil society, and the private sector (Seekamp and Cerveny 2010). Partnerships may evolve from collaboration or lead to it. They can involve a range of individuals, communities, businesses, and organizations that work together toward a shared purpose and common goals. Partnerships can be used to develop policies and programs with coordinated aims, strategies, and instruments to produce comprehensive improvements to complex environmental problems (Mowen and Kerstetter 2006).

Figure 16-2 Selected Key Partnerships and Programs Promoted by the US Federal Government that Directly Support Forest Sustainability



IWRSS	NOAA Integrated Water Resources Science and Services
HWI	EPA Healthy Watershed Initiative
UWFP	Urban Waters Federal Partnership
US GCRP	US Global Change Research Program
CSCs	USFWS Climate Science Centers
LCCs	USFWS Landscape Conservation Cooperatives
CESUs	NPS Cooperative Ecosystems Studies Units
RISAs	NOAA Regional Integrated Sciences and Assessments
Climate Hubs	USDA Regional Hubs for Risk Adaptation and Mitigation to Climate Change
CFLRP	Collaborative Forest Land Restoration Program
NIFC	National Interagency Fire Center
FIA	USFS Forest Inventory and Analysis

Source: McGinley 2016

Increasing use of partnerships by the public sector in the past decade or so has been concomitant with efforts to downsize government, do more with less, and enhance community participation and transparency in governmental decision making (Parkins and Mitchell 2005, Wedell et al. 2008, Seekamp and Cerveny 2010). Their expansion also reflects the rise in grassroots environmental movements that seek greater involvement in and impact on environmental, natural resource, land management, and other forms of decision making (Weber 1998, McCreary et al. 2012).

Today, public-private partnerships increasingly evolve around cross-boundary issues such as water conservation, land use, and climate change and are found at local to international levels (Figure 16-2 on p. 476). For example, in 2015 multiple federal agencies worked together and with other levels of government, civil society, and the private sector to advance climate change science, mitigation, and adaptation (e.g., US Global Change Research Program, USDA Climate Hubs); landscape science and conservation (e.g., Cooperative Ecosystem Studies Units, Landscape Conservation Cooperatives, and Regional Integrated Sciences and Assessments); wildland fire management and response (e.g., National Interagency Fire Center); and water conservation and watershed protection (e.g., Integrated Water Resources Sciences and Services Consortium, Urban Waters Federal Partnership, and Healthy Watershed Initiative).

Private-sector organizations also participate in and pursue partnerships around environmental issues and natural resources. They seek out these relationships as a means not only to reduce business and reputational risks but also to increase the long-term positive impacts of private-sector development (Jenkins and ten Kate 2006). For example, water utilities across the country are developing partnerships with landowners and managers to promote improvements in forest and watershed conditions, recognizing the importance of healthy forests and watersheds to water supply and quality and the interdependence of multiple actors and factors for their long-term maintenance.

Collaborating to Save the Greater Sage-Grouse and Avoid ESA Listing

The greater sage-grouse (*Centrocercus urophasianus*) is a chicken-sized rangeland bird found in the western United States and parts of southern Canada, known primarily for the males' spectacular mating display. As mentioned in the chapter 14 illustration, sage-grouse populations have been in decline since the 1960s, principally due to habitat changes, loss, and fragmentation from energy development, wildfire, and the spread of invasive species. In 2005 advocacy groups petitioned the US Fish and Wildlife Service (FWS) to list the greater sage-grouse under the ESA. The FWS did not have sufficient information in 2005 to make a decision.

A subsequent lawsuit, filed by the Western Watersheds Project, led the FWS in 2010 to decide that a listing was "warranted-but-precluded" across its entire US range, which covers parts of eleven states. The warranted-but-precluded determination essentially put the sage grouse on a waiting list for federal protection, behind yet-to-be-listed species that were in higher-priority categories. Subsequent litigation required the FWS to either list the species by September 30, 2015, or decide listing was not warranted (FWS 2010).

(continued)

While sage-grouse conservation efforts were fairly widespread by the early 2000s, the 2015 deadline for a final decision under the ESA prompted the BLM and Forest Service, which oversee more than half of the birds' range in the United States, to revise their land management plans to enhance species protection and increase habitat conservation and restoration. Other federal agencies also amended their policies and practices to support habitat and species conservation. For example, the Natural Resource Conservation Service developed the Sage-Grouse Initiative to direct a portion of Farm Bill conservation program funding to reduce threats to the birds and their habitats through enhanced sustainability and productivity of working ranches on private and public lands.

Following the 2010 warranted-but-precluded determination, the Secretary of the Department of the Interior invited the eleven western states with sage-grouse habitat to propose alternatives to an ESA listing, including policy mechanisms as well as practices for restoring and protecting habitat and increasing sage-grouse populations. A groundswell of state and local efforts to develop alternatives featured collaborative processes. Hundreds of groups representing a broad range of stakeholders formed and worked with state fish and wildlife agencies to engage in landscape-scale and local-level collaborative efforts to produce state-level conservation plans to protect the sage-grouse and its habitats and, as many hoped, preclude the need for an ESA listing. Local-area working groups (LWGs) typically are comprised of federal and state land management and wildlife agency representatives and a broad range of private-sector and environmental nongovernment organizations, including ranchers, energy developers, and advocates for conservation, recreation, and hunting. LWGs work together to develop and facilitate the implementation of local conservation plans for the benefit of the sage-grouse, it habitats, and whenever feasible, other species that use sagebrush habitats (FWS 2015).

By September 2015, the BLM and Forest Service had revised 98 land and resource management plans—developed to meet FLPMA and NFMA planning requirements—that encompass sage-grouse populations and habitats. These plan amendments incorporated extensive public input and scientific information and were based in part on landscape-level plans developed by stakeholder groups. In total some 67 million acres of public and private lands were protected to benefit sage-grouse. This helps many other species and also benefits a range of human uses and values associated with sagebrush habitat. Because one of the five ESA listing factors is "adequacy of regulatory mechanisms," the FWS reviewed the regulatory mechanisms put into place in federal and state plans across the birds' range from 2010 to 2015 and concluded that these policy mechanisms had "substantially reduced risks to more than 90 percent of the species' modeled breeding habitats across its 173-million-acre range" (FWS 2015).

The agency also took into account the best available scientific and commercial information relating to the bird and determined that "protection for the greater sage-grouse under the Endangered Species Act is no longer warranted" and withdrew the species from the candidate species list (FWS 2015). The Obama administration attributed the "not-warranted" finding to the

> . . . unprecedented conservation cooperation across the western United States . . . comprising the largest landscape-level conservation effort in U.S. history and demonstrating that through strong Federal, state, and private collaboration, the ESA can be an effective and flexible tool in encouraging conservation and providing the certainty needed for sustainable economic development in our states and communities. (Goldfuss et al. 2015)

Many other agency heads and political leaders also attest to the multiple benefits derived from these efforts. Agriculture Secretary Tom Vilsack said,

> Federal and state governments and private landowners recognize that a healthy sagebrush landscape means a healthy western economy. . . . Effective conservation measures can be put in place that not only benefit the greater sage-grouse, but also preserve the western way of life, help improve grazing lands, and bolster rural economies. (USDA 2015)

Though strongly opposed to listing under the ESA and its potential for "crippl(ing) the economy of our state," Wyoming Governor Matthew Mead (R) insisted that "we can continue to create jobs and share our natural resources with the rest of the nation, while the greater sage-grouse thrives" (Mead 2015).

Enhanced protection of the greater sage-grouse and its habitats has flourished with the development of local, grassroots efforts. However, it is doubtful that the level of effort that emerged would have occurred without the potential for an ESA listing and projected impacts from related provisions under the ESA. Moreover, while the policy process of species evaluation has been open and transparent for the most part, and although the FWS has committed to continue to monitor the bird and reassess the need for protection under the ESA in 2020, opponents of the "not-warranted" listing decision are likely to litigate the decision and to continue calling for listing greater sage-grouse under the ESA.

Merits and Drawbacks of Public Participation, Collaboration, and Partnerships

Less than a century ago, public participation and stakeholder involvement in public resource decisions were considered by many to be deterrents to or deviations from effective management through technocratic, top-down approaches. Today, non-participatory forms of policy and decision making generally are viewed by politicians and stakeholders as illegitimate, ineffective, and undemocratic (Dietz and Stern 2008). As traditional forms of public participation have taken root and gradually evolved into more collaborative forms of decision making that support broad representation and participation by a range of interests, enduring conflicts have been reduced and previously inaccessible common ground has been found (Brunner et al. 2005).

Practitioners, researchers, and citizens alike attest to the merits of public participation, collaboration, and partnerships. When done right, these participatory approaches can lead to improvements in trust and understanding among participants, in decision legitimacy and quality, and in the capacity of all involved to engage in the policy process (Fiorino 1990, Steelman and Ascher 1997, Bulkeley and Mol 2003, Dietz and Stern 2008). Furthermore, in many places and cases, they have led to the desired outcomes and improvements in complex systems in which humans interact with their environment, now often termed social-ecological systems.

Public participation, collaboration, and partnerships are not without their drawbacks though, particularly when they are used in complex contexts or issues that have a broad range of public and private stakeholders (Steelman and Ascher 1997). Conflict management can fail, particularly when there are voices missing from the table or an imbalance of those that are present, when there is little or no accountability or commitment, lack of or limited information and/or understanding of the issue, or limited resources for participation (Kenney 2000).

In addition, public input and collaborative processes can be exploited to greenwash predetermined or disputed decisions by placating stakeholder demands for participation or simply meeting related administrative requirements, only to reject information and input received through the process in favor of closed decision out-

puts. In many cases, the public and key stakeholders are not consulted during the decision process or unilateral decisions are made behind closed doors. These closed decisions may proceed uncontested or may be challenged in court or in the media.

A salient example of the somewhat limited level of protection for openness by FACA or similar public process laws is the Energy Policy Act of 2005. This act was promulgated during the G. W. Bush administration, with contents largely developed by Vice President Dick Cheney, formerly the CEO of Halliburton Energy Company, and a select group of fossil fuel energy executives and trade representatives. This group started meeting with Cheney as part of the National Energy Policy Development Group in 2001 and excluded environmental or public interest-group representatives. The eventual 2005 law was challenged on this basis of violations of APA and FACA by the Sierra Club and Judicial Watch, and the case was dismissed by the 10th District Court of Appeals (406 F. 3d 323; Open Jurist 2016), so opponents did not succeed in reversing its passage by Congress.

Where decision processes remain closed or behind doors, they may be for technocratic reasons where professionals think they know best or want to avoid cumbersome public processes. And of course, as we can observe in any public policy textbook, closed decisions occur for political reasons, where vested interests try to allocate resources and power for their benefit without opposition. Individuals and groups interested in or actively participating in decision processes also may be shut out of final resource allocation decisions unknowingly due to undisclosed meetings of insiders or power brokers. Such individuals and groups in turn may file lawsuits, oppose them in the media, or use open-records laws to request information on how those secret decisions were made.

The lawsuits discussed earlier in the chapter were almost entirely based on procedural violations as mandated by ESA, NEPA, NFMA, or FLPMA. Many were preceded by and even based on public-record requests. Nevertheless, even as conflicts arise, agencies still may deny public-record requests and refuse to release information. They also may delay response or action for extended periods of time; charge substantial administrative fees to provide the information; refuse to release information that is deemed sensitive for security, personnel, or other privacy reasons; or redact vast amounts of information in the records released. In these cases, opponents may be faced with the need to spend their own funds or raise funds from like-minded interest groups to acquire the public records needed to contest a decision. Thus, federal agencies and other public actors can still limit open and transparent decisions despite an ever-increasing body of laws intended to democratize natural resource decision making.

Despite such limitations, there is a large body of evidence of the procedural benefits of participatory approaches in terms of fairness, inclusion, representativeness, and other normative factors. Comparatively few studies have examined the environmental outcomes on the ground, and even fewer have considered the overall effects on social-ecological systems. However, many stakeholders and persons affected by administrative decisions have greeted the collaboration movement enthusiastically. Even if not always successful, these approaches have enhanced public satisfaction with decision-making processes in that their views can be heard and incorporated in whole or in part in the final administrative decisions.

Furthermore, federal laws provide wide-ranging means for legal redress for affected interests who feel that an agency has acted in an arbitrary or capricious man-

ner. State laws also exist but are usually far less rigorous and not binding. So in the end, collaborative decision making, public participation, and open governance systems are desirable and useful policy tools to improve natural resource management and protection, but they will never be adequate by themselves. If mandatory or voluntary cooperative efforts do not succeed in allocating resources and power, then regulations, incentives, or market instruments will need to be employed, as discussed in the previous chapters of this book.

Summary

This chapter outlined the trajectory of public involvement in environmental, natural resource, and land management decisions and actions in the United States. Before federal laws mandated public participation in the mid-20th century, decisions about public goods and services mostly were made by administrators and public participation largely was limited to the ballot box and demonstrations. Even as administrative laws were passed, requiring greater access, openness, and transparency in government decision making, dissatisfaction and conflicts ensued, leading to demands for more significant opportunities for public involvement.

Closed decision processes slowly opened up to include a wider range of stakeholders, ideas, and interests, particularly in the environmental realm and with laws specific to the environment, natural resources, and land management. More open and deliberative policy-making forums emerged and eventually led to newer forms of citizen involvement based on collaboration and partnerships at local to global levels, providing stakeholders with significantly greater influence on policy, decisions, and management. Nevertheless, conflicts over natural resources persist, as do more adversarial tactics like appeals and lawsuits.

Participatory approaches have been shown to foster practical and political support for environmental decisions, reduce the propensity for conflict over resource uses, and in some cases result in better environmental outcomes. These benefits are all the more important with declining resources and devolution and decentralization of decision making. Ultimately, participatory approaches to the environment and natural resources have not replaced traditional forms of command-and-control or private market mechanisms for supplying public goods and services. They still may be used selectively, be ignored, or be ineffective with more insoluble problems. Nevertheless, they have had a significant impact on management and decision processes related to the environment, natural resources, and land use across the landscape and in all levels of government, the private sector, and civil society.

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