

Designing a Framework for Evaluating the Impacts and Outcomes of Forest Service Appeals

Workshop Summary

January 6-8, 2003

McMenamins Edgefield
Troutdale, Oregon

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Jacqueline Vaughn
Gretchen M. R. Teich

March 2003



The Ecological Restoration Institute

The Ecological Restoration Institute at Northern Arizona University is a pioneer in researching, implementing, and monitoring ecological restoration of southwestern ponderosa pine forests. These forests have been significantly altered over the last century, with decreased ecological and recreational values, near-elimination of natural low-intensity fire regimes, and greatly increased risk of large-scale fires. The ERI is working with public agencies and other partners to restore these forests to a more ecologically healthy condition and trajectory—in the process helping to significantly reduce the threat of catastrophic wildfire and its effects on human, animal, and plant communities.

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Executive Summary

USDA Forest Service administrative appeals have recently been a focus of considerable political debate. Congressional legislation and new administrative rules to change the appeals process and exclude certain fuel reductions projects from environmental review and appeal are under consideration. Meanwhile, there has been little systematic analysis of the claims and counterclaims being put forward about the ecological, social, economic, and administrative impacts of appeals.

The workshop, *Designing a Framework for Evaluating the Impacts and Outcomes of Forest Service Appeals*, engaged researchers, agency representatives, and various affected interests who use appeals, or are affected by their use, to discuss development of a framework by which the impacts and outcomes of Forest Service appeals can be systematically documented and analyzed. Participants identified what is important to evaluate about the appeals process, and discussed how to realistically conduct such evaluations so that results are credible to all. The purpose of the workshop was to focus research and analysis on critical issues surrounding the appeals process to better inform ongoing policy debates.

Three themes from the workshop addressed how research and analysis could be conducted to enhance meaning and credibility. They include: the importance of examining appeals not in isolation but within the overall context of public lands management and a multi-staged decision process; the usefulness of case studies for exploring the intangibles and non-quantifiable factors that affect impacts and outcomes; and the benefits of involving stakeholders in research design and implementation.

While keeping in mind the importance of the larger context, there are, nevertheless, also a number of things that can be said specifically about various aspects of the administrative appeals process itself. A “cradle to grave” or “life cycle” approach can examine significant factors prior to the appeal, once an appeal is filed, and post appeal.

The number of Forest Service decisions that are actually appealed out of the total universe of proposed projects has been a contested political and methodological issue. Determining these totals with more precision is doable. Appeal records could also be examined to identify the legacy of conflict surrounding issues prior to filing of an appeal, appellants’ stated reasons for appeals, and the types of projects most frequently appealed. What happens as a result of a project appeal could also be examined from both procedural and substantive dimensions, providing data to address the contested question of whether appeals substantively change project parameters or whether they simply result in changes in environmental documentation. Subsequent links to litigation could also be examined.

Another theme in the workshop was the need for greater clarity about the things we don’t know and might never know with certainty. Two of these issues are ones around which much political attention has been focused: the overall costs of appeals, and delays caused by the appeals process. Credible cost data are not available. While it is possible to determine the length of time between the filing date of an appeal (or date of project decision) and the final appeal decision date, many other impacts of delays are less tangible to

discern, difficult to separate from other intervening factors like funding, and inseparable from various stakeholders' political perspectives as to whether those impacts are "costs" or "benefits."

Collaborative processes as an alternative to appeals received considerable attention in the workshop. Although it does not need to be a question of appeals *or* pre-decisional collaboration—the two processes are not mutually exclusive and both could be encouraged and promoted—addressing pre-decisional collaboration as an alternative to appeals does bring to the forefront issues and concerns about trade-offs between the two types of processes. Existence of the appeals process may provide the agency with incentives to avoid appeals by engaging in collaborative processes, as well as provide alternatives for stakeholders who do not believe the agency's pre-decisional participation activities provide meaningful, up-front opportunities for input. Alternatively, existence of the appeals process may provide disincentives for parties to develop on-going, collaborative relationships. Another trade-off that receives considerable attention is how each process affects the balance between local and national interests.

The evolving role of administrative appeals in agency decision making does deserve scrutiny. By examining appeals from many stakeholder viewpoints, using a variety of qualitative and quantitative research and evaluation methods, everyone can gain a better understanding of the many facets of appeals, from their function as instruments of democratic accountability and public participation to their impact upon project design and implementation. Comprehensive and systematic analysis of the issues under debate can raise the current level of discourse from rhetoric and anecdotes, and better inform decision making processes about the future of appeals.

Designing a Framework for Evaluating the Impacts and Outcomes of Forest Service Appeals

I. Workshop Purpose and Need

USDA Forest Service administrative appeals have recently been a focus of considerable political debate. Congressional legislation and new administrative rules to change the appeals process and exclude certain fuel reduction projects from environmental review and appeal are under consideration. Meanwhile, there has been little systematic analysis of the claims and counterclaims being put forward about the ecological, social, economic, and administrative impacts of appeals.

The workshop, *Designing a Framework for Evaluating the Impacts and Outcomes of Forest Service Appeals*, engaged researchers, agency representatives, and various affected interests who use appeals, or are affected by their use to discuss development of a framework by which the impacts and outcomes of Forest Service appeals can be systematically documented and analyzed. Participants identified what is important to evaluate about the appeals process, and discussed how to realistically conduct such evaluations so that results are credible to all. The purpose of the workshop was to focus research and analysis on critical issues surrounding the appeals process to better inform ongoing policy debates.

There are a number of researchers, whether in academic institutions, government agencies, or non-governmental organizations who are currently doing work on the National Environmental Policy Act (NEPA) and the administrative appeals process, or who are planning to conduct research. Research subsequently conducted using workshop results should be of value to all stakeholders in the current debate regardless of their positions about the current appeals process or their positions on the various proposals for revising or repealing the process. Having a common framework of analysis can also provide opportunities for researchers to make linkages among their projects. Moreover, because potential users of any resulting analyses are being involved up-front in the identification of key variables, the analytical results should have greater utility and legitimacy for planning and decision making.

Workshop participants did not debate the merits of any specific legislative or executive proposal to change the appeals process. Agreement was sought on more limited terms: on what factors should be systematically addressed to better inform participants in the policy debate, and whether such criteria could be realistically measured, and if so, how.

This summary represents what we thought were fairly consistent workshop themes. It relies very heavily on ideas presented by participants, but does not reflect workshop consensus. We have tried to reach a balance between simply presenting a “flip chart dump” and a report reflecting only our perspectives.

All workshop participants had an opportunity to review an earlier draft of this summary. Reflecting a commitment to participants, no remarks contributed during breakout sessions or general discussions are attributed to specific individuals or organizations. An exception to this occurs, however, for comments made by panelists during their scheduled presentations.

Forest Service Appeals

The Forest Service has had some sort of mechanism for administrative appeal of decisions almost since its inception as an agency. As Mary Coulombe traced in her presentation, this process has significantly changed over time. While early processes were largely used by business interests as an informal avenue for review and resolution of disputed agency decisions, today involvement in the process is more widespread and often focuses on overarching questions about the purposes and management of national forests. Until 1989 all appeals were handled under the same set of regulations. As a result, however, of Title III, Section 322, of the FY 93 Interior and Related Agencies Appropriations Act (106 Stat 1374), Forest Service project appeals became legislatively mandated, making the Forest Service the only federal agency with a statutorily mandated appeals process. Today there are three different types of appeals:

Forest Plan Revisions and Amendments	36 CFR Part 217
Projects or Activities, documented in an EA, EIS or Decision Memo (NEPA)	36 CFR Part 215
Permits or Written Authorizations	36 CFR Part 251 (Subpart C)

Political controversy over administrative appeals is nothing new. Forest plan appeals, for example, have consistently been a focus of debate, from the first set of regulations under the National Forest Management Act of 1976 (90 Stat 2949), to current proposals for revising the planning regulations. A Forest Service proposal to revise the appeals process in 1992 created a maelstrom of controversy, and eventually resulted in the legislative language mandating project appeals. As Coulombe's presentation concluded, "there is strong sentiment for the right to object."

II. Evaluating the Appeals Process

Three themes from the workshop addressed how research and analysis could be conducted to enhance meaning and credibility. These themes include: the importance of examining appeals not in isolation but within the overall context of public lands management and a multi-staged decision process; the usefulness of case studies for exploring the intangibles and non-quantifiable factors that affect impacts and outcomes; and the benefits of involving stakeholders in research design and implementation.

The Importance of Context

The role of appeals and their impacts and outcomes need to be considered within the overall context of public lands management issues, as well as within the context of a multi-staged decision process. First, the appeals process must be understood within the historical context of its development. A number of paths have affected the evolution of appeals in Forest Service decision making, including changing public expectations and rapidly changing problem definitions. Any analysis of the appeals process needs to be placed within the context of all other decision processes and factors that contribute to what the Forest Service does or doesn't do, including NEPA decision stages, litigation, funding, organizational culture, and how appeals impact the larger debate on national forest management. A broad treatment of context also recognizes the connection between biophysical and socioeconomic factors and outcomes.

Second, examining the appeals process in a broad context invariably leads to questioning problem definitions: Are appeals symptoms or causes? Are appeals a result of conditions on the ground or are conditions a result of appeals? Why do some people believe the appeals process is broken? Is the appeals process even "the problem"? Or is the problem that interests are successfully using the process? Have the issues of wildland fire and hazardous fuels reduction provided convenient triggers for a broader political goal of "reducing burdensome environmental regulations?" Or is the problem disagreement over the purposes and uses of national forests, and appeals just a convenient tool for fighting that battle?

Finally, outcomes can be both tangible and intangible both in space and time. Databases, such as the one constructed by the Ecological Restoration Institute (ERI) at Northern Arizona University from appeal records posted on the Forest Service website (Cortner et al. 2003), might be useful for identifying, tracking, and understanding trends over time (number of appeals filed and their disposition, number and types of appellants, types of projects appealed, projects appealed and subsequently litigated, etc.), but databases alone cannot tell the entire story. A study, for example, might look at the tangible outcome of how many appealed projects were eventually litigated, but would not capture the long-term impacts appeals may have had on the overall direction of forest management. Likewise, calculating in isolation the length of time it took for an appealed project to be implemented sheds no light on the role of other factors (e.g., funding) in moving a project through the planning, environmental review, and implementation processes.

Forest management can be described as composed of a mutually interdependent set of particularly “wicked” problems, in which problems are fuzzy, ambiguous, and equivocal. This hyper-complexity belies treating any forest management problem—including appeals—simply as a technical or process-related problem that can be resolved with the application of “good science.” In other words, “beware of stalking quantitative indicators devoid of context.”

The Need for Case Studies

Case studies are an important vehicle for a more thorough exploration of the intangibles that affect impacts and outcomes. Only case studies, for example, will be able to address relationships that, albeit extremely important, cannot be portrayed by cause-effect correlations. Case studies enrich understanding of context and can place project appeals within the overall history and dynamics of forest management debates on a district, forest, or regional level. They can be used to ground-truth agency databases or inventories. Because case studies can combine a number of research techniques, including structured surveys, trend analysis, and semi-structured interviews, they can balance out the strengths and weaknesses of any one particular research method.

Commonly, case studies are criticized as isolated studies that cannot be generalized or can be abused by choosing cases to prove a predetermined argument. However, systematically chosen case studies or a series of case studies can yield valuable results. If researchers, who necessarily will have somewhat different objectives, can coordinate across case studies, they can begin to build a cumulative body of knowledge—a preponderance of evidence so to speak. Without case studies to provide context and to expand beyond the confined boundaries dictated by quantitative research, many important questions of governance and impacts upon communities, the environment, and the agency cannot be understood.

The Benefits of Participatory Research (Civic Science)

Like research and evaluation in many other areas of public policy, evaluation of appeals can be enhanced by involving an array of stakeholders, including organized groups, community interests, and individuals. As Jonathan Kusel pointed out from his experiences in doing policy evaluations and community assessments, while this is indeed more challenging, it also makes for more robust results. Because science and analysis are likely to be contested, it makes sense to have an array of interests actively engaged in the scientific process, examining the assumptions that bound the questions being asked, and reviewing the research judgments that affect data selection and interpretation. Pragmatically also, cooperation is needed to do case studies and for people to engage in surveys, semi-structured interviews, etc. For example, as Kusel also pointed out, much cannot be known about community impacts without the active involvement of community members, and these individuals are increasingly expecting to be more than passive subjects in the research process. Likewise with environmental groups: to get at the nuanced role of appeals as just one tool in a larger toolbox of strategies for accessing decision making will require the cooperation and partici-

pation of those groups. For all groups who are asked to give precious time and resources to respond to researcher questions, there needs to be some assurance that research results will yield insights germane to their activities. To achieve this purpose a more civic science is required. Scientists and analysts cannot operate in a vacuum. A study in which participants have a vested interest in prioritizing the questions to be explored, and a role in overseeing the conduct of the research and reviewing draft study results, can enhance the credibility of results as well as their policy relevance. It also legitimizes the research by focusing on neutral methodologies. There are a number of ways the users of research and analysis can be involved. Research advisory committees, for example, are one mechanism.

III. Focus on Appeals: Things We Might Be Able to Determine

Keeping in mind the importance of the larger context, there are also a number of things that can be said about the administrative appeals process itself. A “life cycle” or “cradle to grave” approach can be taken. As Don Floyd suggested, questions about the effectiveness, efficiency, and equity of appeals could be evaluated on both process and outcome dimensions. Such an approach also needs to recognize that the very existence of an appeals mechanism has repercussions prior to the filing of an appeal. (Table 1, page 17, presents a summary checklist of items that could be included in case studies of appeals.)

Prior to the Appeal

The number of Forest Service decisions that are actually appealed out of the total universe of proposed projects has been a contested political and methodological issue (General Accounting Office 2001; USDA Forest Service 2002a; The Wilderness Society 2002; Morton and McCarthy 2002). However, the number is not currently tracked by the Forest Service, and cannot easily be discerned from agency appeal records posted on the Internet. Nonetheless, determining these totals is doable, within reasonable parameters. The Schedule of Proposed Actions (SOPA) could be examined to determine the number of total projects, the time they were proposed and what other kinds of projects were proposed at the same time. SOPA records, however, do not track projects designated as categorical exclusions, so even here there might be projects that would escape documentation. (A General Accounting Office study expected to be released in March 2003 is surveying all 155 Forest Service units to provide better documentation of the relationship between the number of proposed and the number of appealed and litigated fuel reduction projects).

Case studies could examine and evaluate the legacy of conflict around the appealed issues prior to filing of the particular appeal, and the nature and effectiveness of pre-decisional public involvement (such as scoping and informal discussion) by various stakeholders, including industry, university researchers, local and non-local advocacy groups, elected officials, etc. It must also be recognized that an appeal is not born in isolation; in most cases there is likely a long-standing conflict around the appealed issue(s). Is there a set of triggering or recurring themes? Case studies could further examine the economic status of communities (unemployment rates, population growth, past forest activities, education level of citizens, median income) to explore the relationship of the social context to contested issues in the community. What factors might affect the likelihood of an appeal being filed on a particular forest? Proximity to large cities, type of ecosystem, number of endangered species, and type and level of recreational use are just a few indicators that might be examined to determine patterns. For example, do forests within close proximity to major urban centers generate more appeals, or do forests with extensive old-growth resources get more appeals?

Examining pre-appeal decision and public involvement processes (comment periods, hearings, informal meetings, collaborative efforts, mediated or facilitated meetings, etc.)

would give an idea of how issues were aired pre-decision and if there were discernible differences in the types of processes used in instances where projects were appealed and those in which they were not. Since current proposals by the Forest Service call for putting more emphasis on collaborative pre-decisional processes, focusing on the nature and effectiveness of these processes for providing access points and opportunities to influence agency decision making would be a significant line of inquiry. Review of individual project records could be undertaken to determine the history of community involvement, the Forest Service's intent in proposing the project and the perceptions of others of that intent, the range of alternatives offered for consideration in the decision making process, and how the proposed actions were modified as the result of public input, new scientific knowledge, or other factors.

Once an Appeal is Filed

Appeal records could be examined to identify appellants' stated reasons for appeals, which would facilitate comparisons of the procedural versus substantive issues most frequently cited. Deriving such information would necessitate contacting individual forests and scrutinizing project case files, since on-line data generally include the Record of Decision and its review, not the original appeal letter. However, not all issues or reasons will be readily apparent from reading just the appeal letter. There may also be unstated, strategic reasons to appeal (such as to buy time by forcing project delay, establish standing for litigation, raise public consciousness about a decision, or gain additional political clout), which could only be determined through interviews with appellants and other stakeholders. Interviews would help determine, for instance, why some groups and individuals appeal projects on a regular basis, while others do not. For example, the Forest Guardians is the leading appellant nationally, while the Wilderness Society does not appeal as much as might be hypothesized or perceived (Cortner et al 2003). This information would clarify the nature of project appeals that are perceived to be substantive efforts to affect change, and those considered "frivolous" or boiler plate appeals. Examples cited include: university classes filing appeals as a class exercise, or appeals that consistently use the same broad, general language (e.g., "insufficient scientific analysis"). In some cases, appeals are not used to primarily affect the design or environmental impacts of a particular project, but to change overall national forest policy (e.g., achieve zero cut). However, in many cases, one person's frivolous appeal is another's heartfelt goal. Moreover, whether it is a legitimate use of appeals to achieve a broader public policy goal rather than challenging the particular project itself would also be a matter of debate.

Don Floyd and his colleagues have pointed out that for some groups lack of interest in pre-decisional processes is a conscious choice. They do not have the time and personnel to participate in lengthy and often expensive pre-decisional processes; appeals are a more efficient way of participating. Related to this, what considerations affect the decisions of individuals or groups to file as interested parties? What kinds of stakeholder are likely to file

as interested parties and what are their characteristics? Why do they choose this form of participation? Additional research on why particular groups favor certain methods over others could provide a more comprehensive picture of how appeals fit into the entire picture of participatory strategy and tactics. Moreover, do participants view the appeals process as open, neutral, fair, and why or why not?

Another unstated reason that may prompt the filing of an appeal is its role in raising public awareness. How do appellants use appeals to publicly highlight values at stake and to raise public consciousness? In addition to appellant interviews, an indicator of using appeals to attain this objective might include whether there was a press release or press conference surrounding the filing of an appeal, and the level of media coverage achieved.

Considerable political attention has focused on the types of projects being appealed, especially concerns about the percentage of “mechanical treatments” or hazardous fuels reduction projects that are appealed (General Accounting Office 2002; USDA Forest Service 2002a; Morton and McCarthy 2002; The Wilderness Society 2002). While seemingly a straightforward question, making determinations about what kinds of projects are appealed is methodologically far more difficult in practice. First, the Forest Service does not have a standard system for defining project type, and devising one would not be an easy task. Many projects have multiple purposes, and there are often multiple projects under a single decision. Second, there is the real and/or perceived problem of the agency trying to fit a project within a certain project category, especially if projects in that category are legally given special treatment. Previous political controversy surrounding agency declarations of salvage timber sales is a case in point. There is already significant concern that projects labeled “fuels reduction” may actually resemble conventional timber sales, or that the agency will abuse proposed new categorical exclusion provisions with the same result. Finally, not only is there the problem of categories being given special legal treatment, but also the problem of proposing projects under categories that just seem less controversial—e.g., “fuels reduction” instead of “commercial thinning.” Agency intentions for a project and appellants’ perceptions of these intentions may vary significantly, and this is often no small point of contention, either analytically or for project decision making.

Additional questions have been raised as to how and under what circumstances some appellants work in conjunction with each other. Why would an individual file singly as opposed to joining an established group? Why do some projects generate multiple appellants, either alone or as joint filers? Do groups with restricted resources join in appeals filed by larger, more experienced organizations, or do they seek access to the process in other ways? Are “frequent filers” perceived differently by the Forest Service than “one-shotters?”

Once an appeal is filed, very little is known about the role of the informal resolution process. How often are meetings held and with what result? How do the agency and appellant groups view the efficacy and effectiveness of such meetings? Are there potentials here that are not being realized? How often does the agency let the 45 day filing period expire and just allow appellants to take their concerns to court?

Post Appeal

What happens as the result of a project appeal? This can be approached from both a procedural and substantive dimension.

If an appeal was dismissed, why? Was the project withdrawn or ultimately revised by the Forest Service, was there informal resolution among the parties, or was the appeal withdrawn by the appellant? How many times are appeals dismissed because of procedural problems (e.g., lack of postmark, project not appealable, lack of participation by appellant in the pre-decision process), versus those that are reviewed and denied based on substantive refutation of appellants' contentions.

Claims also have been made that while considerable time is spent dealing with appeals and beefing up environmental review documents, the project does not change substantially. Others claim many appeals are simply frivolous. These are tangible results that can be tracked by comparing the initial proposal with on-the-ground project implementation. Likewise, environmental groups' claims that they are highly successful in their use of appeals (and litigation) can also be examined. If the appeal was granted or remanded back for additional study and review, it can be determined whether the end result was a procedural or substantive change. On the one hand, perhaps the appeal resulted in development of more legally complex documents (e.g., an EIS was done rather than an EA or additional information was added to the environmental documentation) while the project essentially remained the same. Alternatively, if there were significant changes in project design—modifications in project location and boundaries, addition of new mitigation measures, or revision of implementation schedules—these can be documented. The number of projects abandoned or withdrawn because of appeals can also be discerned. Did the same project eventually come back with a new name? Was there then a subsequent appeal by the same or different appellants? What was the outcome?

Finally, was the project litigated, and, if so and on what basis? If the project was not litigated, was it implemented and if so, how long after the appeal was withdrawn or dismissed? With what results? What kinds of cases are more likely to be litigated? How does case law from litigation affect Forest Service actions? While seemingly straightforward questions, making the link from appeals to litigation is not easy. There is no central "cache" of records on litigation, and no direct way of linking appeals to litigation. Appeals are given a distinct Forest Service identification number; litigation cases are assigned a distinct number by the District Court. Any linkage is most likely to be established through the institutional memory of an individual at the national forest level. The majority of project appeals that are litigated are handled through motions and briefs that result in an out-of-court settlement agreement or a bench decision, with no central depository of paper records kept except the decision outcome.

Important, but admittedly tougher to document and evaluate, outcomes of appeals processes include the effects of appeals on dialogue. Is the use of appeals foreclosing opportunities to engage in pre-decisional dialogue, or are appeals used by groups who feel that this is their only way to get the agency's attention? Another set of impacts include the

effects of appeals as agents of agency change. Previous research has indicated that appeals serve as a tool to prompt organizational learning and professional development (Jones and Taylor 1995). What further explication can be made of this relationship? Finally, how can the link convincingly be made between ecological conditions and administrative processes?

IV. Focus on Appeals: Things We Don't Know and Might Never Know With Certainty

Another theme in the workshop was the need for greater clarity about the things we don't know and might never know with certainty. Of significance, two of these issues are ones around which much of the political debate has centered: how much the appeals process costs, and what delays are caused by the appeals process.

How Much Does the Appeals Process Cost?

Even though the Forest Service clearly noted that it was only an educated guess, the claim that planning and assessment consume 40 percent of the total direct work at the national forest level (USDA Forest Service 2002b) has been frequently cited. So how much do appeals, as part of overall planning and assessment, actually cost? There is no way of tracking the financial costs of processing Forest Service appeals within the current budget structure. People can only guess. The task of determining costs is not as simple as counting the salaries of staff designated to handle appeals, since there are often staff from other units assigned as well, and their time and the attendant costs to their home programs are not accounted for. Moreover, it would be very difficult to determine the costs of appeals to appellants, interested parties, and others affected by appeals. How do you measure, for example, a season of lost work for community groups when project implementation was halted because of an appeal filed right before work was to begin? In addition, some economic indicators, like jobs lost, don't tell the whole story. There are few reliable ways of telling how a community would be doing today even if a project had gone forward.

Finally, is there an appropriate cost/benefit? Whether costs are justified or not is a political judgment. If, as Nancy Manring pointed out, appeals are a tool for legal, political, and professional accountability (i.e., a way to show the agency listened to the public, have taken into account the best available science, and are seriously thinking about environmental consequences), how can these be measured economically? How much is democratic accountability worth or valued? If appeals have evolved from their original intention as ways to settle grievances between the agency and affected parties to a form of institutionalized public participation, how are the costs and benefits of this function to be determined? Deriving economic indicators is thus no easy task. Economic indicators need to be put in the larger context of "unquantifiable" costs and benefits. So, there is a good reason, as economist Dave Iverson noted, to be "wary of economists bearing information gifts."

What Delays are Created Because of the Appeals Process?

Is the forest literally burning because groups appeal and litigate as political rhetoric and media coverage have suggested (Flatten and Nowicki 2002)? This issue needs to be broken down into two parts. The first part concerns the length of time it takes to process administrative appeals. This is more easily discernible. Once the filing date of an appeal (or project decision date) is determined, it can be compared with the appeal decision date. However,

since agency appeal records posted on the internet do not always note the filing date, obtaining such information requires an examination of the project files at each individual forest office. Within the ERI data base, for example, 62 percent of records did not indicate a filing date.

More importantly, however, many delays are often indirect rather than direct, with intangible effects often far removed from timing of the actual appeal. While researchers might be able to more precisely track the time between when a project is announced and the direct changes resulting from an appeal, what is intangible is the impact appeals might have on projects even before they are announced. Scholars have called this the “Rule of Anticipated Reaction” (Culhane 1981). For instance, how does the mere existence of an appeals process force the agency to pay greater attention to environmental concerns, knowing the decision will be carefully scrutinized to ensure compliance? Are certain kinds of options not pursued because of fear of appeals? Do appeals prompt the agency to broaden or narrow the range of alternatives it addresses or to modify a project even before it is proposed? Or, is delay a result of agency personnel trying to “bullet-proof” documents so they will meet legal and regulatory tests of adequacy? Are “good” decisions not made because of fear or appeals, or are “bad” projects not proposed at all because of the potential of appeals? Is there the possibility of more litigation, and hence more delays, if the appeals process is not available?

While the time from project announcement to implementation can be measured, other intervening factors cannot be determined as easily. What other factors might be intervening? For example, what if a project sits on the shelf either during or after the planning process because of lack of funding? Do projects get delayed because of factors like weather or lack of contractor bids? To what extent is an appeal the reason that fuel reduction projects are being delayed, or is it a multiplicity of variables?

Delay is not necessarily an undesired outcome, depending upon one’s political perspective. Delays are used as strategic tools in all sorts of venues, from filibusters in Congress to time-outs in football. A project delay might enable participants to simultaneously pursue other entry points to the political process to achieve their goals before a final decision forecloses options that are undesirable to the group. For example, Mike Anderson spoke of the Wilderness Society’s appeal of a timber sale in a proposed wilderness area: the appeal delayed the project long enough to gain permanent protection of the area through congressional action. On the other hand, examples have also been given of the significant social impacts of delayed restoration projects, including lost work, denied access to winter fuelwood, or the occurrence of a destructive fire in a planned project area. Whether delays achieve either undesirable or desirable outcomes is thus highly subjective. Delays need to be evaluated from several perspectives and in context of the goals to be achieved.

V. Is Collaboration an Alternative to Appeals?

Collaborative processes as an alternative to appeals received considerable attention in the workshop. As an alternative to appeals, President Bush, members of Congress, and the Forest Service desire to focus public input in pre-decisional forums. New planning regulations, for example, propose replacing appeals with a pre-decision objection process. However, it is not clear what the proposed pre-decision process looks like, and how it would differ from the way the agency has traditionally sought pre-decision input. As noted above, for some environmental interests the appeals process is believed to offer their best option for public involvement. They believe that there hasn't been a place for "meaningful public involvement" up-front in the agency's decision making, so they resort to the appeals process as their democratic process alternative. This then raises the question about what new innovations will be introduced in pre-decisional processes to account for deficiencies in existing participatory processes if there are no longer appeals? Comparison of the Forest Service post-decision appeals process with the Bureau of Land Management's pre-decision objection process could provide some insights on how a pre-decisional objection process might be implemented in the Forest Service and with what costs and consequences.

Although it does not need to be a question of appeals processes *or* pre-decisional collaboration—they are not mutually exclusive and both could be encouraged and promoted—addressing pre-decisional collaboration as an alternative to appeals does bring to the forefront issues and concerns about trade-offs between the two types of processes. Is collaboration the result of the appeals process, providing the agency with an incentive to avoid future appeals by engaging in collaborative processes? Alternatively, perhaps the appeals process is adversely affecting on-going relationships between parties and impeding the evolution to collaboration. The Forest Service's *Process Predicament* report, for example, asserted that "instead of helping parties work out their differences, the appeals process can all too easily become a tool for obstruction" (USDA Forest Service 2002b). Or, as Nils Christoffersen noted, communities may view environmental group appeals as being dismissive of community concerns, with each appeal "another nail in our coffin." Battles are chosen, and it might be difficult for stakeholders to invest in an up-front collaboration process if there were still an opportunity or the right to appeal. The psychological impacts of appeals in driving parties apart, noted Christoffersen, is an equally important impact.

Another trade-off that receives considerable attention is how each process affects the balance between local and national interests. On one hand, it is feared that place-based collaboration silences broader national interests, which the appeals process facilitates. On the other hand, community interests, who feel precluded from having much impact on the national policy scene to which many Washington-based environmental interests have good access, are desirous of better forums for providing their input. How you view the effectiveness and equity of governance processes often depends on where you sit.

VI. Conclusion

Debate about the costs, delays, and environmental, social, and economic impacts of appeals could certainly be elevated by informed research and analysis. The fires of 2002 tied the issue of appeals to fuels reduction project implementation. However, without systematic analysis it is difficult to determine the validity of the many claims and counterclaims being offered for public consumption, making the link between appeals and fire events more elusive than the political rhetoric would lead one to believe. For many issues surrounding the appeals process the data are simply not available. As Jacqueline Vaughn challenged the workshop participants at the outset: “show me the data.” In other instances, the data that have been cited rests on some rather shaky methodological foundations. Best “guesstimates” research with a large margin for error has been used as hard “facts” with a level of certainty that is unwarranted. While databases such as the one constructed by ERI researchers begin to discern some trends, they necessarily omit vital information that is not consistently reported or not reported in a timely manner. The Forest Service can be encouraged to do a better job of record keeping in terms of following their NEPA, appeals, and litigation activities. Finally, for other issues like financial costs, we are unlikely to get “proof.”

As the workshop participants stressed, appeals must be understood as part of the larger picture of public forest management and other components of decision processes. The evolving role of administrative appeals in agency decision processes does deserve scrutiny. By examining appeals from many stakeholder viewpoints, using a variety of qualitative and quantitative research and evaluation methods, everyone can gain a better understanding of the many facets of appeals, from their role as instruments of democratic accountability and public participation to their impact upon project design and implementation. Comprehensive and systematic analysis of the issues under debate can raise the current level of discourse from rhetoric and anecdotes and better inform decision making processes about the future of appeals.

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Table 1: Checklist for Case Studies

Prior to the appeal

- Local participation in forest policymaking by various stakeholders (timber companies, Chamber of Commerce, university researchers, community groups, business, non-local advocacy groups, elected officials)
- Economic status of the community (unemployment rates, past forest activities, education level of citizens, median income)
- History of unresolved conflict around the appeal issues, or history of appeals being filed on a regular basis
- Forest Service intent in proposing the project
- Media coverage of forest issues generally
- Release of Schedule of Proposed Actions (how far in advance, what other projects were proposed at the same time)
- Public scoping process (comment periods, hearings, informal meetings, list of interested parties, legal or public notice announcements, focus groups, mediators or facilitators)
- Ecological basis for the project

Once an appeal is filed

- Stated and unstated (in appeal) motivations of the appellant(s) to file an appeal (e.g., enhance notoriety or clout, establish standing for potential litigation, modify or block a project, buy time for negotiations with other stakeholders)
- Range of alternatives offered by Forest Service in decision-making process
- Number and relationship of appellants (single filers, joint filers, cooperative/adversarial, local/non-local, groups or individual filers)
- Type of appellant (law firm, advocacy group, local citizen)
- Type of project appealed by appellant
- Comprehensiveness of appeal and attention to detail (number and extent of issues and contentions; political issues/scientific issues; citation of applicable statutes/rules)
- “Boilerplate” or “template” appeals that appear to be minimally related to a specific project
- Identification of interested parties
- Press releases/press conferences to bring attention to appeal
- Media coverage of appeal (local/non-local)
- Attempts to resolve issues informally by Forest Service and appellant

Post appeal

- Remanded back to district for further study or action
- Dismissal (project withdrawn by Forest Service, informal resolution among the parties, appeal withdrawn by appellant)
- Procedural dismissal (lack of postmark, project not appealable, lack of participation by appellant in pre-decision process)
- Substantive denial based on refutation of contentions identified by appellant
- Changes made in environmental document as a result of appeal
- Changes in project design made as a result of appeal
- Litigation filed and results
- Implementation of project (compare with original proposal to determine what, if any changes were made; project size and scale, implementation schedule, participants)
- Time from date proposed project is publicly identified through each stage (appeal, litigation, implementation begins)
- Effects on future dialogue
- Effects on organizational learning (Forest Service and appellant groups)
- Perceptions about public accountability

VII. References Cited

- Cortner, Hanna J., Gretchen M.R. Teich, and Jacqueline Vaughn. 2003. Analyzing USDA Forest Service appeals: phase, I, the database. Flagstaff, AZ: Northern Arizona University, Ecological Restoration Institute.
- Culhane, Paul J. 1981. *Public lands politics: interest group influence on the Forest Service and Bureau of Land Management*. Baltimore, MD: Johns Hopkins University Press.
- Flatten, Mark, and Dan Nowicki. 2002. Green group lawsuit blocked forest thinning. *East Valley Tribune*, July 8 at www.easvalleytribune.com/rodeofire.
- General Accounting Office. 2001. Forest Service: appeals and litigation of fuel reduction projects. GAO-01-1114R. Washington, D.C.: General Accounting Office, August 31.
- Jones, Elise, and Cameron P. Taylor. 1995. Litigating agency change: the impact of the courts and administrative appeals process on the Forest Service. *Policy Studies Journal* 23(2): 310-336.
- Morton J., and L. McCarthy. 2002. A comparison of two government reports on factors affecting timely fuel treatment decisions. Santa Fe, NM: The Forest Trust.
- USDA Forest Service. 2002a. Factors affecting timely mechanical fuel treatment decisions. Washington, D.C.: USDA Forest Service.
- USDA Forest Service. 2002b. The process predicament: how statutory, regulatory, and administrative factors affect national forest management. Washington, D.C.: USDA Forest Service.
- Wilderness Society. 2002. Forest Service continues to blow smoke: why the USFS report on appeals is wrong. Washington, D.C.: The Wilderness Society.

VIII. Appendices

Agenda

Designing a Framework for Evaluating the Impacts and Outcomes of Forest Service Appeals

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January 6-8, 2003
McMenamins Edgefield, Troutdale, Oregon

Monday, January 6

- 5:00 - 5:30p.m. Welcome, Participant Introductions, and Expected Outcomes
Hanna Cortner, Northern Arizona University
- 5:30-6:00 Presentation: Show Me the Data: Moving from Anecdotal Stories to Systematic Analysis
Jacqueline Vaughn, Northern Arizona University
- 6:00-7:00 No-host Social
- 7:00 Dinner

Tuesday, January 7 (Moderated by Maia Enzer, Sustainable Northwest)

- 8:15- 10:00 Food for Thought: Examining Appeals from Several Perspectives
Session One, Environmental and Social/Community Impacts
- Panels—
A Sense of History: The Origins and Evolution of Appeals
Mary Coulombe, American Forest and Paper Association
Environmental Perspectives on Impacts and Outcomes
Michael Anderson, The Wilderness Society
Community Perspectives on Impacts and Outcomes
Nils Christoffersen and Diane Synder, Wallowa Resources
Researching Community and Social Impacts
Jonathan Kusel, Forest Community Research
- General Discussion
- 10:00-10:30 Break
- 10:30- noon Breakout Sessions on Ecological and Social Impacts and Outcomes.
- The task of each breakout is to discuss the following:
1. What specific criteria/variables should be used to evaluate the impact and outcomes of appeals along the several dimensions—legal/administrative, economic, social, economic, ecological—so that the results would be acceptable by all?

2. How could these criteria be realistically measured, using both quantitative studies and qualitative analyses? For example, how could such measures be applied to a representative sample of appeal cases?
3. What additional research protocols, if any, might be used so that the results would be well-received by a variety of interests (outside of the normal standards of the scientific method or mandated human subjects review), and what might the final products look like?

noon-1:15	Lunch
1:15-2:45	More Food for Thought: Economic and Legal/Administrative Impacts and Outcomes Panels— Economic Impacts <i>Dave Iverson, USDA Forest Service</i> Appeals and Public Participation <i>Don Floyd, Environmental Sciences and Forestry/SUNY</i> Administrative and Agency Impacts <i>Steve Segovia, USDA Forest Service</i> Appeals as Instruments of Accountability <i>Nancy Manring, Ohio University</i> General Discussion
2:45-3:15	Break
3:15- 4:45	Breakout Sessions on Economic and Legal/Administrative Criteria Apply the three questions to economic and legal/administrative dimensions. Prepare report for next day's report out.
Dinner	

Wednesday, January 8 (Moderated by Gerry Gray, American Forests)

8:15-9:15a.m.	Report Outs from Breakout Sessions
9:15-10:00	General Discussion
10:00-10:30	Break
10:30-11:00	General Discussion
11:00-11:30	Martin Goebel, Sustainable Northwest
11:30	Adjourn
11:30	Lunch

Workshop Sponsors: American Forests, College of Environmental Science and Forestry/ State University of New York, Communities Committee of the Seventh American Forest Congress, Northern Arizona University, Pinchot Institute for Conservation, Society of American Foresters, Sustainable Northwest (local host), The Wilderness Society.

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