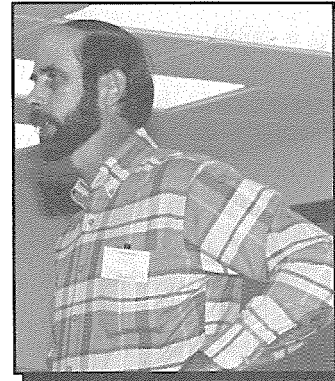


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**THE CATRON COUNTY EXPERIENCE:  
REACHING A MEMORANDUM OF UNDERSTANDING**

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## THE CATRON COUNTY PERSPECTIVE

Howard Hutchinson

Resolving a conflict can be a trying experience. Those embarking on such an undertaking must realize there will be frustrations. Catron County and the Forest Service have had and continue to have knock-down drag-out conflicts. These conflicts are not short-term problems and all parties entering such battles should from the onset prepare for spirited debate.

Our presentations will address the conflict, factors that prevented resolution, how we got to the negotiation table, and what we did when we got there.

### The Conflict

Catron County has initiated a focus on federal actions adversely affecting local governments and their citizens. Catron County's actions now are being copied by counties throughout the United States as this conflict and its resolution have national implications.

### Factors Preventing Resolution

The primary factors preventing resolution are fear of the unknown and playing out the "tragedy of the commons," where no one interest is satisfied. The US Forest Service has many special interests to satisfy in their decision-making process, and these conflicting interests create a situation where satisfying one interest conflicts with another.

Without communication, fear and distrust develop. The county and the Forest Service feared and distrusted each other. The county had not been communicating their concerns to the Forest Service. The Forest Service had not been effectively communicating proposed actions to the county.

### How We Got to the Table

Both the Forest Service and the county were forced to the table by escalating animosity. The county felt that decisions were being made without proper consideration of the effects on the physical, social and economic environments. Catron County enacted a land plan and policy

and several ordinances that Forest Service personnel perceived as threatening. Forest Service staff felt the county was trying to dictate forest planning outside its jurisdiction. It was mutually agreed that a Memorandum of Understanding (MOU) could serve as a vehicle to increase communication and establish a planning process.

### What We Did When We Got There

The National Environmental Policy Act (NEPA) implementing regulations have provisions for local governments to participate in preparing federal agency Environmental Analysis and Environmental Impact statements. Catron County has enacted an environmental planning ordinance that utilizes the NEPA process. This ordinance increases the level of participation for local governments.

The first step in preparing an MOU was to draft a statement of purpose. That statement, which follows, has remained intact throughout the process.

"The purpose of the Memorandum of Understanding (MOU) is to establish a mutually harmonious and productive relationship between the County and the Forest. This MOU will address how and when each agency will jointly participate in Forest and County planning processes. This MOU shall not be construed to affect the jurisdiction of Federal, State, County, or City Governments, or any agency thereof, over any lands owned or managed by any of these agencies."

We feel confident that the MOU will help relieve many of the tensions between the county and the Forest Service. There will continue to be conflicts but with the increased level of communication they will be easier to resolve.

One added point to the NEPA process—the goal of the process is not to get a better document but to get better decisions. Adding local government participation to the process provides all federal agencies better information for better decisions.

## The Catron County Experience: Reaching a Memorandum of Understanding

### THE GILA NATIONAL FOREST PERSPECTIVE

James E. Paxton, Jr.

Howard Hutchinson presented the Catron County perspective on how the Memorandum of Understanding between Catron County and the National Forest developed. I represent the Gila National Forest Supervisor, Maynard Rost, and hope to give you some insights into the Forest Service view of these developments.

My granddaddy was an irrigated and dryland farmer in west Texas. Water was the key to life and he was very much into conserving that which made his living. He also was a homespun philosopher who used homilies to make his points and give "shadows" like me and my cousin things to remember. I can't use the graphic language he used before this polite audience, but I would like to relate his thoughts on "skunks." Poppa would tell me quite often that "you never wanted to get in a 'close quarter discussion' with a skunk! The reason is not so much that you might get bit, but rather that everyone in the room would assume the same aroma." There are lots of times when the Forest Service has been the "skunk" to our detractors and to those who find fault with our management. At times those with whom we have had acrimonious relations have been the "skunk." But does it really matter who started the fight and who is at fault if we all end up smelling the same? Now, what does this have to do with the Gila National Forest and Catron County and is there a skunk in this scenario?

The relationship between the Gila National Forest and Catron County, New Mexico is in an embryonic stage concerning environmental planning and cooperation. We are developing a formal Memorandum of Understanding wherein each entity will detail and agree upon how we will interact in the planning and documentation of projects under the National Environmental Policy Act and the New Mexico Joint Powers Agreement Act. We believe what we do in this regard will be copied many times over as Catron County is a member of the Coalition of Counties and the National Association of County Govern-

ments. We now have a very good working relationship and are moving forward as partners, but it was not always so.

Conflict can be disruptive, emotional, divisional and cause deep-seated and long-lasting animosity. It also can bring about a recognition of change, foster initiatives to deal with the changing conditions, and help spur a new direction for two governmental entities with overlapping responsibilities. The Gila National Forest and Catron County have chosen to become partners in the future management of National Forest lands within Catron County.

Dr. Kai Lee, the author of *Compass and Gyroscope* is a professor at the University of Maine and for five years was environmental consultant to the Northwest Power Plan Council. His views are very applicable to our situation. He refers to the pure application of science as "the compass" and the operation of our social democracy over time as the "gyroscope." Dr. Lee is familiar with social turmoil and views "...conflict is then necessary to detect error and force corrections in the course of the management of ecosystems and social systems." He also defined "unbounded conflict" as pure anarchy and counter-productive to any ecosystem or social system whereas "bounded conflict" was action causing change and reaction to that change working within a set of rules. We are in an era of "Adaptive Management" wherein we experiment continuously with a new course, learn what it does, change course a little, evaluate and change a little more. It seems that both navigational aids are required in our current quest of environmental and societal stability and the sustainability of National Forest lands.

Let's review the history of environmental legislation:

- 1891-Forestry Reserve Act signed by President Benjamin Harrison allowed for reserving lands from the public domain for the perpetuation of forests (timber, grass and water).
- 1897-Organic Administration Act gave actual management practices to the Forest Reserves and allowed for the regulation of use.

- 1905-The Transfer Act whereby Teddy Roosevelt moved the Forest Reserves from the Department of Interior to the Department of Agriculture and formed the Forest Service. Gifford Pinchot was appointed the first chief and was the founder of the Forest Service Movement. He wrote the transfer letter..."You will see to it that the water, wood and forage of the reserves are conserved and wisely used..." "Local questions are to be decided on local grounds." "Conflicting questions must be resolved deciding for the greatest good for the greatest number in the long run!" Then from the *Use Book of 1907*—"Where interests conflict, first one and then the other must yield a little to make things work. In the end, all will profit from it..."
- 1969-National Environmental Policy Act (NEPA) mandated the Forest Service to examine the impacts and effects of proposed actions. Coordination and cooperation with state and local governments also was mandated. Where jurisdictions overlap and to avoid duplicating effort and reduce paperwork, joint studies can be initiated. Decisions remain unique and autonomous according to jurisdiction.
- 1973-Endangered Species Act provides for the protection, management and preservation of wildlife species, threatened with extinction.
- 1974-Forest and Rangeland Renewable Resources Planning Act (RPA) provides for the resources of the National Forests and other lands to be managed for the perpetuation of the resources with use and management.
- 1976-National Forest Management Act (NFMA) from which Forest Land and Resource Management Plans have been written for each National Forest. To date, 156 plans have been produced.

As Howard Hutchinson told you earlier, Catron County passed an Environmental Planning and Land Use Ordinance in 1992. The ordinance dealt with the maintenance and preservation of

the "...customs, culture and economic viability of the citizenry of Catron County." Catron County and many other small western counties have seen the management of the lands they call home passed from their control, or even involvement or influence, to urban and environmental groups through process legislation. Feeling threatened, Catron County reacted by passing an ordinance that gives them the same standing as urban, environmental, and other groups. Applying Dr. Lee's terminology, our compass is spinning and the gyroscope has gone into orbit.

Catron County's ordinance also gave the county the ability to enforce their policies. Anyone who violated the terms of the ordinance could be subject to arrest and prosecution. In the most extreme situation, if a District Ranger or Forest Supervisor makes a decision viewed as counter to Catron County's ordinance, would he or she be subject to arrest? It is often necessary to make managerial decisions for the best use of the resource based on fact and analysis even though the impact of that decision may not directly benefit the users of the National Forest. An example is a rancher who resides in Catron County with a grazing allotment on the Gila National Forest. If that allotment were to be reduced due to an analysis that showed the resource was over-committed for the number of cattle, a decision could be made to reduce the permitted cattle by 50 percent. Consequently, the rancher would lose potential income from the sale of as much as one-half of the number of calves he was able to sell in the past. The county would also lose a part of their tax base due to fewer mature cows out on the range. Those changes could be considered significant impacts on the "...custom, culture and economic stability..." of Catron County. Under a cloud of the threat of arrest for doing the job required, and because some individuals in the county wanted to have a hand in making management decisions concerning the National Forest, relations were very strained between the county and the Gila National Forest at the end of 1992.

The County Commissioners and the Forest Supervisor recognized the need to get back on track and attempt to work with each other. In

## The Catron County Experience: Reaching a Memorandum of Understanding

April 1993, a committee of several folks from Catron County and several from the Gila National Forest, including three District Rangers, took off their skunk suits, sat down at a common table and began searching for those areas where both sides could agree. Our charge was to produce a Memorandum of Understanding (MOU) that would define how the county and the Forest Service would interact, cooperate, and coordinate efforts on environmental planning. The areas of common ground include:

- Land is important to us all for our history, our economic welfare, and our future. Nearly 2.3 million acres of Catron County are Gila or Cibola national forest, approximately 53 percent of the total land base. Catron County contains six Ranger Districts on the Gila and one on the Cibola. Mining, ranching, logging, outfitting/guiding, are some of the major economic activities conducted by locals on the National Forest.
- We all want to be here tomorrow; Dr. Kai Lee's "quest of sustainability."
- No one agency nor individual enjoys working under a threat to their security.
- NEPA mandates local involvement and cooperation.
- The Forest Service has decision-making authority over management of the national forest lands that cannot be abrogated.
- Catron County has the responsibility of governing use of private lands and helping the Forest Service with input and cooperation in the management of national forest lands within the county. The county governs under state laws and the "powers not reserved" in the US Constitution. It is responsible for protecting the customs, culture and economic viability of its citizens. The county also is responsible for informing the Forest Service how a proposal would affect their customs, culture and economic viability.
- Each entity recognizes the other's authority.
- Neither entity will try to interfere or usurp the powers and authority of the other.
- Basic communication is required to accomplish anything effectively.

Where are we now? We have met once or twice each month since April and now have a Draft Memorandum of Understanding that we believe is ready to be reviewed by the County Commissioners and by the Gila Supervisor and the Forest Service legal advisors. If all agree that we are acting properly and legally, the County Commissioners and the Forest Supervisor will sign the agreement and we will begin implementation. We realize that management practices of other agencies, laws passed by Congress, judicial appeals, and litigations by outside parties may alter our management practices. The key to our success is that we are talking and working toward solutions. The MOU will give us and our successors a formal process to keep that communication open.

### *EPILOGUE*

When Catron County and the Gila National Forest representatives made their presentations in October, both negotiating teams felt they were on the verge of realizing a completed Memorandum of Understanding. On October 28th, the negotiations came to an impasse. Catron County withdrew from the negotiations with a request to the Forest Service Region 3 Office that a facilitator be recruited to assist in the discussions.

In late November, Shipley Associates was contacted to be the facilitator. Shipley submitted a proposal to the Coalition of Arizona/New Mexico Counties (Coalition) and Region 3 to conduct a National Environmental Policy Act (NEPA) training session and to facilitate the MOU negotiation.

From January 24-26th, 40 county and Region 3 Forest Service representatives attended a three-day training session in Albuquerque. Region 3 encompasses both Arizona and New Mexico forests and the Coalition has member counties from both states. On the January 27th and 28th, Catron County and the Gila National Forest resumed negotiations with Shipley Associates as facilitator.

After the week-long session, participants realized that there were three levels of participation being discussed by the two teams.

- The NEPA implementing regulations create several types of participation.
- Integrated Resource Management (IRM) is a 13-step process used to arrive at a decision. All 13 steps are part of the NEPA process but only 5 were used in the National Forest Management Act of 1976.
- Ecosystem Planning is Forest Service policy established under the NFMA and is unique to the Forest Service.

The MOU describes these levels of participation and the responsibilities of each party to coordinate their planning processes.

Acting Forest Supervisor Carl Pense and the Catron County Commission signed the MOU on February 15th. Both negotiating teams feel they now are speaking the same language and have laid the foundation for increased communication. The lesson learned through this exercise is that when negotiations stall, it is helpful to seek an outside party with facilitation skills and knowledge of the subject in conflict. WRRRI's conference on conflict resolution contributed to successful negotiations between Catron County and Gila National Forest Service.