

University of Colorado Law School
Colorado Law Scholarly Commons

The Past, Present, and Future of Our Public Lands:
Celebrating the 40th Anniversary of the Public
Land Law Review Commission's Report, One Third
of the Nation's Land (Martz Summer Conference,
June 2-4)

Getches-Wilkinson Center Conferences,
Workshops, and Hot Topics

6-3-2010

Some Reflections on Fish and Wildlife Resources (Report Chapter Nine)

Todd True

Follow this and additional works at: <http://scholar.law.colorado.edu/celebrating-40th-anniversary-of-public-land-law-review-commission-report>

 Part of the [Environmental Policy Commons](#), [Natural Resources and Conservation Commons](#), [Natural Resources Law Commons](#), and the [Natural Resources Management and Policy Commons](#)

Citation Information

True, Todd, "Some Reflections on Fish and Wildlife Resources (Report Chapter Nine)" (2010). *The Past, Present, and Future of Our Public Lands: Celebrating the 40th Anniversary of the Public Land Law Review Commission's Report, One Third of the Nation's Land (Martz Summer Conference, June 2-4)*.

<http://scholar.law.colorado.edu/celebrating-40th-anniversary-of-public-land-law-review-commission-report/7>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



Todd True, *Some Reflections on Fish and Wildlife Resources (Report Chapter Nine)*, in *THE PAST, PRESENT, AND FUTURE OF OUR PUBLIC LANDS: CELEBRATING THE 40TH ANNIVERSARY OF THE PUBLIC LAND LAW REVIEW COMMISSION'S REPORT—ONE THIRD OF THE NATION'S LANDS* (Natural Res. Law Ctr., Univ. of Colo. Law Sch. 2010).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

**SOME REFLECTIONS ON
FISH AND WILDLIFE RESOURCES
(REPORT CHAPTER NINE)**

Todd True, Attorney
Earthjustice

I. ***Hook & Bullet or Ecosystem Protection:*** Chapter Nine on Fish and Wildlife Resources is really two chapters, one with a traditional focus circa 1970 on the use of public lands for fishing and hunting and another that seems to foreshadow much of the controversy we've experienced in the past several decades over the role of public lands in protecting fish, wildlife, and healthy ecosystems.

A. This tension between a traditional view of fish and wildlife resources as something to grow and harvest on the public lands and an alternative vision of ecosystem protection is reflected in the second sentence of Chapter 9:

Although about 37,000,000 hunting and fishing licenses, applying to public and private lands alike, were sold in the United States in 1967, the fish and wildlife on the public lands have great significance and meaning beyond that form of recreation.

Chpt. 9 at 157. The last part of this sentence expresses what was probably a somewhat novel concept in 1970 and maybe even one of unintended scope: "the fish and wildlife on the public lands have great significance and meaning beyond [hunting and fishing]."

B. A little later in the introduction to Chapter Nine the Report says:

Greater emphasis needs to be given to fish and wildlife values in allocating public lands to various uses in order to assure that fish and wildlife resources receive equal consideration in public land administration.

Id. (emphasis added). In many ways, that sentence captures one of the central controversies of public lands management over the past several decades – the role these lands should play in protecting "fish and wildlife values."

C. Chapter Nine does not shy away from this controversy but appears to anticipate and embrace it saying for example:

- "Protection and propagation of rare and endangered species of wildlife should be given a preference over other uses of public lands;"
- "Fish and wildlife populations should be maintained at levels in consonance with the ability of the habitat to support them;" and,
- "Preference should be given to the support of those species for which the public lands provide a significant or critical portion of the habitat."

C. The 800-pound gorilla: climate change. Climate change promises to alter natural landscapes in fundamental ways. Public land management regimes of the past are poorly suited to meet this challenge. When it comes to on-the-ground management of public lands, it tends to be business as usual even though the climate train is well in view. The goal of public land management for fish and wildlife going forward must be to support ecosystem resilience and diversity, to remove stressors on the natural systems, and to put our public lands and the species that live there in a position to meet the challenge of climate change with natural responses and adaptation wherever possible. This will require different regulatory and management approaches. The devil will be in the detail. For example, on much of our public lands, managing to support the natural capacity of ecosystems to retain and store water is likely to be critical in a warming climate. Very few public land activities today are looked at through the lens of their capacity to affect the water cycle. That will need to change. Likewise, the importance of understanding and protecting wildlife corridors will increase. Similarly, some public lands store significant amounts of carbon now. The harm from disturbing these landscapes and releasing carbon into the atmosphere may add weight to the reasons for leaving parts of the landscape alone.

PRINCIPLES AND GUIDELINES

PROPOSED REVISIONS TO THE NATIONAL OBJECTIVES, PRINCIPLES AND STANDARDS FOR WATER AND RELATED RESOURCES IMPLEMENTATION STUDIES

Demonstrating a commitment to modernize the nation's approach to water resources policy, the Obama Administration is proposing significant changes to the rules that govern federal water planning to ensure that such efforts both protect and restore the environment and improve the economic well-being of the Nation. America's water resources – streams, rivers, wetlands, estuaries, lakes, and coasts – are at the heart of our economy, our environment and our history. These water resources support billions of dollars in commerce, provide drinking water for millions of Americans and supply needed habitat for fish and wildlife and other benefits. As called for in the Water Resources Development Act of 2007, the Administration's proposal would overhaul these rules and require that water projects improve the economic well-being of the Nation for present and future generations, better protect communities from the effects of floods and storms, help communities and individuals make better choices about where to build based on an understanding of the risk, and protect and restore the environment.

Background

- Federal water planning has been guided by a process that has remained largely unchanged for over twenty-five years. The first set of "Principles and Standards" was issued in September 1973 to guide the preparation of river basin plans and to evaluate Federal water projects. Following a few attempts to revise those initial standards, the current principles and guidelines went into effect in March 1983.
- In the Water Resources Development Act of 2007, Congress instructed the Secretary of the Army to develop a new *Principles and Guidelines* for the U.S. Army Corps of Engineers (section 2031).
- In order to increase consistency and transparency, the Administration decided in the summer of 2009 that any effort to modernize its approach to water resources development should apply to the full suite of agencies doing such work – not just the four agencies (i.e., U.S. Army Corps of Engineers, Bureau of Reclamation, Natural Resources Conservation Service and the Tennessee Valley Authority) which are subject to the current *Principles and Guidelines*.
- The proposed revisions are based on science and recognize the role that well-functioning natural systems can play in water resource management.

Key Provisions

The revised *Principles and Guidelines* include a number of important changes that modernize the current approach to water resources development in this country:

- **Achieving Co-Equal Goals.** The Administration's proposal reiterates that Federal water resources planning and development should both protect and restore the environment and improve the economic well-being of the Nation for present and future generations. While the 1983 standards emphasized economic development alone, the new approach calls for development of water resources projects based on sound science that maximize net national economic, environmental, and social benefits.

- **Considering Monetary and Non-Monetary Benefits.** The revised *Principles and Guidelines* make an important shift away from the earlier approach to project selection. Specifically, this revised version will consider both monetary and non-monetary benefits to justify and select a project that has the greatest net benefits – regardless of whether those benefits are monetary or non-monetary. For example, the monetary benefits might capture reduced damages measured in dollars while the non-monetary benefits might capture increased fish and wildlife benefits, or biodiversity.
- **Avoiding the Unwise Use of Floodplains.** The new *Principles and Guidelines* represent a significant shift in the way we manage our floodplain resources. The decision to modify water resources and floodplains will be based on evaluations of the services gained and lost by such an action and only those actions that provide a net benefit shall be further pursued or recommended for construction. For the first time such evaluations must give full and equal consideration to nonstructural approaches that can solve the flooding problem without adversely impacting floodplain functions.
- **Increasing Transparency and “Good Government” Results to Protect American Taxpayers.** The revised *Principles and Guidelines* are intended to significantly increase the transparency of the planning and implementation process for water resource development projects in this country. The proposed changes were made to deliver “good government” results for the American people. It is expected that the use of best science, peer review, and full transparency will ensure that projects undergo a more rigorous study process, which should inform authorization and funding decisions.

Next Steps

- With today’s announcement, the Administration is sending the new draft *Principles and Guidelines* to both the Federal Register for public comment and, in accordance with WRDA 2007, to the National Academy of Sciences (NAS) for its review. The NAS review is expected to be completed by November 2010. Additionally, CEQ will take public comment on the new draft Principles and Guidelines for 90 days via the CEQ website (www.whitehouse.gov/ceq).
- The next step is the development of the “Procedures” which lay out the detailed methodology for conducting implementation studies under this new *Principles and Guidelines*. The interagency process to develop those procedures will begin almost immediately and will likely take more than a year to complete.
- The third step involves each agency developing its own “Implementation Guidance” to outline how the new *Principles and Guidelines* apply to their agency-specific missions. This step can likely be implemented concurrently with the second step mentioned above, finishing up just after the “Procedures” are completed in late 2010.