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1990 Blue Mountain Forest Service Plan revision 2024

Today humanity is at an historic time of great social and governmental change. People all over the planet are choosing constitutional local sovereignty. Misguided governmental structures (democracy)--based on lies, deception, hidden acts, enslaving, starvation, poisoning, stealing, taking bribes, manufacturing shortages, cheating in elections, and lawlessness--are crumbling before our eyes.

The week of June 24-31, 2024 the United States Supreme Court issued several decisions, providing guidance and clarification to operate our Constitution to return America to our founding fathers' principles of constitutional local governance. This essay begins to assess the significance to producers--farmers, ranchers, miners, timber operators--of the Court's jurisprudence, which overturns the Chevron deference, 1984-2024, where the Court had instructed judges to assume agency policies were lawful and correct.

Under agency rules and regulations during 1984-2024, producers suffered at the hands of federal and state agency unelected personnel: who, in wars against producers of the land, confiscated private property, destroyed local (rural) cultures, and interfered in private contracts.

Today, since the **Loper Bright Enterprises v. Raimondo** decision, federal and state agencies may no longer rely on the judiciary to give deference to agency regulations (the so-called Chevron deference).

Understandably, between 1984 and 2024 there developed a huge gap in understanding between (rural) producers and agency regulators (who are themselves intellectual elites and urban consumers). In an effort to bridge this gap between rural producers and intellectual elites, in May, 2024, my wife and I spoke on behalf of farmers and ranchers at the Conservative Princeton Association presentation "Escape from Net Zero Hunger Games--Choosing Food Sovereignty over Climate Alarmism."

see The Great Escape from Net Zero Hunger Games <https://www.youtube.com/watch?v=wEFAVoalFug>

As a result of our discussions with Princeton alumni, my continual re-reading of **Social Justice Fallacies** by Thomas Sowell, and recent Supreme Court decisions: I realize the cause of frustrated communication is neither in me nor in the person to whom I am trying to convey knowledge; the gap, the discrepancy was and is in differing styles of education: indoctrination versus science, urban versus rural.

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Raised by an agriculturalist, I was taught fundamental science: to observe, to measure, to record data, to analyze problems and to reason out do-able solutions without thinking about one's own feelings; in short, to solve problems, boots on the ground. In contrast, as Thomas Sowell so eloquently articulates, education has become "indoctrination on how to solve yesterday's problems so you feel good about yourself."

My personal and professional interest is in the water quantity & quality of watersheds, starting with the Snake River portion of the Columbia River watershed. In the Upper Snake River drainage, beaver dams and beaver dam analogues--up to 3,000 per mile of stream reach--enhance water retention (quantity), stream flow duration and water quality. I also worked indirectly with Congress to provide funds to purchase native forb seed mix for timber and range improvement on publicly managed lands; it would be nice to get that seed mix on the ground.

As a Coast Guard veteran, UC Berkeley graduate, forester, watershed manager, and generalist in natural resources with 7 decades of hands on and boots on the ground experience in timber, water, cattle, beaver, wild ungulates, fire ecology, soils, mining, fishing, agriculture, and pollinators, I was trained in science, and taught the importance of repeated measurements over time; beginning with geology (slope & aspect), anticipated and measured rainfall, ground and surface water, wildlife distribution, and plant species distribution, all within congressional statutory authorization and land law. As a result, I analyze problems and reason out do-able solutions without reference to personal feelings—and build from data on the ground plans to solve environmental and economic problems.

After reading the USDA Forest Service Blues Forest Plan online at <https://storymaps.arcgis.com/stories/584b8ae9d4384784bc5a2b6791a96355>,

I realize what is presented is not a revision/update of the 1990 Forest Management plan (which was a first attempt at a "how-to manage the land" plan) but rather a process to "find out what urban populists think they visually want and that will make them feel good," really a proposal of what in a perfect world forest managers might attempt to strive towards, without any guidance or assistance as to how in the real world to manage forests to follow the congressional directives for the forest service to provide (in statutory order of priority) water quantity and quality, timber, grazing, and multiple use--thereby allowing the forest manager to determine if the land could or could not meet public expectations within the congressionally authorized budget.

I realize that while the Forest Service still includes many genuine scientists, others of today's Forest Service employees may not understand real science and may have suffered "indoctrination on how to solve yesterday's problems so you feel good about yourself." For example, the Blue Mountain Plan website begins by asking for desired outcomes and is slanted towards urban feelings about wilderness designations, designating endangered species, and social/ environmental justice rather than economic production as directed in congressional statutes (USC). Relevant USC sections are quoted below.

Thanks to Thomas Sowell, I realize the main cause of my frustration in reading the Forest Service website is due to differences in styles of education: between science and indoctrination, between on-the-ground producers and agency intellectual elites.

To emphasize this crucial difference in education styles, and before I apply the US Supreme Court's jurisprudence to the forest plan, I include selected relevant passages from Thomas Sowell's

powerful little book **Social Justice Fallacies (SJF)**, 130 pages of text, 58 pages of notes and references, 12 pages of index.

“Whether in law or in other areas, one of the hallmarks of elite intellectuals’ seeking to preempt other people’s decisions—whether on public policy or in their own private lives—is a reliance on unsubstantiated pronouncements, based on elite consensus, treated as if that was equivalent to documented facts. One revealing sign of this is how often the arguments of people with other views are not answered with counter-arguments, but with ad hominem assertions instead. This pattern has persisted for more than a century, not only in discussions of social justice issues, but also in other issues—and not only in the United States, but also among other intellectual elites in countries on the other side of the Atlantic.” Page 97 SJF

What was the source of this intellectual elite presumption to preempt other people’s decisions? Sowell writes that Roscoe Pound, Dean of Harvard Law School from 1916 to 1936, “set forth principles of judicial activism” in 1907 and 1908. “With Pound, as with Woodrow Wilson, what the public at large wanted faded into the background. Pound lamented that “we still harp upon the sacredness of property before the law” and approvingly cited the “progress of law away from the older individualism” which “is not confined to property rights.” Page 96 SJF

“Dean Pound simply dismissed as “dogma” the Constitutional separation of powers, because the separation of powers would “limit the courts to interpretation and application” of the law. Pound called for “an awakening of juristic activity,” for “the sociological jurist,” and declared that law “must be judged by the results it achieves.” Page 97 SJF

“Why [agency] judges and sociologists should be making social policy, instead of people elected as legislators or executives, is not explained.” Page 97 SJF

“How we see the distribution of consequential knowledge is crucial for deciding what kinds of decisions make sense, through what kinds of policies and institutions. We each have our own island of knowledge in a sea of ignorance. Some islands are larger than others, but no island is as large as the sea. As Hayek conceived it, the enormously vast amount of consequential knowledge dispersed among the population of a whole society makes the differences in the amounts of such knowledge between some people and other people “comparatively insignificant.”

“This conclusion provides little basis for intellectual elites to engage in wholesale preemption of other people’s decisions, whether these are decisions about how they live their own lives or decisions about the kinds of laws the voting public want to live under, and the people they want in charge of carrying out those laws. Intellectual elites with outstanding achievements within their own respective specialties may give little thought to how ignorant they may be on a vast spectrum of other concerns.” Page 99 SJF

“Stupid people can create problems, but it often takes brilliant people to create a real catastrophe. They have already done that enough times—and in enough different ways—for us to reconsider, before joining their latest stampedes, led by self-congratulatory elites, deaf to argument and immune to evidence.” Page 100 SJF

“In social justice literature, unmerited advantages tend to be treated as if they are deductions from the well-being of the rest of the population. But there is no fixed or predestined amount of well-being, whether measured in financial terms or in terms of spectators enjoying a sport or soldiers surviving a battle.

This is not an incidental subtlety. It matters greatly whether people with high incomes are adding to, or subtracting from, the incomes of the rest of the population.” Page 108 SJF

“None of this suggests that businesses have never done anything wrong. Sainthood is not the norm in business, any more than in politics, in the media or on academic campuses. That is why we have laws. But it is not a reason to create ever more numerous and sweeping laws to put ever more power in the hands of people who pay no price for being wrong (agency personnel), regardless of how high a price is paid by others who are subject to their power.” Page 112 SJF

Now we turn to the recent United States Supreme Court decision, *Loper Bright Enterprises v. Raimondo* No. 22–451. Argued January 17, 2024—Decided June 28, 2024. This decision changes the way agencies implement (environmental justice) land management interpretation of congressional law.

“Given the Court’s constant tinkering with and eventual turn away from Chevron, it is hard to see how anyone could reasonably expect a court to rely on Chevron in any particular case or expect it to produce readily foreseeable outcomes,” Chief Justice Roberts for the majority wrote. “And rather than safeguarding reliance interests, Chevron affirmatively destroys them by allowing agencies to change course even when Congress has given them no power to do so.”

“Courts ... understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning,” Chief Justice Roberts wrote for the majority. “That is the whole point of having written statutes; ‘every statute’s meaning is fixed at the time of enactment.’”

He noted that “at best, our intricate Chevron doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action?” He also warned, “Although the Court finally ends our 40-year misadventure with Chevron deference, its more profound problems should not be overlooked.” **The decades-old doctrine, Justice Thomas said, “violates the Constitution.”** (Separation of government powers)

Thus, we now have a teachable moment for the agency and people of the Blue Mountains region, as we and the government agents among us wrestle, in a real-time example, with how to do on-ground vegetative and animal management on a landscape/watershed scale, while developing the ability to measure now and into the future the results of on-ground responses to land prescriptions and implementation within the bounds of congressional intent.

Where it is desirable to develop a Forest Service land/water use plan one must start with an understanding of historical congressional acts and authorizations.

Historically: federal forest management dates back to 1876 when Congress created the office of Special Agent in the U.S. Department of Agriculture to assess the quality and conditions of

forests in the United States. In 1881 the Department expanded the office into the Division of Forestry. A decade later Congress passed the Forest Reserve Act of 1891 authorizing the President to designate public lands in the West into what were then called "forest reserves." Responsibility for these reserves fell under the Department of the Interior until 1905 when President Theodore Roosevelt transferred their care to the Department of Agriculture's new U.S. Forest Service. America's first forester, Gifford Pinchot, led this new agency as its first Chief, Congress's purpose to improve and protect the forest by securing a favorable flow of water and thus a continuous supply of timber and products for the benefit of the people. In 1964, Congress added to the purpose of the forest, § 475, multiple uses, § 528. We quote here United States Code on national forests, with emphasized portions for easy future reference:

16 USC § 475. Purposes for which national forests may be established and administered. All public lands designated and reserved prior to June 4, 1897, by the President of the United States under the provisions of section 471 of this title, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as national forests under said section, shall be as far as practicable controlled and administered in accordance with the following provisions. No national forest shall be established, except to improve and protect the forest within the boundaries, or ***for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;*** but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

16 USC § 480. **Civil and criminal jurisdiction. *The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence,*** except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision **being that the State** wherein any such national forest is situated **shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.** (June 4, 1897, ch. 2, § 1, 30 Stat. 36; Mar. 1, 1911, ch. 186, § 12, 36 Stat. 963.)

16 USC § 481. **Use of waters. All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated,** or under the laws of the United States and the rules and regulations established thereunder. (June 4, 1897, ch. 2, § 1. 30 Stat. 36.)

16 USC § 500. Payment and evaluation of receipts to State for schools and roads. Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

(May 23, 1908, ch. 192, 35 Stat. 260; Mar. 1, 1911, ch. 186, § 13, 36 Stat. 963; June 30, 1914, ch. 131, 38 Stat. 441; Sept. 21, 1944, ch. 412, title II, § 212, 58 Stat. 737; Apr. 24, 1950, ch. 97, § 17 (b), 64 Stat. 87.) AMENDMENTS 1950-Act Apr. 24, 1950, deleted second proviso relating to limitation paid county. 1944-Act Sept. 21, 1944, added sentence relating to stumpage value of the timber. SIMILAR PROVISIONS Provisions similar to this section were contained in Department of Agriculture Appropriation Acts for the following years: 1944-June 28, 1944, ch. 296, § 1, 58 Stat. 444. 1943-July 12, 1943, ch. 215, § 1, 57 Stat. 412. 1942-July 22, 1942, ch. 516, § 1, 56 Stat. 680. 1941-July 1, 1941, ch. 267, § 1, 55 Stat. 423.

16 USC §524. Rights-of-way for dams, reservoirs, or water plants for municipal, mining, and milling purposes. Rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the national forests of the United States, are granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, **and subject to the laws of the State or Territory in which said forests are respectively situated.** (Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628.) § 525. Rights-of-way for wagon roads or railroads. In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby. (Mar. 3, 1899, ch. 427, § 1, 30 Stat. 1233.)

16 USC §528. **Development and administration of renewable surface resources for multiple use and sustained yield of products and services;** Congressional declaration of policy and purpose. It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. ***The purposes of sections 528-531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title.*** Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

16 USC §529. **Same; authorization; consideration to relative values of resources; areas of wilderness.** The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528-531 of this title. (Pub. L. 86-517, § 2, June 12, 1960, 74 Stat. 215.)

16 USC § 530. Same; cooperation with State and local governmental agencies and others. In the effectuation of sections 528-531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. (Pub. L. 86-517, § 3, June 12, 1960, 74 Stat. 215.)

16 USC § 531. Same; definitions. As used in sections 528-531 of this title the following terms shall have the following meanings:

(a) "Multiple use" means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. (Pub. L. 86-517, § 4, June 12, 1960, 74 Stat. 215.)

16 USC § 532. Roads and trails system; Congressional findings and declaration of policy. **The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met;** that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) **to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.** (Pub. L. 88-657, § 1, Oct. 13, 1964, 78 Stat. 1089.)

Summation for Water Quantity & Quality

16 USC § 475. Purposes for which national forests may be established and administered. ... ***for the purpose of securing favorable conditions of water flows*** (quantity and quality of water from the forest) **and to furnish a continuous supply of timber for the use and necessities of citizens of the United States** (this would include cutting of all woody vegetation of any commercial value);

16 USC § 481. **Use of waters. All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated**

16 USC § 528. **Development and administration of renewable surface resources for multiple use and sustained yield of products and services...** *The purposes of sections 528-531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title.*

16 USC § 529. **Same; authorization; consideration to relative values of resources; areas of wilderness.**

In this teachable moment for the agency and people of the Blue Mountains region: As a result of the Supreme Court's decision, we have an opportunity to re-design and implement a working plan as we all transition away from automatic deference given to agency experts and towards obeying and implementing congressional directives. The upper Snake River watershed affords us a real-time model of successful on-ground vegetative and animal management on landscape and watershed scales, while developing the ability to measure now and into the future real time results of on-ground responses to land prescriptions and implementation within the bounds of financial and statutory congressional intent. The congressional directives are to increase water quantity (from rain and snow), and to ensure water quality sufficient to meet beneficial use needs.

In the Blue Mountain Forest Management Plan revision, we find a request for urban users of the forest landscape to state what they desire from the plan area. Instead, to fulfill the directives of congress, one needs first to look at geological and topographic maps to determine rock structure, elevation, aspect, and slope deviations. This gives indications of engineering limitations for road access, potential water drainage and beaver dam analogue structural locations.

Then examine vegetative cover (tree density/acre and % crown-cover or crown-closure) and precipitation events, either rain or snow, as well as timing, amount, and duration of runoff. All of this information is needed to determine "*for the purpose of securing favorable conditions of water flows*" 16 USC 475 as well to plan for timing the cutting of timber and removal of under-stand vegetation, thereby reducing wild-fire risk and maximizing snow capture and slow spring runoff. Snow melt and water flows can vary widely depending upon all the variables such as soil, aspect, slope, precipitation, infiltration and vegetative and animal diversity.

Once this is inventoried and layered then one can delineate and layer: wildlife/fisheries ecosystem overlays, recreational/social amenities and other multiple use and sustained yield of products and services. Then and only then can one determine if urban stakeholders' desires can be met, and if not, it would be clear why not, thereby allowing Congress to change land use goals by statute, if desired.