

**Interview with Mark Rey, Former Undersecretary of Agriculture, 2001-2009**

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MN: Tape 1 – Interview with former Undersecretary of Agriculture Mark Rey.

MN: Mr. Rey, before we begin, what is your current professional status and what are your plans for the future?

MR: Well, I guess the simplest way to describe my current professional status is I'm taking a brief sabbatical while I decide what my plans for the future are. I didn't spend a lot of time working on that while I was serving, in large part because when you start looking for work, you have to recuse yourself from decisions that affect the people that you're talking to about future employment and I didn't want to do that. So basically when you occupy one of these kinds of jobs, you can either do the job or look for your next job, but you can't do both.

[UPDATE: Mark Rey has agreed to teach in some capacity for Michigan State University]

MN: Great. Well, I have a few questions regarding the position. First, what legacy do you leave as undersecretary of agriculture?

MR: Well, you know, I sort of hate to duck the first question, but my personal view on legacies is that they cannot be described contemporaneously and they should not be opined by the people who purport to leave them. So I guess, the simple way of saying what I'm trying to say is that I'll leave it to history and to others to decide what my legacy as undersecretary of agriculture was. I don't think it will become clear what it was for at least the passage of a certain amount of time.

MN: Fair enough. What do you consider to be your greatest achievement and failure as undersecretary?

MR: I think the three achievements that I'm most proud of—whether they're the greatest or not--are my participation in the development and implementation of the Healthy Forest Initiative and the congressional enactment by broad bipartisan majorities of the Healthy Forest Restoration Act. Second, my participation in the development and implementation of the Conservation and Forestry titles of the 2002 and 2008 Farm Bills. Bills which today gave us the authority and funding to bring over 210 million acres of privately owned farm and ranch land into one or another of our land conservation programs.

And the third, somewhat less glamorous accomplishment which I'm most proud of is getting in better order the back-office functions of the agencies that I

oversaw. The budget, finance, personnel and other functions that nobody much pays attention to outside of government but which are essential to having a well functioning government that's delivering programs. Most notably in 2002, we were able to provide a clean audit for the Forest Service's books for the first time in the agency's history. That allowed us to provide a clean audit for the Department of Agriculture for the first time in the Department's history. After an extraordinary amount of work that was completed near Christmas time in 2002, which led some wags to call it the "Miracle on 14<sup>th</sup> Street" since nobody ever thought that you could get USDA's books cleaned up.

You know, those kinds of things are only important if you think about them a little harder than most people do. Including people in the Forest Service. There was a considerable amount of—I wouldn't say resistance, but at least reluctance—to invest time in financial-management issues within the Forest Service's ranks, and we almost had to effect a cultural change to get that done. And one of the things that we said was, "you know, you all as Forest Service employees are experts in your respective fields whether they be forestry, wildlife management, fisheries, archaeology or what have you—and 99.9 percent of the American public doesn't know much about what you do. They just have to trust in your expertise and ability to do a good job and to serve the public well. But most people know what it means to balance a checkbook because it's something they have to do. And as an agency, if we can't balance our checkbook to the point that it becomes apparent to the average person that we don't have that ability, then there's no reason for them to trust us on the stuff that's more difficult in their mind, because we haven't been able to do the stuff that's relatively simple." And that, as much as anything, is why it was important that we do this and why I count it as one of the accomplishments that I'm most proud of.

In terms of failures or regrets, I don't know that I have any that stick with me to the extent that I regret them. If I had any regrets, it would be twofold: One: That I didn't get to serve in a period of budget surpluses and the second is that I didn't serve during a period of above-average rainfall. Because had both of those been different, the job would have been much easier.

MN: What is the most valuable lesson you've learned during your tenure?

MR: The benefit of listening closely and the discipline of not assuming that there is any question too stupid to ask in a briefing where the outcome of the policy that is being recommended is unclear. The favorite question that I used to ask at briefings was "Then what?" Because typically a briefing is designed to elicit a positive response to a selected option on the part of a policy maker, a political appointee like myself, and you can—you'll usually find how well thought out that recommendation is if you keep carrying the inquiry beyond the recommendation. In other words, if you say, "Okay, if we do this, then what happens?" And just test the ability for the people who are proffering the recommendation to play out how it will affect the future. And if they have a pretty thoughtful assessment of what

will happen next, then by and large, it's a well thought out policy. If they don't, then that's the first hint that it's probably a good idea to get some additional analysis before you proceed.

MN: Was there an issue that you advanced in your position as undersecretary that you opposed at a personal level?

MR: Nope. I always prided myself in being able to mold the policy to that which I supported so at the end of the day I was either oblivious to the fact that I opposed it or clever enough to change it.

MN: Much was made of your background working for the forest products industry, and renewed attention has been given to the revolving doors between government and industry employment, is this concern well-founded, in your opinion?

MR: Well, that question actually has imbedded in it some interesting insights that themselves deserve a bit of attention before we go to the question itself. The fact of my previous background with the forest-products industry became largely irrelevant to most everybody except journalists or the media. You know, the fact is that I was a public servant for a longer period of time than I was an advocate for the forest-products industry and at some point the statute of limitations in most people's minds to that affiliation with the forest-products industry expired, and indeed, for most of the advocates that represented causes or clients before me, that was largely irrelevant. For the Sierra Club's standpoint, other groups that had a view in opposition to the forest-products industry's view, their basic concern was what my current view of their position was rather than where I came from to get to that position.

With journalists though, I think it is easier to hang labels on people to simplify, or at least slant issues--summarize issues—maybe is a better way of saying it, for the purposes of their readers, than it is to do the harder work of crystallizing an issue in a way or the sides of an issue in a way that's easily understandable. So my experience was that it was primarily journalists who kept using the sobriquet “former timber industry lobbyist” well beyond the point that that was relevant to anybody else in the actual policy-making environment.

Now, you mention in the question that renewed attention has been given to the revolving doors between government and industry; I think that's a narrower formulation than what's really happening right now. I think what's really happening right now is increased attention is being given to the revolving doors between government and non-government employment or participation within government and involvement in some private sector entity, whether it's industry, a nonprofit entity, even a different level of government than the federal government.

The concern about what people bring to government by way of previous experience and previous insights and previous attitudes and previous biases, and the concern about whether people, after leaving government, use their government experience inappropriately as a way of enriching themselves are both valid concerns. They are concerns that have been with the democracy for a long, long time and I think that they are concerns for which appropriate remedies have already been framed and are already in place.

To wit, the scandals that have occurred have resulted in convictions of the parties who propounded the malfeasance. So it's not like these folks are getting away with something. They did something wrong, they did something that was against the laws that were already established to guard the public's interests against conflicts of interest. They were caught, they were punished, they are paying their debt to society accordingly.

The additional measures that we're looking at now are, in my judgment both arbitrary and in some cases, unfair, and ultimately may serve to isolate people from the government. By that I mean, the ban on government service for anybody who's lobbied or been a registered lobbyist within the past two years. That ban is being applied without regard to whether you registered to lobby for an industry group, a public interest group, a nonprofit or another unit of government. There are people in Washington, D.C. who are registered to lobby for the state of Michigan or any number of other states that are now banned from federal service in many respects because of that registration.

There are people in Washington D.C. who, in light of the most recent lobbying laws which were passed in 2006, registered out of an abundance of caution simply because they didn't want to be caught up short by the appearance of meeting the standards for what constitutes a lobbyist and so they registered--now they're banned from government service.

I think that the net result of that is going to be to increase the separation of the government from its people. We've associated in groups to affect how we're governed since the beginnings of the democracy. De Tocqville in his travels through America commented that Americans at that time, during the post-Revolutionary War era, were unique among citizens in democratic societies because we affiliated in groups and associations. Well, you do that to basically petition your government for whatever redress you're seeking, which, more succinctly, is lobbying.

So I think the concern was, and is well-founded. I think that we've put together a system of regulations and statutes that guards against that. There are always going to be people who that violate statutes. If they're caught, they should be punished. It doesn't, however, create an *ipso facto* argument for more stringent statutes. Or more stringent requirements. Particularly requirements like the ones

that we're seeing imposed now which I think are going to unfairly keep good people out of governmental service.

MN: As undersecretary, you were at the center of several conflicts and controversies and I'd like to ask you about a few of those now. First the roadless rule saga. Did the state petitioning process work out as you envisioned?

MR: Well, before we get to the roadless rule, the question embodies a statement that's been repeated but without an historic context attached to it. And that is that I was the center of numerous controversies and conflicts as undersecretary. While that is a true statement on its face, the context of that statement is broader. Virtually everybody who's been undersecretary of agriculture for natural resources and the environment has been at the center of several controversies and conflicts. That pretty much goes with the job. In a comparative analysis, my immediate predecessor, a Democrat serving during the Clinton administration, was defunded by Congress; his office was abolished because of controversies that he was involved in.

His predecessor, a Republican serving in the George H.W. Bush administration was summarily fired by the secretary of agriculture because of a controversy that blew up during his watch. His predecessor, a Republican serving in the administration of Ronald Reagan during Reagan's second term was defunded by Congress because of a controversy that he was involved in. His predecessor, a Republican serving during Reagan's first term, was subject to a long and contentious confirmation battle which resulted in an extended Senate floor debate with about a quarter of the Senate or so—somewhere between a quarter of the Senate and a third of the Senate voting against his confirmation.

So by those bases of comparison, going back almost 30 years, you know, I'm relatively milquetoast and unnoticeable during my tenure.

But the question that you asked was about the roadless rule and the initial question was did the state petitioning process work pretty much as I envisioned and the short answer is: Yes. In fact, to the extent that it's worked in two states—Idaho and Colorado—so far it's worked almost identically as we hoped it would and that is partnering with a governor to try to bring broader agreement, certainly not consensus and definitely not unanimity to the disposition of Forest Service roadless areas in that particular state. We brought it to the conclusion or near conclusion with a Republican governor in Idaho and a Democratic governor in Colorado. So, as a reflection of what we originally had in mind, it worked pretty much as we thought we'd like it to.

MN: Well, speaking of Idaho ... As you know, Idaho's state petition final rule is being challenged by an assortment of conservation groups, but some prominent conservationists also support Idaho's roadless rule. What do you make of Idaho's

efforts in this regard and of the divergent response by the environmental community?

MR: Well, I think Idaho did a very good job, at first, putting their petition forward. They did a pretty thorough review of the individual roadless areas in each individual national forest with a fairly extended public process to that end to put together their recommendations. But then, in addition, the state was flexible in entertaining national input to modify the proposal in a way that they felt was acceptable that garnered broader support, including the support of many environmental groups who chose not to challenge the result.

I think the divergent position of environmental groups is a tactical difference, not a substantive difference. You know, it's hard for me to believe that there is a deep substantive divide between, or among, groups that have been united on the merits of most other things. On the other hand, I can see a very real tactical difference, particularly at this point in history, because the question is not whether the state of Idaho and the Forest Service did a good job with this rule, or whether this rule is an environmentally sound rule, rather the question is, looking beyond Idaho at the other states, you know, what posture do we want to have as we approach a new administration?

I think some of the groups felt that the Idaho experience was replicable, and if it could be replicated, then it was a way forward to resolve the issue at last. I think other groups felt that, with a new administration incoming, there was a chance to go backwards in history and resuscitate the 2001 rule, which for some of them was an idealized situation, becoming even more idealized as history is played out.

MN: Other than Idaho and Colorado, did you expect there to be so much support from other states in terms of supporting the 2001 roadless rule?

MR: Yes, I expected that the differences between the 2001 rule and whatever state rules that we produced would be differences in degree and not direction and that they would be differences that would accomplish two important things: One, correcting actual errors in the 2001 rule. Errors that were the result of haste in getting it out the door before January 20, 2001. And the second important change would be to build broader, local support for the ultimate outcome. And the two are related obviously, because a rule that's of a higher quality in a site specific sense is generally speaking going to attract more local support. Those being the two big differences it was not a great surprise to me that the state rules that we saw, both Idaho and Colorado, as well as the petitions from California, New Mexico, Virginia, North and South Carolina, had essentially the same level of roadless protection that the 2001 rule did, with corrections made to deal with errors associated with the 2001 rule. In some cases, those errors were minimal and in other cases they were pretty significant.

North Dakota, for instance, I got a tour of a roadless area from the governor in his Ford LTD, the governor's car, and we drove through this area and he stopped the car. You know, in North Dakota, the governor drives his own car, I guess. And he said, "Okay, what do you see here?"

Well, it was a pretty nice area, on the Dakota Prairie National Grasslands, and he said, "It's a beautiful area. Now what do you see there out in front of the car?"

"Well, that's a road."

He said, "Yeah, this is one of our roadless areas. We're in the middle of it, in fact. That's why I stopped."

So we had a lot of errors like that in the inventories we that used in the 2001—that our predecessors used in the 2001 rule and correcting those went a long way to building broader public support at the state level for those states that participated.

MN: What do you suspect will be the next chapter of the roadless rule story?

MR: Well, I think given the fact that there are at least enough people willing to never say die on the 2001 rule, the next several chapters will involve litigation. One way or the other, and then at some point, I suspect the Supreme Court will be asked to resolve a difference between or among the circuits about what should happen next.

The 2001 rule was the subject of seven separate lawsuits involving nine separate states and an army of private interests in four different judicial circuits. Now some of those cases were mooted by the 2005 rule that we wrote, but if, at some point, the 2001 rule resurfaces fully formed, then some of those cases are going to be reignited.

The State of North Dakota will re-file its case which is in the Eighth Circuit Court of Appeals. Of course, the State of Wyoming's successful challenge of the 2001 rule is currently before the 10<sup>th</sup> Circuit. The challenge that occurred in the Ninth Circuit is still live and being argued and there are interests in the D.C. Circuit who could reignite their case. I think there's enough people left that want to battle over the merits of the 2001 rule that they'll keep the litigation alive so that at some point in the future, the Supreme Court will get the opportunity to move forward. And that may not be a satisfactory result. Usually litigation-driven policy is not satisfactory, more often than not, even to the people who prevail in the cases in conflict.

Our hope was that, with the state-by-state approach, we had found a way to reconcile the shortcomings with the approaches that had been used previously. This issue has been around for 40 years. It's essentially been with us since the

enactment of the 1964 Wilderness Act, which among its provisions required the Forest Service to evaluate all of its roadless areas and make recommendations to Congress as to which of them should be legislatively designated as wilderness. And that imposed a fairly significant analytical obligation on the Forest Service, which it has struggled with over time, and which it has not completely resolved even now 45 years later.

At three points during that 45-year period, people who occupied my position, and who I think probably thought they were a lot smarter than I think I am, decided that this needed to be dealt with once and for all in one fell swoop in a nationwide rulemaking, and that that rulemaking would finally end the debate over what should be recommended to Congress for wilderness and what should be put to some other use.

Those three examples, those three efforts occurred in the Nixon administration; in the Carter administration; and in the Clinton administration, with the RARE effort: The Roadless Area Review and Evaluation in the Nixon administration; Roadless Area Review and Evaluation II in the Carter administration; and in the Clinton administration, the Roadless Rule, which they decided wisely not to call RARE III because it would have underscored the futility of the effort at the outset.

In all three of those instances, the efforts were caught up short by reviewing courts. In the case of the Clinton rule, of course, there's still pending litigation. But the majority of the judges who have reviewed the rule so far have found against it by a slim margin, and more will likely get the opportunity to vote before it's over. And what the courts said in varying forms in all three instances were that the agency had failed to discharge its responsibility to look at the issue in a site specific enough way to meet its obligation under the National Environmental Policy Act and/or other statutes depending on which court decision you reference and that the decision was therefore arbitrary.

In the period in between these three efforts, the Forest Service taking note of what the courts said, tried to deal with the issue on a forest-by-forest basis. Particularly after the passage of the National Forest Management Act of 1976, the agency tried to wrap it into the land management planning process under that statute. And I guess you'd have to say that that wasn't wholly successful either, in part because it didn't bring closure to the debate as evidenced by the fact that there was a Clinton rule in the first place. If there had been closure, there'd be no need for a third attempt at a nationwide rulemaking.

So when we came in, we looked at that history and we concluded that the crux of the problem with this issue is that it's—on the one hand—an intensely political debate because it's a basic resource allocation question over resources that people feel very strongly about. On the other hand, it's a very technical debate because you're trying to decide the fate of individual areas, putting boundaries around

them that are based upon site specific data and so therefore you have to be able to amass and work with a substantial database to make good decisions.

In the case of trying to do a nationwide rule, you know you can get all the political closure you want to finally end the debate. You can have the president of the United States stand on the side of a ridge in southern Virginia and announce the outcome, but as the courts have told us, it's hard to do justice to all the technical detail that is required to make the decision sound from the standpoint of a reviewing judge.

On the other hand, if you deal with this on a forest-by-forest basis, you can—by virtue of the fact that you have a lot less data to deal with—deal with it more intelligently.

The problem is that you can't really get political closure to the decision because the decision is going to be made by a GS-14 or a GS-15 career civil servant and everybody knows that you can take the debate on up the food chain to see if you can get a better result. So you don't get any real closure to the issue, both because of where it's made and also because you don't engage national interests to the same degree that you do in a national debate.

So we thought if we tried to find a middle road or a third path by working on a state-by-state basis, we could, on the one hand, reduce the size of the decision down to a manageable level, and on the other hand engage for the purposes of bringing better political closure to this, the one person who's arguably elected to represent all the citizens of the state and that's the governor, and that in a partnership with the governor we could get the right balance.

And I think our experience in Idaho, and so far in Colorado, suggests that there's some merit to that idea. But even if not, we've at least taken the debate out of the two ruts that it was in and sent it in a direction that people can evaluate for themselves as to whether they think it's better or worse.

When I interviewed for the job with then-Secretary of Agriculture Ann Venneman, her first question was: "Why are the issues that the Forest Service deals with so intractable and long-standing?" And she used the roadless area issue as an example.

And I said, "Well, there are two reasons. One, there's a lot at stake, people are emotionally bound up in what's at stake and that's why they tend to be intractable at times. But the second is, at least with specific regard to the roadless debate, we've seen basically people trying to come to the same solutions or using the same approach to get to a solution over and over again for 40 years without anything changing. Instead, they've been making the same mistakes over and over again for the last 40 years."

And so I looked at her and I said, “Madam Secretary, if you pick me for this job, the one thing that I’ll pledge to you is that I’ll come to work every day committed to, as best I can, find ways to make entirely new mistakes and not the same old ones.” So at worst, we’ve redeemed that commitment.

MN: Well, let’s move from the roadless rule. Was there a particular conflict or issue, such as Sierra Nevada framework, the Northwest Forest plan, Tongass and so forth, that challenged you more than others?

MR: None that stands out as being more challenging than others. There were a couple of issues that were more confounding than others because I didn’t expect them to generate the kind or the level of outcry that they did.

One of those was our decision in the Spring of 2004 to ground the large air-tanker fleet for safety reasons. You know, we had experienced some crashes as the result of catastrophic metal failure among certain models in the fleet in the late 1990s and early in 2002, in the beginning of fire season.

And the National Transportation Safety Board started into their investigations and we cooperated with those investigations, as well as conducting our own investigations to evaluate what we ought to be doing differently to assure a higher level of safe operation of the large air-tanker fleet, even given that this is a fairly high-risk business. We thought that the number of crashes were too high.

When NTSB issued its report with several recommendations, some of which we already had under way, others of which were new to us, we didn’t think there was any choice but to ground the fleet until we could implement those recommendations, and I was surprised by the amount of political backlash that came from elected officials in states where the fire season was a pending concern.

It wasn’t that we didn’t have other planes to use; we were backfilling with heli-tankers and helicopters which were more expensive to fly on a per-hour basis than fixed-wing aircraft, which is why we wanted to achieve the safe operation of the large air-tanker fleet. But I didn’t think that I’d spend most of that summer responding to congressional antipathy to that. So that one was kind of interesting.

The second one was the effort to extract from Plum Creek Timber Co. some concessions that they were not obliged to make to access their lands, which is a right they already had, as they were changing their own land-use pattern. At the end of the day, the concessions were lost because a lot of people were trying to get the Forest Service to do something that it wasn’t legally permitted to do nor structurally inclined or qualified to do, which was to stand in the shoes of local government as a zoning agent.

So I don’t know that those were more difficult, in fact they weren’t, than any number of other issues, but they were somewhat surprising in the sense that I

didn't expect that, one, we would get a lot of hostile incoming for trying to make the firefighting air fleet more safe; or two, for getting Plum Creek to agree to some restrictions on deeds that they were going to convey to other owners.

MN: I'd like to come back to the Plum Creek issue in a little bit. Conflict over fire management was a constant during your tenure and there continues to be disparate interpretations of what constitutes a healthy forest. The debate is so polarized, with each side deeply suspicious of the other. Some see Healthy Forests as a Trojan horse, the way to simply cut more timber under the guise of fuel reduction, while others champion a much more active forest management. What is your take on this debate, and if you could approach the issue of fire and Healthy Forests again from the start, would you do anything differently?

MR: Well, my take on the debate is that it's over and that one of the advantages of serving a full eight years is that I can encourage people to go back and look at the rhetoric that was employed during the debate compared to what's actually happened subsequently now that we've had a long enough period of time to evaluate the results.

None of the accusations that were lodged against the Healthy Forests Initiative or the Healthy Forest Restoration Act have come to pass. Had anything close to those accusations come to pass, we'd be looking at denuded forests today and we're not.

At the same time, since the president announced his Healthy Forests Initiative, the federal land managing agencies combined have treated about 27 million acres of federal lands that were at risk to catastrophic fire for fuel-reduction purposes. That's an area about the size of the State of Tennessee, and only about 5 percent of those acres involved the removal of anything that had commercial value attached to it, and that includes material that was used for biomass energy.

So if this was a Trojan horse, it was so small that I dare say you couldn't have fit a single Athenian in it, and the results by contrast to what was alleged, have actually been quite salutary. If you compare, for instance, two similar events: The fire siege in the Fall of 2003 in Southern California and the fire siege in the Fall of 2007 in Southern California, what you find in it is that in very similar events that occupied a similar number of days—2007 was actually two days longer than 2003—similar conditions with very dry fuels and Santa Ana winds that were actually drier and higher in 2007 than in 2003, we burned about 250,000 less acres in 2007, and lost only about half as many homes in 2007 as we did in 2003. And that's with a difference of 189,000 new homes having been built in the wildland-urban interface during the intervening four years in those seven Southern California counties.

The reason for that difference is that we saw fires ignite and then burn into areas that had been treated in the intervening four years to reduce fuel loads. Because

we treated about 300,000 acres in those counties on a strategic basis. And as those fires burned into the areas that had been treated, they laid down in intensity, the fire crews were able to attack them directly, and keep them out of subdivisions, thereby sparing homes.

That was the point and purpose of the Healthy Forests Initiative and the Healthy Forest Restoration Act. It was successful and as far as I'm concerned there are still probably as many people who want to argue that this is a Trojan horse for industry as there are people who want to argue that we should not have conveyed the Panama Canal to the nation of Panama. But they're no longer what I would call central to the debate about fuels treatment and how we restore the health of our forest systems.

Now, I also, in the ensuing years, looked at a lot of survey research data to track public attitudes about the need for fuels treatment. And rather than sort of going into chapter and verse of how that level of public support has gone up over the last several fire seasons, I'll just give you one sort of anecdotal story about why I think the debate is over.

In the spring of 2004, I was sitting in my office at USDA one evening and it was just before seven, and the phone rang and on the other end of the phone was Dana Perino, most recently the White House press secretary, at that time the communications director for the White House Council on Environmental Quality, and she was quite excited and she said, "You won't believe what I just saw on T.V. right now."

Well, I didn't have the T.V. on so you'll have to tell me. She said, "Well, I was channel surfing so I could see how the networks were going to handle the story we were working on today and it wasn't quite 7 o'clock yet and so there wasn't any news on yet, but as I was surfing channels, I clicked on to the game show "Jeopardy" and before I could click it off, I heard Alex Trabec say the final Jeopardy answer is a November 2003 federal government report said that this catastrophe could have been avoided by better trimming the trees." And she said, "My god, I can't believe it. We've reached a level of public consciousness that we're in the Jeopardy show."

And I said, "So what happened?"

And she said, "Well, then I couldn't turn it off and I had to wait and see how many of them wrote down the right question." Because you know you scribble your answer and you can wager anything you want.

And I said, "So, how'd they do?"

And she goes, "You wouldn't believe it. All three of them had some variation of 'what are wildfires or forest fires' scribbled on their boards."

Now unfortunately for those contestants, the correct answer was “What was the Northeast power blackout of August 2003.” If you remember, there was a tree that fell across a high-tension line in Ohio that started a chain reaction that blacked out the Northeast. But we obviously had gotten their attention, even though we cost them thousands of dollars in prize money.

So you know there’s still a vibrant debate on timber salvage, on any of a number of other forest management issues, but I think the debate over whether we have to remove fuels to restore the health and sustainability of these fire-dominant systems is over. I think it’s as relevant to continue to debate that as it is to continue to debate that we should have committed to giving the Panama Canal back to Panama.

MN: Just a couple of quick questions about planning. The rewriting of forest planning regulations has been quite controversial. Some interests allege that the 2005-2008 planning regulations either undermine or eviscerate several environmental standards, most notably wildlife viability and the NEPA process in general. How do you respond to charges that this is an attempt to delegatize forest planning and management?

MR: Well, you know, I guess the initial response is that the courts will ultimately have the last word on what the laws involving forest planning require, with both the National Forest Management Act and the National Environmental Policy Act. But this is another case where you have to look at the context of the debate and it involves a fairly long context. The agency has been trying to update the forest planning rules for over 20 years—actually now approaching 25 years. The first set of rules were written in 1982, actually they were really written in 1979 and then modified slightly in 1982. So for all practical purposes, the rules that we were operating under were written in 1979.

Now, one way to look at regulations, or even laws, is that they are tools to help agencies do their job to tell them what to do and to help them do it. To inform them about what they’re supposed to do. If you look at regulations in that light, then these are pretty dull tools. In 1979, the agency was using a linear programming model that required a mainframe computer to run it and was generating computer punch cards. People in the field were still using slide rules to make calculations. That’s the nature of the tools in a different context that agency planners were using in 1979.

They first tried to revise these regulations in the late ‘80s and failed to get it done. They tried it in the early ‘90s and failed to get it completed. And then they tried it in 1996 and failed to complete it. So there were three failed attempts and then we finally got a completed attempt in the late Fall of 2000. Not coincidentally because an administration was coming to an end.

The 2000 proposal was sued by everyone. So the proposal that we were presented with coming in the door was under litigation even before we walked in the door from a consortium of environmental groups on one side, a consortium of public land users on the other side. And we then presented these rules to a group of agency planners as well as a set of outside experts and said, "Tell us how these would work. If we decided to defend these rules from all comers, could you actually use them to revise forest plans?"

And the answer coming back up from agency planners is that these have gotten so complicated and convoluted, that there is no way we can revise plans in under 10 to 12 years, which is what it was taking already under the 1982 regulations.

Now think about where that left us. We have a requirement under a statute that was written in 1976 that's never been amended significantly since 1977, to create 10-year plans using regulations that were effectively written in 1979 and that as a consequence of intervening events, including countless lawsuits, were now taking us 12 years to write and then another 12 or more years to revise a forest plan. So we're taking a dozen years at best to produce a plan that has a life span for 10 years. We're taking more time to revise a plan that in turn took more time to produce than the government took to put a man on the moon or to develop atomic power. So the planning process was creating an exercise that took longer to produce a result than either the Manhattan or the Apollo projects.

So we felt a compulsion to try to dissect what the root causes of that were, and what had changed in the intervening period of time that produced such a result and what we were getting by way of better resource management as a consequence for this extraordinary investment of time and capital.

One of the things that we concluded looking at how the case law had developed over time is that the original vision of what these plans were going to be and what they were going to do was no longer valid. The original vision was that these plans would determine what was thereafter going to happen on each of the national forests for the ensuing 10 years and that individual activities or projects that flowed from the plans would be justified by them and therefore proceed relatively quickly. And of course that didn't really happen because over the course of the ensuing period of time in response to challenges over individual projects, the courts consistently held that the agency had the responsibility to do more detailed environmental analyses of the individual projects than the original vision entailed and that indeed almost all of the projects that had any environmental consequences associated with them were going to have to stand on their own two feet based upon the quality of the environmental impact statement that was going to be done in accordance with the project. And that the plan was referenced in that environmental impact statement, but not itself a justification for proceeding.

The second thing the case law had done in that ensuing period of time had made it clear that if there were going to be fights over what happened on the ground, they would have to wait until something was actually happening on the ground and that litigants who wanted to challenge a plan would have a fairly heavy burden to overcome to show that they were harmed by that plan and therefore had standing to bring such a challenge, or they would have to wait until actually something was going to occur on the ground that was going to harm them and then at that appropriate time, according to the courts, bring such a challenge. So that was one big thing that had changed.

The original vision of what these plans were going to do and be was no longer operative. If we wanted to return to that vision, it was going to require Congress to restore it and to go back and make good on the rhetoric that accompanied the enactment of the National Forest Management Act, which was by and large rhetoric that said, among supporters of the Act both Republican and Democrat, people as disparate as Dale Bumpers and Jim McClure, that we've taken forestry out of the courts now and returned it to the foresters. Well, in fact, that didn't happen. It was perhaps their intent, certainly their desire even if it wasn't their intent, strictly speaking. But in order for that original vision to reoccur, it was going to take an act of Congress. Absent that, then we'll just have to adjust to the reality we face today, not some idealized situation that we'd hoped would have happened or that we hope in some future world could happen.

The second thing we learned is that we spent a lot of treasure hypothesizing over what might happen in the course of developing a plan without any real data to back it up. And, in the course of those hypotheses we involved all of the interests and the courts, in an almost theological debate about whose vision of the projected future was the most accurate. We speculated whether there wasn't some additional analytical work that could be done to put a finer point on the predictions of the future, but without any more data to bring to bear on those predictions, that was a bankrupt model for decision making.

The better model, particularly based on where the courts had taken this, was to instead make some reasonable projections, but then to do the projects, do a lot more monitoring, take all the money that we were using to hypothesize and actually invest that money on the ground to monitor the results of projects to see how close the hypothesis came to reality, and then adjust accordingly, if the hypothesis proved not to be correct.

So that was the model of the 2005, and subsequently the 2007 planning rule. And as I said, the courts will decide whether we met the requirements of the law or not.

Putting aside the legal requirements, our approach presents everybody involved in the planning process, in my judgment, with a fairly simple question. And that is, "Do you want to plan in the real world or do you want to plan in some idealized

world that you thought once existed or hope may exist again in the future?" If you want to plan in the real world, the regulations we produced will be a great asset to that and you'll be able to revise plans more quickly, and in the course of doing that, install better environmental protections that those new plan revisions call for than if you want to plan in an idealized world.

The trend of plan revisions is to use knowledge that's been acquired subsequently to do a better job of land management. So if you're taking 10 years or 12 years to get that on the ground, the question is are you really benefiting the environment to the degree that you could if you could do that in two or three years? And that's the real world context in which planning occurs and the choice that everybody has to make. Sure, we can make this as complicated as anybody wants in order to answer every hypothetical question before we finally have a revised plan ready to implement, and if that takes 12 years or 15 years or 30 years, as it has on the Tongass National Forest, then we can spend the time doing that.

But consider if, as a consequence of what we've learned in the development or the implementation of the preceding plan and the development of this revision, we have better and newer ways to do things that will achieve on-the-ground benefits, what do we gain by postponing the implementation of those benefits for the better part of a decade or more?

MN: A lot of people in that real world that are engaged in the planning process, tell me that they're looking for much more predictability and stability and certainty in a planning process than what's offered in the 2005 regulations.

MR: Well, a lot of them are looking for an idealized situation they won't find. They won't get predictability or certainty as a consequence of the passage of time to develop a plan. They'll get stasis. And some of them, truth to tell, are probably happy with stasis. If you're satisfied with the status quo as it is today, then your motivation to engage in any changes to the status quo is going to be fairly limited and it's not necessarily convenient to say that you're in favor of the status quo, so you generate other arguments that justify keeping the status quo unchanged.

MN: In theory, the planning regulations in terms of adaptive management make sense, and part of that obviously is monitoring, but if history is any guide, the monitoring funds will not be forthcoming.

MR: Well, that's because what history would suggest is we spent all the money we had doing longer, more theoretical environmental assessments to speculate on outcomes. If you don't spend that money doing that, you have it left for monitoring. And if you have it left for monitoring and you get real-world results, you don't have to speculate. That's the simplest description of the paradigm shift that we were trying to implement.

MN: Well, let's move back to the issue of private land development and Plum Creek. I would like to talk about what the U.S. Forest Service has called one of the four threats to our national forests. The loss of forest lands to subdivisions and fragmentation. This threat is particularly acute in places like Montana with its checkerboarded land ownership patterns and the amount of prime real estate owned by Plum Creek Timber Co. In this context, will you tell me a little about the recent controversy surrounding disputed easements shared by the U.S. Forest Service and Plum Creek in Western Montana. I'm especially curious as to why Plum Creek abruptly pulled out of this process when the U.S. Forest Service appeared to be willing to make some broad, albeit disputed, concessions.

MR: Well, I think you've reversed the circumstances involved in the outcome here. It was Plum Creek who was willing to make concessions at the outset, then withdrew because they could see that the decision if it was carried to a conclusion would have been litigated thereby throwing the issue into a greater degree of uncertainty. So the concessions that Plum Creek was willing to make were what were lost, not any Forest Service concessions.

But let's go to the basic issue first, because it is the context in which the Plum Creek situation is being debated. The facts are that one of, if not the most, significant environmental threat in the Intermountain West right now is the subdivision of and development of privately owned lands, both ranchlands and forest lands. It is an issue that complicates the resolution of almost every other environmental issue that faces the West, including water quality and water quantity and wildlife habitat protection.

The western states are the fastest growing and the most rapidly urbanizing, and that's why the issue is most pronounced there. The five fastest growing states in the last census were Nevada, Arizona, Colorado, Utah and Idaho, and a number of other Intermountain Western states were right behind them, and other western states as well. In those states in particular, the growth is coming in ex-urban areas, in the wildland-urban interface, not in the gentrification of large core metropolitan areas. Because everybody is moving to take advantage of the amenity values of having a house in the woods or closer to nature. It's the dark side of the information revolution. With the spread of broadband access into rural areas, people can commute longer distances because they can telecommute part of the week or all of the week if they choose. And that's what creating that development pressure.

That's why one of our major initiatives in the 2002 and 2008 Farm Bills, as well as in other related programs like the Healthy Forest Reserve Program which was part of the Healthy Forest Restoration Act, or the Forest Legacy Program, were designed to provide incentives to landowners not to subdivide their land, to purchase conservation easements, to defray the pressure to settle, by giving them an opportunity to generate an additional revenue stream from their holdings by keeping them as working farms, ranches or forest lands. And we're pretty proud

of the progress that we made during the eight years that we had to implement both Forest Legacy, the Healthy Forest Reserve Program and all the Farm Bill conservation title programs. We probably in total put over 10 million acres into easements as a consequence of those programs.

Much of the work, though, to deal with the pressure of that kind of development by design and necessity falls to state and particularly local governments, and most particularly county governments. Because in our federalist system, we've assigned most of the responsibility for regulating private property to county zoning agencies and we have not revisited that since 1974 with the failure of comprehensive federal land-use legislation that year, which Congress never choose to revisit. And instead of trying to reassess, or rearrange, the federal-state-local federalist arrangement, we've tried through a variety of means to assist counties in doing what has been primarily their responsibility. And part of our effort in the Farm Bill programs is to be a partner with counties in the purchase of those easements in a strategic way that helps channel development into less-sensitive areas.

For the most part in that ensuing 35 years, county governments have stepped up and increased their zoning authorities and responsibilities, in some cases at the county level and in other cases as the result of state initiatives that were put on the ballot and approved by the majority of people in each state. So with relatively few exceptions, what you have now are some fairly specific, and in some cases, pretty aggressive, land-use controls imposed at the state or county level.

As it happens, Montana is one of those exceptions and the primary reason for that is that the state Legislature has decided to restrict the authority of counties to regulate private land use in a peculiar way. And that way is a state statute that holds that if a private landowner owns above a certain percentage of the private land within a particular county, then they have the right to veto any county zoning ordinance. I want to stress that that is a peculiar element of Montana politics that doesn't seem to be shared elsewhere in the country even though other states have a wide variety of differences in their state and county zoning requirements.

In the case of many private landowners, I should say many non-federal landowners because some of the landowners involved are states as well, we share checkerboard patterns of ownership. Congress in the 1800s, in one of a number of homestead-related statutes designed to help ensure the settlement of the West, gave both the states and the railroads sections of land that the federal government controlled prior to statehood. The states got some of that at statehood and some of it afterwards through the passage of educational land grant acts. The railroads got it all at the same time and so the federal ownership—the public domain, if you will—was then checkerboarded with ownership by non-federal entities in every other section. Subsequently thereafter, at the turn of the last century, the forest reserves were created by Theodore Roosevelt and Gifford Pinchot and what was placed into the forest reserves, now the national forests, included some of that

checkerboard ownership. So many of our Western national forests in particular have areas of checkerboard ownership where the other owner is either a state government or a private owner, either a railroad or a successor-in-interest to a railroad, or in some cases a homesteader who bought the land from the railroad or its successor in interest. So we have a very complicated land ownership or land tenure pattern in some parts of the national forest.

That confounded our ability to access the national forests to put them into multiple-use purposes because we had to get easements and rights-of-way across these non-federal owners to access the national forests. So in 1964, Congress dealt with that problem by passing the Forest Roads and Trails Act to authorize the Forest Service to enter into reciprocal rights-of-way and easements with these other owners to gain access to the national forests. The principal purpose, in fact the only purpose of the Forest Roads and Trails Act of 1964, was to provide a mechanism to gain access to the national forests for the general public for both timber production, which was a more important, relatively speaking, goal at that time but also for other purposes as well, because the national forests were being discovered as recreational assets, even in the 1960s and, of course, more prominently in years thereafter.

So from 1964 to present, we have engaged in negotiations with other landowners, both private and state governments, as well, to create these reciprocal rights-of-way and reciprocal easements. Early on, the Forest Service was desirous of having these rights-of-way not limited in purpose. We wanted to be able to access the national forests for whatever purpose that a particular area could meet. We also wanted the road standards to be high enough so that access would be available to the general public, including the general public traveling in a standard passenger vehicle. So if we were negotiating with a non-federal landowner, we would say, “we would like a reciprocal right-of-way and an easement agreement and we’d like it unfettered to purpose because we want to develop some campsites, some fishing areas, on the national forest parcels that we’re going to access with the right-of-way through your land and we need the road to be of a standard that people can reach it.”

The other landowners for the most part weren’t interested in those kinds of high standards roads, because for the most part all they wanted to do was harvest timber so if the road was of a sufficient standard so that a logging truck could use it to harvest the timber, that was all they were initially interested in. For them, the concession was, “all right we’ll agree to unlimited access, a higher road standard and more frequent maintenance to meet your needs, in return, we don’t want any limit on what we can do with our land.” And the easements that were written at that time were all of that nature such that they did not restrict access to the non-federal landowners to simply timber production or mining, or whatever other purpose was proximate in that landowner’s time horizon as opposed to some future use that he might put to the land.

Now that having been said, you can talk to any number of people in the Forest Service or outside of the Forest Service who were serving at the time that these easements were developed and who can tell you that their contemporaneous understanding was that we were writing easements for timber production purposes. And that's true, because that's all they were concerned about. But at the same time, the language that was executed in these easements wasn't so limited and indeed both sets of landowners had a desire to make sure that their use of the land wasn't subsequently limited by the easement. The Forest Service, because we wanted the roads open, ungated, so that the public could enjoy their national forests. The other landowners because they didn't want their future land uses circumscribed by an easement as well.

When Plum Creek as an individual landowner converted from a C-class corporation to a real estate investment trust, it—just as every other entity that's made that conversion—began to look at its assets a different way. And every real estate investment trust and every timber industry management organization that's done this has basically made the same conversion. You're no longer part of an integrated forest-products manufacturing company, the timber lands are no longer part of the production stream, they are a separate asset standing on its own that has a particular value and is managed for a specific profit profile on its own. Part of that is going to be to supply raw material to wood-products manufacturing facilities, pulp and paper mills and sawmills, but you're now detached institutionally from those mills and so you're on your own in terms of trying to figure out what the values that your assets can be put to, to make your new entity as profitable and as efficient as possible.

One of those values is to look at the entirety of your estate and see if some of the land doesn't have a greater value to be developed as real estate rather than managed for timber production notwithstanding the concerns that that development will create except to anybody who's seeking to buy their house. The people who have their house are the ones that are going to be concerned, but anybody who still wants to get in has got a completely different view.

And that's what Plum Creek is now in the process of doing in Montana and elsewhere. And so they came to the Forest Service and said we're going to develop a portion of our lands. The initial response by people at the field level was all over the map as to what they had to do and so they came to the Washington office and the Office of General Counsel and said, "We're getting very different responses from all of your field folks. We believe, looking at these easements, our rights are clear. We need to know institutionally whether the Forest Service is going to honor those rights uniformly, assuming that the language of the easement is the same in each case. And it is in most, where there are differences we're willing to abide by the differences. But where they're the same, we need to know whether the Forest Service is going to honor the rights or whether we're going to have to defend these rights by suing the Forest Service."

So our general counsel took a look at it and said, “This is fairly simple. These rights exist; they have always existed and to the extent you’ve got field people saying they’re not there, they’re probably going to be sued and they’re probably going to lose.”

So we then told Plum Creek all right, but you know we’ve got a problem and the problem is we’re not happy with this increased development. It’s causing problems for us. The neighbors that we’re getting are not people that are easy to deal with. They come in to the country new, they don’t know anything about it. They assume this road is a public road, it’s not. It’s a road they have some responsibility to maintain by virtue of the cost-share agreement in the reciprocal right-of-way and before we let you just go off and subdivide and sell, we’d like some commitments from you that will make it easier for us to deal with them.

Now Plum Creek wasn’t under any illusion that they had to grant those commitments. They could just say, “hey, you gave us an easement; the easement transfers with the property and whatever transpires after that is between you and the new property owner, not us.” But they are smart enough to know that we could drag our heels and make it difficult if we had wanted to.

So they committed to several things, one of which was that they would encumber their deeds with a requirement that the developer form homeowners associations so that we could have a single entity to deal with when we got to road-maintenance issues. The second was that they would encumber their deeds to require the developers to build with firewise plans so that the subdivisions would be more defensible in the case of wildfire; and the third was to include in their transactions a hold-harmless clause. Everybody who was buying a piece of their land knew that the federal government wasn’t committing beyond its normal fire-and search-and-rescue responsibilities to take on a new and additional burden simply because there were now people with \$500,000- or million-dollar homes in a new subdivision that wasn’t there before.

And that’s kind of where we left it. Or where the issue was before some of the counties, particularly Missoula County in Montana, came in with a desire to get a different outcome. Of course that outcome was for the Forest Service to step in their shoes and regulate Plum Creek’s land-use decisions since they didn’t have the authority from the state Legislature to do that. The problem was that we didn’t have the authority to do that either, number one. Number two, we wouldn’t have been very good at it. Number three, and most importantly, this wasn’t a problem anywhere else.

Even if I wanted to tell our lawyers, find me a legal justification that’s colorable to decide to regulate Plum Creek, I couldn’t do that without regulating every other non-federal landowner, including a number of state governments across the country. So that, I concluded, was not going to be a course that could be easily

taken. And so therefore the choice was do we go forward with this or do we just let the status quo lie and the result was we let the status quo lie.

I believe that unless the state Legislature changes Montana law, the very things that Missoula County and others were afraid were going to happen, will in fact happen, and they will have to bear the brunt of that. To wit, as an example, their biggest concern was roads. Counties are going to be asked to maintain these roads. Well, no, they're not. They're still private roads. They're owned by the Forest Service and Plum Creek's successors-in-interest. They're not county roads. If there's a homeowners association, per the requirement Plum Creek was willing to agree to, the Forest Service goes to the homeowners association and says, we have a dual responsibility to maintain this road to this standard. Let's work that out so that you can put that in part of your assessment for your homeowners association members. Now, our level of maintenance may not be what these individual homeowners want. As a group, they're now going to go to the county demanding services. They're voters in the county now. The county has nothing to rely on. The county is going to either have to say, nah, we're not going to do that. It's not a county road. Forget it. You guys should have known when you bought that you had some responsibility for maintaining the road. Tough luck. Too bad. So sad. You know, that's going to put a burden on county commissioners to either tell constituents, probably influential constituents, since they'll probably be upper middle-class or upper class constituents that they're not going to extend county services.

The very fear that they had will now more likely become manifest as a consequence of their insistence that we do something that we weren't authorized to do.

MN: How do you account for the Government Accountability Office opinion, preliminary opinion, about this matter that seemed to question your interpretation, or the USDA's interpretation of the Forest Roads and Trails Act? They seemed particularly concerned about the sort of precedent that could be set westwide by this interpretation.

MR: Well, their opinion was somewhat short of an opinion. I would call it a series of observations because they didn't really get to the point of saying this is what we think the Roads and Trails Act means and what therefore the Forest Service should have done. They stopped well short of that and simply said, you know, based on our observations the Forest Service could have done this differently and had they done it differently, they might have resulted in a different outcome and the course they've taken could have precedential value elsewhere in the West. Well, the last part of it is preposterous. It's a shortcoming in their analysis because they didn't look at any other state, and therefore they didn't have the input that they would have gotten from other states who said, we don't want the Forest Service mucking around in our local zoning authorities or statutes. We've got what we want as far as control over private property rights. States like

Oregon, Washington, California. The last thing we need is the Forest Service slopping over and confusing and otherwise confounding regulatory decisions that we're already poised to make. So I don't think the precedent of this is that significant from the concern that the GAO raised because the other states have already weighed in. The National Association of Counties, for instance, has weighed in in opposition to Missoula County's view. You know, the balance of the observation is that you could have done this differently and you could have gotten a different outcome. Well, yeah, that's fine, but you know, I have a general counsel that gives me legal advice and I typically rely on him or her and their legal advice is Plum Creek had the better legal argument here, and if you're going to be sued, you're more likely to win the lawsuit brought by somebody who wants you to disenfranchise Plum Creek's rights than you are the lawsuit brought by Plum Creek to defend their rights.

MN: Why do you suppose Plum Creek pulled out of the process?

MR: Well, I think it's fairly simple. By pulling out of the process they could assure that there would not be a final decision that could then be litigated by a third party. So now, the status quo ante is that they have their rights and a third party is going to have to object to whatever they decide to do using only the bare language of the easements that have been in existence, in some cases, for 40 years. So their litigation risk is much smaller. That's not to say we get a better public policy outcome, in fact, we get an inferior public policy outcome.

But as far as Plum Creek is concerned, I think their thought process was pretty logical. A: We want to clarify we have these rights. B. In order to not have the Forest Service jack us around, we're willing to agree to some things we don't have to agree to, but C: if, the course of that agreement, we're going to create an avenue for some third party to challenge our rights, then the hell with it. We're out of here.

End of Tape 1.

## TAPE 2

MN: Quite a few of your initiatives and decisions have been stalled by the federal courts. You've also had some interesting interactions with the courts on a professional level. The role of the judiciary in forest management has received considerable attention and criticism in recent years. Is this criticism of the courts warranted, in your opinion? And what ought to be the role of the courts in forest management?

MR: Well, first again, as a matter of context, there hasn't been appreciably more challenges to my decisions than those of my predecessors, which were also

challenged. The case law, or the book of cases that the Forest Service has, hasn't increased dramatically in the last several years, nor has the Forest Service's success in defending—the Department of Justice's success in defending the Forest Service in response to those cases. We still win better than two-thirds of the cases that are brought and settle satisfactorily, from our standpoint, even more of them. So that's been more or less a constant rather than a new development. Nevertheless, there has been a lot of commentary on the role of the courts, including commentary among justices, as the Ninth Circuit just did a searching reassessment of its jurisprudence over the last couple of decades. Basically doing a course correction, if you will, as a course of an *en banc* review of a case that the judges decided was wrongly decided by a three-judge panel of the Circuit. So even the members of the judiciary have been commenting on, reviewing, and in some cases, critical of their own work.

A lot of criticism of the courts is, in my judgment, not justified. The role of the courts is to apply the applicable law to cases in question and when they do that, you know, I don't think we have much of a beef about what they come up with. And if we end up losing a case, we go back and see what we have to change.

I think that the idea that the courts are social change agents is an idea that's misapplied to the judiciary and, in the environmental and natural resources area, that's becoming more and more clear than was perhaps once the case.

MN: There have been some significant changes that have taken place since the National Forest Management Act passed in 1976. The recognition of climate change is the big one, of course. Consider also that many interests now see unmanaged motorized recreation as a greater threat facing the national forests than timber harvesting. And then there are globalized timber markets and international plantations that have fundamentally shifted the role and economic position of the national forests. I could go on, but suffice it to say that serious changes have taken place since NFMA was enacted. In light of these changes, and considering that you have called some environmental and forestry laws "archaic," do you believe that these laws are in need of revision?

MR: I do believe that they are in need of revision. I doubt that that's going to occur in the near future. And the reason that I believe that they are in need of revision is not that simply because they are archaic, although they are in part that, but also because they're disjointed. They're archaic because in many cases they were written in a different era and they haven't been subsequently updated or modified since.

The National Environmental Policy Act was written in 1969 and it hasn't been materially amended since. The National Forest Management Act and the Federal Land and Policy Management Act were written in 1976 and have not been materially amended since.

The Endangered Species Act was written in 1973, last amended in the early 1980s, and is now more than 18 years overdue for reauthorization, and of course, there's the mining law of '72—that would be 1872, not 1972. So going back to what I said earlier, if you look at laws as tools that help agencies make decisions, then these tools are pretty dull and outdated. But beyond that individual problem, there is another, and that is as Congress wrote the body of environmental law that exist today, primarily in the late 1960s through the 1970s, they wrote two different kinds of statutes which have not been perfectly coordinated in their implementation.

On the one hand, they wrote broad, process-oriented statutes, like the National Environmental Policy Act or the National Forest Management Act, with sort of general goals that thereafter laid out a process the agencies that were charged with implementing them should follow toward the achievement of those general goals. That's on the one hand.

On the other hand, they wrote a series of statutes with very specific proscriptions like the Clean Water Act's Zero Discharge Standard; the Clean Air Act's Prevention of Significant Deterioration Standards; the Endangered Species Act's prohibition against doing anything that threatens or jeopardizes an endangered species, and then gave those statutes to other agencies with different backgrounds, different objectives, different cultures, different expertise and different views on what constitutes acceptable risk in decision-making to implement. Those statutes don't necessarily fit together entirely well, nor has Congress done anything in the ensuing two decades to try to sort out the differences to any great degree. So if you were going to levy a criticism of the current statutory framework, it would be both one that suggests that some of these requirements are archaic and out of date, and another that they are disjointed and not synchronous in the way they impose objectives or obligations on all of the agencies involved. That having been said, do I think Congress is going to modify them anytime soon? I don't think so, and I think the reason is we have neither a pending crisis that would justify precipitous congressional action nor the consensus that would be necessary in the absence of such a crisis to get Congress to act.

What's happening instead is that the agencies and the various groups are trying to work their way through the existing statutory framework to see if they can engage, in some cases in an extra-statutory way, to achieve an outcome that's better than would otherwise be achieved if they simply relied on the existing statutes and the existing mechanisms to achieve those results.

That, I think, is why you're seeing the growth of cooperative approaches to resource decision making and the growth of place-based solutions that is popping up in various parts of the country. And what may emerge from that effort, over time, is a more constructive engagement in a concrete setting among groups who previously disagreed, that will then maybe expand to a willingness to engage each other in a more abstract way, in a way that says, "If we were able to achieve this

specific result in this particular context, despite—not because of—the existing statutory framework, how would we change the existing statutory framework to make it something that would assist, rather than confound, the achievement of these kinds of results. But that’s a step beyond where we’ve progressed so far, I think.

MN: Well, speaking of these place-based initiatives, as you know several of these are ongoing in Montana and Idaho, most prominently perhaps is the Beaverhead-Deerlodge Partnership, but there are also efforts on the Lolo, on the Kootenai, on the Clearwater, so do you look favorably upon these place-based proposals and their effort to codify their negotiations?

MR: Well, I look very favorably on these kinds of cooperative efforts and, to the extent that they’re successful, they oftentimes don’t need a codification of their results. They have it within their own resources and capabilities to bring that conclusion to bear successfully. Sometimes though, part of the arrangement is something that needs to be codified, such as a congressional wilderness designation, and in that case, we’ve been pretty supportive as these have come up from the ground up to endorsing whatever was needed to conclude the collaboration successfully.

What I think you’re seeing today, is that the success of these kinds of collaborative efforts being replicated are now getting the attention of national policy makers, such that you’re seeing mechanisms included in the new statutes to encourage this effort. So for instance, in the Secure Rural Schools legislation in 2000, there was an emphasis on locally led resource advisory committees to invest a certain level of funding in projects on each national forest. When that legislation was reauthorized this past year, in 2008, there was an even greater emphasis on the use of resource advisory committees.

The Healthy Forest Restoration Act in 2003 placed an emphasis on community-based wildfire protection plans and the development of those plans to prioritize fuels treatment work and the majority of fuels treatment projects that were authorized as a priority under those plans had not been the subject of appeals and litigation. The sort of cooperative approaches imbued in the 2002 and 2008 Farm Bills were another example of taking what was being developed at the local level and trying to institutionalize it nationally.

The work that Trout Unlimited did with the EPA to develop a Good Samaritan program to deal with abandoned mine reclamation on federal lands is another good example of cooperative conservation at work. It’s, in a sense, as if our leaders are watching where the people are going and running to get in front of them so they can help lead them there, and as that occurs, you know it is occurring now, as something in addition to the existing statutory framework. What I think you’ll see over time, is that as that generates more and more success, it will generate a level of interaction that will allow us to get back into the existing statutory framework and make some changes so that those statutes are less archaic

and less disjointed so that they can actually assist in the development of these approaches as opposed to either being an impediment or irrelevant to these approaches as they're being developed.

A perfect example of that is the Good Samaritan piece of it. That is one enterprise in cooperative conservation that actually can't proceed unless there's a change to the Superfund statute, because the current Superfund law attaches liability to anybody who comes in and tries to remediate that site. Therefore, nobody is going to voluntarily step forward and assume liability that's not theirs. Unfortunately there's nobody left to assign liability to, so the site stays abandoned, it stays unremediated, it continues to have these adverse environmental consequences that it's had for the last half century or more. So there you're going to have to flip a switch with the Superfund statute to allow that cooperative to proceed.

In most cases, the collaborative efforts have proceeded notwithstanding the existing statutes. The existing statutes are not an impediment to it, but they're not a help to it either. I think we're going to approach the day where enough cooperation and good will has been engendered that we'll actually look backwards and say, "Okay, what do we have to do to make the existing statutes help this occur faster and not just simply stay out of the way?"

MN: But it seems that these more recent trends are seeking to lock in some of those deals through codification. I'm asking this partly because of your primary role in drafting the Herger/Feinstein Quincy Library Act legislation. Are there lessons that we can learn from that place-based law?

MR: Well, I think the primary lesson learned from some of these is that you have to be able to distinguish between codification that's necessary because some of the decisions lie outside of the collaborative, and therefore require a different authority to execute, and codification that's designed to complete an incomplete collaboration and that otherwise wouldn't be required except for the fact that it's an incomplete collaboration. That's not a reason not to do it, but it's an important distinction to understand going in because it materially affects what the outcome is going to be.

If you have a collaboration that has come to a successful conclusion, and part of that conclusion is that some of it has to be legislated because it cannot be accomplished but through legislation, like the designation of wilderness, then you're simply executing the last steps of a collaboration that's already complete. If on the other hand, you're codifying something because there are still disagreements either within the collaborative or among stakeholders who arguably could have been or should have been part of the collaborative, you may still choose to do that but what you're codifying is a different kind of a solution than one where an agreement has been reached and your role is mainly to

discharge what has historically been your role, and that is to codify at the national level something that hasn't been delegated beyond, or below, the national level.

In the latter case, you're not really required to make any judgments; in the former case, you are becoming part of the collaborative and making a judgment that the collaborative has been successful enough even though it's not complete, that you want the outcome that has been agreed to, notwithstanding the fact that there are still stakeholders outside of that sphere of agreement. Quincy Library was an example of the latter.

The Beaverhead-Deerlodge Partnership may become an example of the former because the only thing we're being asked—the national level decision makers are being asked to codify is the wilderness designations. I say maybe because it's not clear that we have a complete collaborative yet.

MN: Funding for the national forests is of widespread concern. So much of the agency's budget now goes to fighting fire. Will you speculate about the agency's long-term budgetary outlook?

MR: Well, I think it's difficult, but not insoluble and not unique. We are, I think, for the foreseeable future going to be in a period of relatively level discretionary spending. I don't see much changing in that regard until: A. the world becomes a more peaceful place; and B. we come to grips with entitlement spending and decide what kind of a resolution we're going to propound to that so that we can then turn back again to discretionary spending priorities. Until those two key things are resolved, every agency at the federal government level is going to be in a budget-constrained environment because of the impacts of those two overarching variables. Now we can solve things within those constraints by figuring out a better way to budget for firefighting. I think that's going to happen. That will take some of the pressure off. And by learning to spend more wisely the money that we get and to seek non-appropriated dollars to support federal government missions to a greater degree. Those were challenges that we faced and those will be the challenges of the future. They're not new challenges though. They've always been there.

In my tenure, one of the things that I tried to do fairly frequently was to meet with our people at the field level and to have what we called "family meetings." Particularly in the Forest Service, that was the format that was used; less so in the Natural Resources Conservation Service. And as you participated in one of those meetings, they were typically open question-and-answer sessions with anything being fair game and there was a very rare family meeting where people didn't ask about budgets and funding levels. What I had to say, was: "Look, I don't see it as getting progressively better until we address those two things that I mentioned earlier.

Both of our agencies, the Forest Service and the Natural Resources Conservation Service, are effectively New Deal agencies. NRCS was founded as the Soil Conservation Service during the New Deal to deal with the Dust Bowl issue. The Forest Service was obviously founded earlier than that, because it was founded by Theodore Roosevelt, but a lot of the meat that was and is the Forest Service was put onto Theodore Roosevelt's bone structure by Franklin Roosevelt during the New Deal. And a lot of the programs that both the Natural Resources Conservation Service and the Forest Service administer today have as their antecedents New Deal programs. The Plant Materials Center, the Soil Survey of the NRCS, the Job Corps that the Forest Service is the sole remaining public sector job corps provider for, is a lineal descendent of the Civilian Conservation Corps.

Franklin Roosevelt today is remembered by history as the New Deal president because of the persistent level of experimentation that he did during the New Deal during the Great Depression. What's less well remembered today, and less well recorded by history, is that between 1940 and 1944, Franklin Roosevelt reduced domestic spending by 37 percent off of a much smaller spending base than the one that we enjoy today. And the reason he did not is not a mystery, it is because we weren't then, as we are today – a nation at war, and during war time other priorities are going to take precedence.

The bigger challenge we have today is not only are we at war but we're now generationally confronting the growth of the entitlement programs that he in fact helped create and that we're going to have to figure out how to fund into the future, while we maintain the other domestic programs that are priorities. Our Forest Service and Natural Resources Conservation Service people have a history of being creative in the face of tight budgets and it's a history that's going to serve them well because it's also their future.

MN: You spoke earlier of non-appropriated funding. Are there other U.S. Forest Service funding scenarios, from carbon markets and payments for ecosystem services, that deserve more attention and debate.

MR: Well, I think one of the things that I hope our successors carry forward the momentum we started on, is the development of private markets for ecosystem services, because they're developing rapidly and there is an opportunity to harness private capital in the service of conservation objectives if they're creative enough to expand what we started. We were only able to scratch the surface before our tenure ran out.

I can envision a future in which ecosystems services are traded in the private markets the same way other commodities are traded today. And that in the course of making those trades, we generate an income stream of private capital that stands alongside appropriated dollars to do good conservation work by rewarding landowners for making those investments in conservation. And some countries

are further along in that than we are, and so we are, in some cases, in some respects, catching up, although we're not very far behind.

As we did our analysis of how these markets are developing, the obvious question came in, "Well, what about the public lands?" Apart from the idea of empowering private land conservation by providing these revenue streams to underwrite the cost of private land conservation by giving the private landowners the ability to sell ecosystem services into markets, what kinds of opportunities are there for public lands as well? Because those public lands are providing substantial amounts of ecosystems services also.

The answer there is a little more complicated. Because in every case where these markets have developed, you've had to resolve the question of additionality and baselines. And what that means is: What's the baseline that you use to establish the incremental value of more of a particular service. You can't create a market mechanism until you agree on the baseline. In most cases, the baseline has been something above what exists today. So it recognizes what's there and says if we can get more of it, cleaner water, cleaner air, more forests, then we're willing to create a market to pay for it.

The public lands in most of these debates have been considered part of the baseline, which is to say, some of the participants in the dialogue associated with the development of these markets, like the dialogue that's occurring in California right now, have said we're not going to pay for what's already there. We're going to pay for something that exists beyond the status quo or is created beyond the status quo, and the public lands are already there, ergo, because those services are being provided as a consequence of an existing statutory mandate, the value should be attached to anything beyond those services, not as they exist today. And I have a hard time disagreeing with that as sort of a logical construct for how you build these markets because otherwise you're not going to get any conservation benefits for the money that's being spent. You're simply going to underwrite work that's already being done. That having been said, there is, I think, a role for public lands to play in how these markets function, but it's a different role than entering the markets directly. And it's a role more akin to ensuring their function.

Today, if you are a landowner and you decide to plant trees to sequester carbon so that you can sell your carbon credits to the Chicago Climate Exchange so they can be resold through the Exchange to a utility who's emitting carbon, you're only getting about 60 percent of the value of your carbon credits. What the Exchange is doing, is totting up how much carbon you're going to sequester, dividing that into credits, multiplying it times the dollar value of that number of credits and then discounting it by 40 percent. So you get 60 percent of the value of your carbon credits. The reason those are being discounted is because of uncertainty. Because the Climate Exchange has to be able to indemnify the utility in case your trees get burned in a forest fire or knocked down by a hurricane. They have to go out and

acquire additional carbon credits to make the utility whole. So that's why you only get a discounted value for what you're selling into the market.

The national forests have a huge reforestation backlog. A couple million acres. And it increases every year as we get wildfires, that burn off some more forests and we replant or some of that we reforest some of it and some we don't. Some of it we don't because it'll reforest naturally and we don't want to intervene. In other cases, we don't because we add the acres to the backlog and do the reforestation work only when we have the appropriated dollars to get around to it.

Well, what if the national forest system became a primary insurer of carbon credits and worked with the markets so that if you were going to sell carbon credits to the Chicago Climate Exchange you had a choice. You could either accept 60 percent of the value of those credits or you could get 100 percent of the value of the credits if you secured from the Forest Service an insurance premium for the credits. The Forest Service would charge you for the premium, maybe 10 percent of the value of the credits, they'd take that money and catch up on the reforestation backlog planting trees on their normal schedule, albeit faster than they would have otherwise, and hold the credits associated with that planting as insurance against your credits for as long as the contract lasts.

That's I think probably the more likely public land role and what we get out of that is additionality, as well as better federal land management, as well as a higher value for the private landowner who's selling credits into the system, whose credits are also going to provide additionality. So I think that's where the more likely avenue for participation of public lands is. Carbon is only one asset. Obviously we have a backlog of wildlife habitat improvement work we'd like to do, particularly for T&E species. You could fund that backlog the same way. If you had somebody who wanted to insure the value of some wildlife habitat credits that they were selling, we've got areas where wetlands restoration is work that we could be doing on the national forests. And we could insure mitigation banking trades the same way.

MN: I would now like to talk about what some consider to be the slow and piecemeal privatization of our national forests and federal lands. This concern has been raised in numerous instances. Recreation fees, the outsourcing program, selling parcels to secure fund Secure Schools. How do you respond to such fears and criticism.

MR: Well, the first thing is that this characterization of what's occurring is historically inaccurate to the extent that it's presented as some new development. The history of the national forest system has been one of sharing both costs and revenues associated with national forest management with some of the interests that are involved in national forests management, and it goes both ways. In the case of counties, within which national forests are located, Pinchot and Roosevelt concluded in 1906 that there was going to have to be some mechanism for sharing

the proceeds of the national forests with the counties involved. Or when they were gone, that is when Roosevelt's term expired in 1908, and Pinchot left soon thereafter, the pressure to declassify the forest reserves and return them to the public domain would be hard to resist. So they passed the Revenue Sharing Act in 1908 that gave the counties involved 25 percent of the gross receipts associated with any management of the national forests. That was one cost-sharing scheme that was established at the very beginning of the national forest system.

Going the other way, charging fees for certain services provided is as old as the national forest system is as well. I should say as old as the public lands as well, because it goes to both the national forests as well as the former public domain lands that were administered by BLM. So as a consequence in the 19-teens, forest protection associations were developed in each state that shared the cost of firefighting with the national forests and underwrote some of the firefighting work that was done, both on national forests and on non-federal lands.

In the 1930s, after the enactment of the Taylor Grazing Act and the Grazing Advisory Committees on both the public domain and Forest Service lands, the advisory committees ended up paying for some of the work that the Forest Service and BLM managers were doing in order to assure that grazing could continue and that range improvements could be applied.

In the 40s and 50s, we started to allow people to build cabins on designated sites and charged fees for the use of those cabins. That kind of revenue sharing, back and forth, with Forest Service revenues being shared and fees for the production of goods or services being collected is pretty much as old as the system has been. What's changed, and frankly in my judgment, the only thing that's changed, is that we've got different sets of goods and services that people are wanting from the national forests and so we're modifying fee structures accordingly, or revenue sharing accordingly to accommodate those goods and services. I don't see that as something that is new, or for that matter, that gradual. I think it's been a constant throughout the history of the system--throughout the history of the federal lands.

Today, the current most significant use of the national forests, the most profitable use of the national forest on a per-acre basis is telecom sites. And are we getting telecom companies complaining that they're paying the highest fees in the system for their sites? No.

MN: Looking back, what group or interest was your most formidable adversary while in office? What made them so formidable?

MR: Well, if you try to understand the interest that you're working with, what motivates them, what are the external variables that they're reacting to, what are their objectives, their priorities, they cease to become adversaries. It's really hard to call somebody you've gotten to understand that well your adversary. And if they cease to become adversaries, they cease to become very formidable. So I'd

be hard pressed to call anybody that I've interacted with at any length, an adversary. Which then sort of obviates the need to rank them in degree of formidability.

But you have to make the effort to get to understand them well enough to make that occur. Usually, in my experiences in the policy-making environment, it's easiest to have adversaries if you don't know anything about them. The more you get to know about them, and I guess, the more they get to know about you, the harder it is for them to remain adversaries. That's always been my philosophy.

MN: Talk to me a little bit about your role as undersecretary and the role of other political appointees, vis-à-vis career professionals in the Forest Service. Like your predecessor you have been either credited or vilified for your role in management decisions, large and small. What is the appropriate role of political roles in this context?

MR: There is no sort of single rule that governs how political appointees interact with career civil servants. In most administrations, there's not even sort of a general approach. And so, every political appointee has the opportunity to decide, within some constraints, on their own how they want that role to be carried out and what they want the relationship with their career people to be. And if you look across government in any particular administration, and certainly if you look more broadly across different administrations, you see a pretty wide range of results, ranging from highly adversarial to a very close and cooperative relationship at the other extreme.

So here's my kind of rule of thumb and that is what I call the 20-60-20 rule, which worked reasonably well for me and maybe I should just leave it at that and not generalize. At the risk of generalizing inaccurately, I'll do so anyway because my thesis is that in any large governmental organization, you can divide the career civil servants into three categories. Twenty percent of them are delighted that you're there the day that you walk in the door because they had serious policy and/or personal differences with the people that preceded you and they are foursquare behind what they think you want to accomplish, maybe even more enthusiastic about it than you are. But they're there, ready to do whatever you want and maybe half a dozen things that they think you want that you haven't told them yet. But they're happy that you're there.

There's another 20 percent who are on the other side of the equation who are convinced that based on what they understand of the new administration generally, and what they think they understand about you specifically, who are terrified about what you might be bringing by way of policy direction, priorities or objectives, or the style in which you want to operate with them. So they're either busy burnishing their resumes in order to bail out as quickly as possible or trying to find hidden places that they can dig into where you won't find them

quickly. And that's 40 percent of the 45,000 people that I had to nominally oversee.

The other 60 percent are people who are career civil servants and have signed on to be career civil servants and appreciate the way that the system is structured, they're going to get political appointees who will be their policy-making leaders and are prepared to sign on to that with a couple of caveats. One, that the policy isn't counterproductive and unreasonable. Two, that it's clearly enough enunciated by whoever the political appointee is that they can actually understand it as opposed to spend their time wondering what it is their political overseers desire. Three, that they'll be given the opportunity to execute that policy if they demonstrate that they do in fact both understand it and agree with it, or given the opportunity to express their disagreements if they think in part, or even in whole, that the policy is not as well-founded as it could be and having been given that opportunity, then execute it if it's changed or if it's not. And then, fourth, and finally, that if they do faithfully execute it, whether they thought it was the best thought-out policy that they'd ever run across or whether, given the opportunity they could have made improvements, if they do agree to execute it and it goes to shit, as it sometimes does, that their political overseers won't abandon them and blame the fact that it got screwed up on them, as opposed to the person who was responsible for handing the policy down in the first instance.

My experience is that if you bring that 60 percent of the work force into your ambit so they're comfortable that those four criteria are met, then you've got 80 percent of the people basically supporting the program that you've articulated. The remaining 20 will either come to the realization that it wasn't as bad as they thought it was going to be in the first place and hopefully they'll join in or they'll leave, which allows them to pursue their agenda in some other context, or they'll at least make themselves absent enough that they won't be an impediment to progress.

In order to make that work, you have to start out with a realistic expectation of what your role is as political overseer. A generous view toward the fact that they're the ones that are going to have to implement it and you're going to have to get the 60 plus on top of the 20 that are already there, and have their confidence and support before you're going to be successful in making your policy work, and then three, you're going to have to basically accept responsibility if things go to hell and share credit when they actually turn out right. If you get that down, then you'll be fairly successful as a policy maker, as a political appointee overseeing career civil servants. If you screw it up, then that 60 is going to flip on you and you'll be fighting the career ranks your whole tenure, and the results of that will not be a successful tenure in office because what you accomplish will be grudging and more limited than will otherwise be the case.

MN: During your career inside and outside the USDA, you have undoubtedly heard of various ways in which the U.S. Forest Service might be reformed in the future,

from the rewriting of laws to various organizational and budgetary proposals. Are any of these reform measures that sound more compelling to you now that you've worked inside the bureaucracy?

MR: No. And the reason is that is a couple fold. One, more generally, in government, form should follow function and if you still have undecided issues associated with the functions that you want done, then you shouldn't start fiddling with revising the form of government until you've gotten closer agreement on the functions. In my experience over the last couple of decades, is just about every reorganization proposal that's surfaced has had behind it underlying disputes about function. And I don't think you solve these disputes by rearranging the form of government. The second reason I haven't been impressed by any of these proposals that have surfaced external to the bureaucracy is that they assume that nothing's been going in within the bureaucracy to make the form more efficient in achieving those functions that are at least generally agreed to and in fact a lot's been going on.

In the absence of outside proposals that have been agreed upon by Congress to reorganize federal decision-making structure in this area, the agencies involved have been looking for ways using the authorities that they already have to make the process more efficient.

For instance, we have Service First initiative between the Forest Service and BLM where they're sharing offices and specialized staffs to do work given the similarity of their missions. We have interactions between the Forest Service's State and Private Forestry Program and the Natural Resources Conservation Service to harmonize their landowner outreach and assistance programs; we have the development of a common computing environment, both within USDA so that all the agencies within the Department have identical computing systems that are interchangeable and interactive. We have a similar effort that's been under way at the Department of the Interior within the last decade.

We have consolidation of back office services among agencies to wring out greater efficiencies, so that, in USDA, for instance, many of the smaller agencies have eliminated their budget and finance offices and are just having that work done by larger agencies to create economies of scale and achieve efficiencies. None of those required statutory changes. None of them required legislative mandates to change, and none of them required major structural changes, they all, however resulted in savings and in efficiencies.

What most of the proponents from the outside looking in of these major changes ignore, such as moving the Forest Service to Interior, is that that change will require you to lose the efficiencies that you've already created, and all the changes that the agency has made on its own. So you pick up the Forest Service and you move it over to Interior: You've severed the common computing environment that all USDA agencies enjoy and you've diminished the value of that investment significantly as a consequence. You've severed the tie between

the Forest Service and NRCS. You've messed up the consolidation of payroll and accounting and employee services because that went from 20 vendors government wide to four in a consolidation that we initiated through the General Services Administration, OPM and OMB in 2002. But among the four winners are both the USDA National Finance Center and the Department of Interior National Business Center. Those are two of four government-wide providers of employee payroll services.

So you take the Forest Service, which is the largest customer of the National Finance Center and dump it over in Interior, where it will have to be serviced by the National Business Center, and you've just added three years of work to fix that issue on top of the work that you've already done.

All the things that I've seen so far have been, I think, changes that, No. 1, were marginal in some respects; two, had a policy agenda lying behind them that's not the reason you change government structure; and No. 3, were wholly ignorant of everything that's been done to create efficiency and therefore incapable of truly evaluating the pluses and minuses of making a subsequent statutory change.

Given all of that, the question is then, should the status quo stay unchanged or should it be changed. And the answer to that is always the same and that is: you tote up the pluses and minuses at the end of the day, knowing that there are going to be minuses, are they outweighed by the pluses? And in my judgment, none of the proposals that I've seen so far would pass that test because the pluses aren't significant enough to outweigh the minuses and therefore, it's not worth proceeding.

If somebody said though, this is an area that's ripe for change anyway and if you were going to change it, what would you do? And after I gave them this lecture about why I'm skeptical about the value of change, they said, nevertheless, we think that whatever, for whatever reason, change is necessary, then what I would suggest is that if you're really going to wade into this and be in for a dime, be in for a dollar and do what the states have done. Because we haven't changed the structure of governance in the natural resources and environmental areas since the late 1960s. Since Richard Nixon was president and created the Environmental Protection Agency through an executive order out of disparate elements of the Department of Agriculture, the Department of the Interior, what was then the Department of Health, Education and Welfare, and a variety of independent agencies and put them all into the EPA. That was in 1969.

Yet we've passed a substantial body of new statutes and authorities during that time, dispensing the responsibility for implementing those statutes and authorities to a wide variety of agencies scattered across government. To the average person, parachuting into this with no prior experience, this would look on the face of it, like the most disaggregated area of domestic policy that you could imagine, given

the lack of any significant structural change in the face of the amount of new authorities and funding that have been created in the last 40 years.

The states basically went through the same progression as states passed state statutes that mirrored most of the federal statutes. But if you look at what they did, most of them re-engineered their executive branches much more fundamentally, creating departments of natural resources with broader authority over a wider range of things than anything comparable at the federal level. Many of them, in addition to that concluded that, even with this reorganization, the political sensitivity of many of the issues that these new departments of natural resources were going to address required some intermediate entity between the governor and the state legislature and the departmental director, so they created natural resources commissions with appointed commissioners whose job it is to run interference to entertain, modulate, evaluate, referee the political incoming that some of the decisions involve. At the federal level, we haven't done anything comparable to that.

So if you were going to be in for a dime, do some relatively minor things like move the Forest Service to Interior, or move BLM to Agriculture, or move NOAA Fisheries to Interior, any of those sort of small-bore changes, all of which would be controversial and all of which would require statutory authority anyway, why not be in for a dollar and do what the states have done to harmonize the structure, to the statutory mandates as they exist today, and at least eliminate one of the reasons why the current laws are disjointed as opposed—without necessarily solving all the problems, but at least addressing that one.

In order to do that, to be effective, it would have to be more than an executive branch reorganization. As well it would have to be a legislative branch reorganization so that all of the various and sundry committees who currently review the work of all these various and sundry agencies relinquish their jurisdiction to the creation of a committee on natural resources and the environment that is created in each Congress just as the creation of the Department of Homeland Security resulted in the creation of a new appropriations subcommittee for Homeland Security and a new authorizing committee for Homeland Security so, would you need the Congress to respond in a like way if this was going to have any effect over time? Now would that result in better policy or worse policy? I don't know. But at least there the benefits have the prospect of outweighing the costs and make the task worth the toil. Because one of the benefits would be a way of getting around the disjointed nature of the statutes that were created during the 1970s and have some uniformity to the way the agencies tasked with implementing them approach the task by virtue of the fact that they are now all part of the same organization as opposed to completely different organizations that don't reach any coordination until the president is dragged into it, if he chooses to be, to render some kind of verdict on an interagency dispute.

MN: My last question: The U.S. Forest Service has been whipsawed back and forth over the last couple of decades because of swings in executive power. This is to be expected in a democracy, of course, but what impact does this shift in power and agenda have on agency personnel and programs, and what do you think will happen with power shifting to the Obama administration?

MR: Well, the answer to the first question is I'm not sure the shifts have been that extreme in the broad scheme of things. In the case where elections have outcomes that switch power between parties, it's important to look beyond the rhetoric that went into the election and look instead 18 months down the line to see how much has actually changed and how it's changed and what the manifestations of those changes are. You get a completely different perspective 18 months into a new administration than you do if you were gauging the partisan dialogue that was occurring before the elections.

So I'm not sure the swings have been that extreme, and where they have changed, whether it's hard or easy on the career folks, I guess depends in part on whether the change agents, the incoming folks, adopted my theory of the 20-60-20 rule. If they adopted my theory of the 20-60-20 rule, and got 80 percent of the career folks behind them, then the changes aren't hard on them at all. If, on the other hand, they decided they were just going to impose change from above and had 20 percent, rather than 80 percent, of the career people behind them, then it's probably going to be harder on the 80 percent who are on the outside. But at the end of the day, the change still won't be that significant because there will still be an amount of passive resistance that will build up over time that will confound people who thought that they didn't need to win over their employees to be agents of change.

As to what the Obama folks are going to do, I think it's too early to pass any judgments on them because they don't really have their people in place yet and so I think that until they do, that's an open question and they ought to be the first ones to have the opportunity to answer it.

MN: Mark Rey, thank you.

MR: You're welcome.