LAWS AFFECTING THE RELATIONSHIP BETWEEN RECREATION AND MINERALS MANAGEMENT ON THE NATIONAL FORESTS

Recreational use of National Forests is so great today that it is hard to believe that there was a time when the Federal Government almost had to beg people to use their National Forests. The first mention of recreation was associated with the Act of March 4, 1915 (Ch. 144, 38 Stat. 1086, as amended; 16 U.S.C. 497) authorizing the Secretary of Agriculture to issue permits for hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience, or safety...summer homes and stores; It also included industrial uses and any buildings, structures, or facilities necessary or desirable for education or for public use or in connection with any public activity.

The Act was designed to bring people into and to enjoy their National Forests. The National Forests were in competition with the National Parks in trying to attract visitors, and thus catch the eye of Congress and potentially increase budgets. In the language of the Act, Congress was careful to instruct the Secretary on how to manage these uses; "The authority provided by this paragraph shall be exercised in such manner as not to preclude the general public from full enjoyment of the natural, scenic, recreational, and other aspects of the National Forests." In other words you don't get exclusive use of the National Forest System Lands. The wording of Special Use permits have language to this effect, to this day.

The next significant mention of recreation comes in the Act of June 12, 1960 (P.L. 86-517, 74 Stat. 215; 16 U.S.C. 528(note), 528-531) more commonly known as the Multiple-Use Sustained-Yield Act of 1960 (MUSYA). Recreational use and management thereof got legitimate through the following: “It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed and wildlife and fisheries purposes. Usually people quit reading here and say that these are the things that the National Forests are to be managed for, and everything else is a supplemental use. Some people even go so far as to declare that the order of naming is the hierarchy.

Further reading of Sec. 1 reveals some side boards on this designation: "The purposes of this Act are declared to be supplemental to but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475)." also commonly referred to as the Organic Administration Act, or Organic Act. Derogation is defined in the ***NEW WEBSTER? DICTIONARY of the English Language, College Edition***, as follows: The act of derogating; a lessening of value or estimation; detraction; disparagement. So Congressional intent is clearly spelled out that these uses/programs are supplemental and do not supplant the uses described in the Organic Act. Because the MUSYA refers to the uses in the Organic Act the following is taken verbatim from the Act of June 4, 1897:

"Designation and Purposes of National Forests

All public lands designated and reserved prior to June, 4 1897, by the president of the United States under the provisions of the Act of march 3, 1891, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as national forests under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions. No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of

water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States; but it is not the purpose of these provisions, or of the Act providing for such reservations, to authorize the inclusion therein of lands more valuable for mineral therein, or for agricultural purposes, than for forest purposes.

Water Use

All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder."

Rules and Regulations

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under provisions of the Act of March 3, 1891, and which may be continued; and he may make such rules and regulations and establish service as will insure the objectives of such reservations, namely, to regulate their occupancy and use and to preserve the forests therein from destruction; ..."

The Organic Act was clear that lands more valuable for minerals and/or agriculture should not be set aside for other uses. So Congress acknowledges that Recreation is now a legitimate use under MUSYA, but it does not usurp the uses identified in the Organic Act. In fact MUSYA goes on to make it even clearer: "Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests (16 U.S.C. 528)."

Multiple use is then defined:

"Multiple use means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some lands will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." Congress made it clear that the national forests were to be managed for multiple uses, but not at the cost of those uses described in the Organic Act nor in anyway interfere with the use or administration of the mineral resource.

The next major piece of legislation to direct multiple use management was the Act of August 17, 1974 (P.L. 93-378, 88 Stat., as amended; U.S.C. 1601 (note), 1600-1614) also known as the Forest and Rangeland Renewable Resources Planning Act or the Resources Planning Act (RPA). This directed the secretary and the Forest Service to do many things, but the most significant was to prepare Forest Plans that were in compliance with the principles of the MUSYA. Most forest plans carried provisions that required a mineral evaluation before developing recreation facilities. This was designed to ensure that

valuable mineral lands were not withdrawn for some other purpose. However, many times this provision was ignored and/or given lip service when new recreation facilities were proposed.

Another Act that should be mentioned is the Act of December 31, 1970 (P.L. 91-631, 84 Stat. 1876; 30 U.S.C. 21a) or the Mining and Minerals Policy Act . In this act Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs...." Because Congress wanted to make it clear what a mineral was they defined it: "For the purpose of this Act minerals shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium. This is a strong message from the Congress that development of the mineral resource is in the national interest.

The next piece of legislation governing forest land uses is the Act of October 21, 1976 (P.L. 94-579, 90 Stat. as amended; 43 U.S.C. 170(note), 1701, 1702, 1712, 1714-1717, 1719, 1732b, 1740, 1744, 1745, 1751-1753, 1761, 1763-1771, 1782; 7 U.S.C. 1212a; 16 U.S.C. 478a, 1338a) also known as the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA deals with a number of issues including right-of-ways , withdrawals and other land use and title issues. Section 102 is a declaration of policy and (a) 7, 8 and 12 and (b) are germane to this discussion:

"(a)The Congress declares that it is the policy of the United States that--

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; that where appropriate will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and will provide for outdoor recreation and human occupancy and use;

(12) the public lands be managed in a manner which recognizes the Nations need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands;"

So Congress continues to press for multiple use, but also again makes special mention of minerals management by citing specific legislation. Nothing in FLPMA amends the specific requirements of previous acts ensuring that other uses do not usurp the management of the minerals resources.

The next piece of legislation to delve into forest management is the Act of October 22, 1976 (P.L. 94-588, 90 Stat. 2949, as amended; 16 U.S.C. 472a, 476, 500, 513-516-, 518, 521b, 528(note), 576b, 594-2(note), 1600(note), 1601(note), 1600-1602, 1604, 1606, 1608-1614). This is know as the National Forest Management Act of 1976 (NFMA). NFMA first amends the RPA by putting in a new sec 2 (Findings). Of particular interest to this discussion is: "Sec. 2 Findings.--The Congress finds that-- (3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nations public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531) and public participation in the

development of the program. Again Congress continues to refer us to the MUSYA for guidance on how the multiple uses should be managed.

Section 6 of NFMA amends Sec. 6 of the RPA by adding several new subsections. Of interest in this discussion is subsection (e):

e) In developing, maintaining, and reviewing plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans--

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness;" Please note that minerals are not in this list, because the MUSYA says "nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests (16 U.S.C. 528)." Congress again makes it abundantly clear that even during the forest planning process the Secretary shall keep the principles and guidance found in the MUSYA in the forefront.

So what can we say based on this review? Congress has made it clear over and over that the MUSYA is extremely important when evaluating and administering the multiple uses found on the national forests. This is true not only in the day to day administration, but also in the forest planning process. While Congress has broadened the definition of multiple use over time, they have not changed the favorable status afforded the mineral resources. Because there apparently must have been some confusion as to what was meant by the mineral resources, Congress felt the need to define it so that all minerals were included. Based on the review of the laws governing the national forests, one can find no desecration in administering the mineral resources, except where they are known to not exist. This is borne out in Wilderness legislation as well as the recent roadless evaluation. One of the exceptions in the Roadless Rule was for development of the mineral resource. Based on the evaluation of the laws, it would seem that the Roadless Rule had no basis to limit the oil and gas leases. Assuming that roadless areas are a legitimate multiple use, then they would also be subject to the MUSYA and the restriction on interfering with the use and administration of the mineral resources.

As a new round of forest planning has already begun there be a major push for more recreation exclusive uses, when in fact the law would prohibit these uses where minerals are present and/or possible to exist. This also holds true for the roadless initiative being undertaken by the Forest Service and the State of Colorado. It will be important that people understand and adhere to the laws as they are written.