NATURAL RESOURCES POLICY UNDER THE BUSH ADMINISTRATION

EDITOR’S NOTE†

The Bush Administration. These three words bring forth a very different and extreme reaction when used by those speaking about natural resources policy of the current administration. From one side, people proclaim an administration that has sold out to special interests; enacted laws and policies that will do irreparable harm to our nations parks, forests, and endangered species; and abused science for political gain. From the other side is the belief that the Bush Administration is a defender of commonsense approaches to environmentalism and the belief that proclamations from Washington seldom consider the needs of the rancher, logger, miner, or average American. Which is right? While many who read and write on environmental topics tend to come out in support of the former view, it seems utterly unsatisfying to believe that the current White House is simply bent on the destruction of the environment in its quest to exploit natural resources. It also seems disingenuous to proclaim that the “4 Cs” have been a complete success (or even consistently applied) in creating a conversation policy that protects what needs protection entirely through cooperation. In this issue, the Duke Environmental Law and Policy Forum (“DELPF”) presents eleven perspectives how natural resources policy has been shaped over the past four years.

DELPF held a symposium in November 2004 to address this contentious topic. The result of that symposium is this publication. Leaders from the current administration, the Clinton Administration, and academia offered us their perspective on natural resources policy. While those involved chose their topics, the result is a complete discussion of the highlights (or lowlights) of the administration’s actions. Along with those who presented papers at our symposium in November, we are publishing three additional articles that add context and breath in understanding the natural resources policy of the current administration.

Three officials from the Bush Administration provide insight into

the paradigm that drives their initiatives of the last four years. The contributions from Lynn Scarlett, Assistant Secretary of the Interior for Policy, Management and Budget, and Craig Manson, Assistant Secretary of the Interior for Fish and Wildlife and Parks, are edited transcripts of the addresses they delivered at the Duke Law School in November and March. These two submissions provide an overall mindset of the current administration’s natural resources policy.

Donald Murphy, Assistant Director of the Park Service, provides an essay where he proposes that morality and ethics should serve as the basis for public policy in the area natural resources. Murphy believes that this new paradigm that focuses on bioevolutionary ethics will lead to the formation of what E. O. Wilson calls our “moral sensibilities.”

Charli Coon, a fellow at the Heritage Foundation, provides a defense of the Healthy Forest Restoration Act, which has been the popular target of environmental groups. Coon criticizes those whom she sees as “do-nothing extremists” whose policies over the past administrations have created dangerous forest conditions by allowing unregulated forest growth. She then looks to the Healthy Forest Restoration Act in action as providing innovative solutions that save lives, homes, and money.

Perry Pendley, director of the Mountain States Legal Foundation, points to the Bush Administration as not going far enough to defend the rights of landowners in the West and claims that the administration has fallen short on its campaign promises to provide relief from what Pendley believes was overzealous and illegal regulation implemented in the waning hours of the Clinton Administration. Pendley provides several examples of the administration taking a “winning on any basis whatsoever” approach that has puzzled many of his key supporters.

Lois Schiffer, partner at Baach Robinson & Lewis and former Assistant Attorney General for the Environment and Natural Resources Division from 1994-2001, focuses on two conditions of National Environmental Protection Act (“NEPA”) to illustrate the Bush Administration’s natural resources policy. First, Schiffer looks to efforts by the Bush Administration to limit NEPA through statutory interpretation, litigation, and legislation to the detriment of the statute and to United States global leadership in environmental issues. Second, Schiffer considers the influence of NEPA beyond U.S. borders, sometimes referred to as “extraterritorial application of NEPA,” and recent moves to limit its application in this realm.
John Leshy, Professor of Law at the University of California-Hastings and former Solicitor of the Department of the Interior under the Clinton Administration, provides a larger criticism of the Bush Administration, which he views as deceptively undermining environmental regulations to serve industry interests. Leshy tries to capture and illustrate with examples the principal themes that he believes reflects the Bush Administration’s natural resources policy.

Patrick Parenteau, Director of the Environmental and Natural Resources Law Clinic and Professor of Law at the Vermont Law School, provides an additional broad scathing critique of the administration. Parenteau’s purpose is to illustrate, through selected examples, what he believes are the administration’s abuses of science, law, and democratic processes to make bad public policy. He believes a review of the Bush record reveals a pattern changing environmental law by fiat, collusion, and deception.

Gloria Flora, director of Sustainable Obtainable Solutions and formerly of the Forest Service, provides a critique of the changes made by the Bush Administration to the Roadless Rule. Flora explains the underpinnings of the Roadless Rule, critiques the rationales used to undermine the Rule, and provides a new modus operandi for a sustainable management of National Forest roads for those dependent on them.

J.B. Ruhl, Professor of Law at Florida State University, analyzes the Bush Administration through Endangered Species Act innovations. He points to positive developments from the Bush Administration in new approaches to inter-governmental relations under the ESA and ground-level projects aimed at partnering with landowners and other resource managers. Overall, though, Ruhl sees weakness in there being no theme of ESA innovation emanating as was present under the Clinton Administration.

Marcilynn Burke, Assistant Professor of Law at the University of Houston Law Center, examines the effect of rhetoric on the enforcement of the Endangered Species Act. Burke examines the rhetoric used by the current and past administrations and how it has had a large impact on how the ESA is interpreted and enforced.

Through these eleven articles, many issues are discussed; however, it is not our goal to end the debate on the Bush Administration’s natural resources policy. It is our goal instead to provide a forum that can crystallize the differing opinions and draw attention to an area that should receive greater attention in the national debate over the direction and leadership of our nation.
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