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David H. Getches

*University of Colorado Law School*

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# The Legacy of the Bush II Administration in Natural Resources: A Work in Progress

*David H. Getches\**

The Bush Administration's record in natural resources management and environmental protection has been the subject of bitter criticism. The Administration is blamed for ignoring legislative mandates, blatantly violating environmental and public land laws, and backing sweetheart settlements of lawsuits. Yet this is an Administration that has championed policies of "communication, consultation, and cooperation—all in the service of conservation," "Clear Skies," and "Healthy Forests." Some observers recall the controversy stirred by the Administration of Ronald Reagan and his Secretary of the Interior, James Watt, and declare that the Administration of George W. Bush ("Bush II") surpasses the Reagan-Watt record of unfriendliness to the environment. Others believe "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."<sup>1</sup>

One must take the assessments of contemporary critics, as well as the Administration's self-assessments, with generous doses of salt. Attempts to view current events as history will judge them as imperiled by an inevitable lack of perspective and detachment. With the advantage of hindsight enjoyed by historians, what will be the retrospective assessment of Bush II's policies for the environment? The answer will depend largely on the consequences traceable to those policies, measurable in palpable on-the-ground impacts on the natural world, such as quantifiable losses or

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\* Dean and Raphael J. Moses Professor of Law, University of Colorado School of Law. A.B. Occidental College; J.D. University of Southern California.

1. *Editor's Note: Natural Resources Policy Under the Bush Administration*, 14 DUKE ENVTL. L. & POL'Y F. 277, 277 (2004).

gains in protection of lands, of species of fish and wildlife, and of environmental quality.

At a subtler, less quantifiable level, Bush II's policies may induce gradual, long-range changes in thinking about natural resources and the environment. The administration of Teddy Roosevelt, for instance, introduced a conservation ethic into national discourse. The Reagan Administration popularized anti-government rhetoric – not specific to environmental issues – so that it eventually became acceptable in the discourse of both political parties, and later shaped the substance of policies. Similarly, the dominant rhetoric concerning the environment in the present era dismisses the seriousness of environmental threats, polarizes issues into choices between basic human welfare and romantic preservation, and denigrates environmental advocates; this may lead to long-term changes in American political attitudes and policies toward natural resources and the environment.

#### I. CRITICISMS OF BUSH II

Critics of the Bush II Administration say that it is on a crusade to subvert laws and policies governing the use and protection of natural resources that presumably had become embedded in American life over the last three decades of the twentieth century. Some practices and policies, they say, are at odds with established policy, if not flatly against the law. Examples of the critics' "evidence" are the following:

- No sooner did the Bush II Administration take office than it began reversing rules and regulations to ease development and use of resources on the public lands.<sup>2</sup> For example, it postponed and then withdrew regulations phasing out snowmobile use in Yellowstone National Park.<sup>3</sup>
- New regulations were issued under the National Forest Management Act to allow development on millions of acres of roadless areas on national forest land.<sup>4</sup> The regulations would relax the degree of environmental review and limit public involvement in

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2. One of Bush's first actions was to withdraw or place on hold all pending regulations. Memorandum for the Heads and Acting Heads of Executive Departments and Agencies, 66 Fed. Reg. 7,702 (Jan. 24, 2001).

3. Special Regulations; Areas of the National Park System: Delay of Effective Date, 66 Fed. Reg. 8,366 (Jan. 31, 2001) (postponing implementation of the rule phasing out snowmobile use); Special Regulations; Areas of the National Park System; Final Rule, 68 Fed. Reg. 69,267 (Dec. 11, 2003) (substituting a new rule that allows snowmobile use but requires entry limits, air and sound emission limits, and the use of trained guides).

4. Special Areas; State Petitions for Inventoried Roadless Area Management; Roadless Area Conservation National Advisory Committee; Final Rule and Notice, 70 Fed. Reg. 25,653 (May 13, 2005) (to be codified at 36 C.F.R. pt. 294).

the process of deciding whether and on what terms those lands will be opened for private development and exploitation.<sup>5</sup>

- Protections of proposed wilderness areas have been lifted by a Bush II Administration ruling prohibiting the Bureau of Land Management from inventoring or protecting additional land areas with wilderness characteristics.<sup>6</sup>

- Enforcement actions for violations of the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and federal hazardous waste laws in the first three years of the Bush II administration fell to a total of 36 compared to 152 lawsuits that the Clinton Administration filed in its last three years.<sup>7</sup>

- Scientific advisors have been replaced with people who will give the Administration the answers it wants. More than sixty leading scientists, including forty-eight Nobel laureates signed a letter claiming that the Bush II Administration disregards scientific evidence when making policy decisions.<sup>8</sup> The statement accuses the administration of censoring and misrepresenting evidence, suppressing discussion within government agencies, and disregarding independent expert opinions and government studies to suit its own findings.

- Programs for the protection of species under the Endangered Species Act have been curtailed. Professor Holly Doremus, in her comprehensive assessment of the Bush II record of using science, observes that the Northwest Forest Plan was enacted to protect

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5. See Robert L. Glicksman, *Traveling in Opposite Directions: Roadless Area Management Under the Clinton and Bush Administrations*, 34 ENVTL. L. 1143 (2004) (criticizing Bush II actions).

6. The United States entered into a consent decree with Utah adopting a novel interpretation of law that eliminates the Bureau of Land Management's (BLM's) discretion under the Federal Land Policy and Management Act (FLPMA) § 201, 43 U.S.C. § 1711, to conduct wilderness inventories, and eliminates BLM's discretion under FLPMA § 202, 43 U.S.C. § 1712, to designate and protect Wilderness Study Areas. These interpretations were challenged by environmentalists. See *Utah v. Norton*, 396 F.3d 1281 (10th Cir. 2005) (appeal dismissed on procedural grounds). See generally Sarah Krakoff, *Settling the Wilderness*, 75 U. COLO. L. REV. 1159, 1162-74 (2004) (describing Utah Wilderness Settlement).

7. J.R. Pegg, *Polluters Face Fewer Lawsuits Under Bush EPA*, ALBION MONITOR, Oct. 6, 2004, at <http://www.albionmonitor.com/0410a/bushepalawsuits.html>. Environmental compliance inspections have also declined steadily. *The Bush Record—Environmental Enforcement*, ENVIRONMENT 2004, at [http://www.environment2004.org/br\\_environmental\\_enforcement.php](http://www.environment2004.org/br_environmental_enforcement.php) (last visited Apr. 11, 2005).

8. National Resources Defense Council, *The Bush Record: Bush Administration's Environmental Policies Ignore Science, Scientists Say*, Oct. 19, 2004, at [http://www.nrdc.org/bushrecord/2004\\_10.asp](http://www.nrdc.org/bushrecord/2004_10.asp).

spotted owl forest habitat, but the Administration succeeded in gutting the Plan's wildlife survey provisions as an accommodation for the logging industry.<sup>9</sup> Additionally, the Bush II Administration has weakened protections for endangered species on military bases.<sup>10</sup>

- The Bush II Administration is undermining the protections of the foundational National Environmental Policy Act (NEPA) by excluding broad areas of resource development from impact assessment requirements<sup>11</sup> and asserting NEPA-hostile arguments in court.<sup>12</sup>

- Lawsuits by or against the government have been settled by the Bush II Administration on terms that disfavored environmental protection and that favored development of resources. Moreover, some critics say the Administration has strategically encouraged so-called "Trojan horse" litigation against the government that it quietly settles on terms favorable to the challenger, while opposing intervention by non-profit environmental protection groups.<sup>13</sup>

- Notoriously drafted behind closed doors, allegedly in complicity with the industry, Bush's National Energy Plan proposes to ease power plant and gas refinery regulations, calls for more coal-burning power plants, and focuses on expanding energy development on public lands. Accordingly, the Administration pursues oil and gas development in the Arctic National Wildlife Refuge (ANWR), the Rockies, and other oil reserves in Alaska.<sup>14</sup>

- Requirements for restoration of wetlands under the Clean Water Act have been relaxed to allow developers to drain or fill wetlands

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9. Holly Doremus, *Science Plays Defense: Natural Resources Management in the Bush Administration*, 32 *ECOLOGY L.Q.* 248 (2005).

10. *Endangered Species Act Turns 30 Years' Old*, CNN.com, Jan. 1, 2004, at <http://www.cnn.com/2004/TECH/science/01/01/endangered.species.ap/>.

11. National Environmental Policy Act Determination Needed for Fire Management Activities; Categorical Exclusions; Notice, 68 Fed. Reg. 33,813 (June 5, 2003) (adding categorical exclusions for many logging activities); National Forest System Land and Resource Management Planning; Proposed Rules, 67 Fed. Reg. 72,770 (Dec. 6, 2002) (proposing eliminating EIS requirement for major amendments and revisions of forest management plans).

12. See William Snape III & John M. Carter II, *Weakening the National Environmental Policy Act: How the Bush Administration Uses the Judicial System to Weaken Environmental Protections* (2003), available at <http://www.defenders.org/publications/nepareport.pdf> (last visited Apr. 11, 2005).

13. Michael C. Blumm, *The Bush Administration's Sweetheart Settlement Policy: A Trojan Horse Strategy for Advancing Commodity Production on Public Lands*, 34 *ENVTL. L. REP.* 10,397, 10,397 (2004).

14. *National Energy Policy, Report of the National Energy Policy Development Group*, May 2001, at <http://www.whitehouse.gov/energy/National-Energy-Policy.pdf>.

without requiring acre-for-acre restoration, as long as there is no net loss of wetlands in Army Corps districts.<sup>15</sup>

## II. THE BUSH II ADMINISTRATION'S SELF-ASSESSMENT

The Bush II Administration champions itself as working to streamline regulations, to reduce red tape, and to ensure that “needed environmental reviews and public review processes are conducted in the most efficient and effective way possible.”<sup>16</sup> Personal responsibility is emphasized over federal government action in an attempt to create a partnership with “states, tribes, local communities, and individuals.”<sup>17</sup> The Administration views its policies as part of the continuum of progress made by the nation over the past thirty years.

The Administration believes that current environmental laws and regulations impede crucial development, that direct command-and-control regulation should be replaced with market-based approaches to pollution, and that federal public land policy should favor increased extraction of resources. Existing regulations are seen as being burdened with “excessive analysis, ineffective public involvement and management inefficiencies” that result in “costly procedural quagmires.”<sup>18</sup>

Key environmental accomplishments that are highlighted on the government website, “Protecting Our Nation’s Environment,” include restoring the health of forests, enacting a program that has halted the net loss of wetlands, and securing increased funding for park maintenance. The Administration emphasizes that the “focus is on results – making our air, water, and land cleaner” and states that it employs “the best science and data to inform our decision-making.”<sup>19</sup> Regarding global warming, President Bush maintains that “sustained economic growth is an essential part of the solution, not the problem. Economic growth will make possible the needed investment in research, development, and deployment of advanced technologies.”<sup>20</sup>

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15. *Administration Eliminates Tighter Rules on Wetlands Development*, SEATTLE POST-INTELLIGENCER, Jan. 15, 2002, at A1.

16. The White House, *Protecting Our Nation’s Environment, Reducing the Threat of Catastrophic Wildfires and Improving Forest Health*, at [http://www.whitehouse.gov/ceq/hfi\\_12-02\\_wh\\_fact\\_sheet.pdf](http://www.whitehouse.gov/ceq/hfi_12-02_wh_fact_sheet.pdf) (last visited Apr. 11, 2005).

17. The White House, *Key Bush Environmental Accomplishments*, at <http://www.whitehouse.gov/infocus/environment/> (last visited June 19, 2005).

18. The White House, *Administrative Actions to Implement the President’s Healthy Forests Initiative*, Dec. 11, 2002, at [http://www.whitehouse.gov/ceq/hfi\\_usda-doi\\_fact\\_sheet\\_12-11-02.pdf](http://www.whitehouse.gov/ceq/hfi_usda-doi_fact_sheet_12-11-02.pdf) (last visited June 19, 2005).

19. The White House, *Protecting Our Nation’s Environment*, at <http://www.whitehouse.gov/infocus/environment/> (last visited June 19, 2005).

20. The White House, *Global Climate Change Policy Book* (2002) at <http://www.whitehouse.gov/news/releases/2002/02/climatechange.html> (last visited June 19, 2005).

Environmental programs include the "Healthy Forests Initiative" and the "Clear Skies Initiative." The Bush II Administration also advocates "build[ing] on America's ethic of stewardship and personal responsibility through education and volunteer opportunities."<sup>21</sup> "Cooperative Conservation" is the new mission statement of the Department of Interior, a mission defined as involving local involvement, partnerships with citizens and communities, and an emphasis on voluntary incentives for landowners to protect land and species.<sup>22</sup> In sum, the Bush II Administration views itself as aiding individuals in taking responsibility for their local environment, while encouraging innovation and progress by corporate interests through more efficient regulation of natural resources.

### III. RHETORIC OR REALITY?

Critics give little credence to the Bush II Administration's claim that relaxing the application of laws and revising regulations is consistent with environmental protection. The intensity of their objections may follow from the abrupt loss of power and respect that environmental protection advocates suffered with the shift from Clinton-Babbitt to Bush-Norton. Political disappointment partly explains the harsh reviews by Democrats, especially those who were ousted from positions in the Department of the Interior and other agencies charged with natural resources and environmental policy implementation. And after enjoying access to people high in the former administration, environmentalists are insulted by being outside and being denied even an audience with agency officials who were chosen from the very industries and development interests the environmental advocates have consistently opposed.

So the rhetoric of environmental organizations must be understood as motivated at least in part by rejection. This is not to discount criticisms like those by Professor John Leshy, former Solicitor of the Department of the Interior in the Clinton Administration,<sup>23</sup> but only to caution that these criticisms should be held up to rigorous analysis. Similarly, one must test the enthusiastic statements and appealing labels the Bush II Administration gives its own policies and programs. Yet, cautious reviews of what both the critics and proponents say will still leave any prognosis inconclusive about the legacy of the Bush II Administration in natural resource protection.

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21. The White House, *Key Bush Environmental Accomplishments*, at <http://www.whitehouse.gov/infocus/environment/> (last visited June 19, 2005).

22. Department of Interior, *Fiscal Year 2006 Interior Budget in Brief: Resource Protection*, at <http://www.doi.gov/budget/2006/06Hilites/DH21.pdf> (last visited Apr. 11, 2005).

23. John D. Leshy, *Natural Resources Policy in the Bush (II) Administration: An Outsider's Somewhat Jaundiced Assessment*, 14 DUKE ENVTL L. & POL'Y F. 347 (2004).

An administration's legacy will be measured primarily in material terms—acres, species, river miles, board feet, and acre-feet—and in concrete legal changes that are hard to reverse. Once lands are intensively developed or a species is extinct, the results are permanent. Laws can change, but once legal protections are enshrined in statutes governing the public lands they gain a high level of permanency. Past administrations have remarkable records of natural resource policies that produced tangible results, some of them negative but most of them positive. Another measure of a conservation legacy is the change in thought and rhetoric inspired by an administration's policies. A well-articulated policy may gradually become embedded and influence future policies.

*The Roosevelt Era: A National Conservation Ethic*

President Theodore Roosevelt's Administration is legendary. In his two terms (1901-1909) he created twenty-four new forest reserves and increased the size of eleven existing reserves.<sup>24</sup> Under the authority of the 1906 Antiquities Act, Roosevelt set aside the first national monuments, including 270,000 acres of the Grand Canyon.<sup>25</sup> Along with the withdrawal of land for the creation of national monuments, Roosevelt withdrew sixty-six million acres of land from the public domain to protect it from mining abuses,<sup>26</sup> and created the first wildlife refuge.<sup>27</sup>

Roosevelt was the first President to have an identifiable conservation policy. It was significant for the results it produced on the ground and in the law books, as well as for the shift in popular attitude that coincided with these changes. To be sure, it was not Roosevelt himself who changed national opinion. He was inspired by writers and activists of the era, and by events that were beginning to embody a new way of thinking about land and resources. Yellowstone had already become the nation's first national park, and the Forest Service Organic Act had been passed before he became President. But Theodore Roosevelt used rhetoric as well as law to enshrine the ethics and ideals of natural resources conservation into our national culture.

The country's array of public land laws and natural resources policies governing homesteading, mining, and access to water and timber had been developed over more than twenty presidential administrations preceding Roosevelt, with intense legislative activity in the last half of the 1800s. The dominant policy collectively expressed by these early laws was

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24. GEORGE CAMERON COGGINS ET AL., *FEDERAL PUBLIC LAND AND RESOURCES LAW* 106 (5th ed. 2002).

25. *Id.* at 353.

26. *Id.* at 118.

27. *Id.* at 139.

the orderly disposal of federal lands and resources, and the results were surely measurable. In the period of western expansion, title to millions of acres changed from public to private, lands were occupied (and often later abandoned), and resources were exploited. More than any others, the natural resources policies that defined this era from the third President, Thomas Jefferson, up until Roosevelt, the twenty-sixth, had left their marks on the land. Although the policies and the national mindset evolved to support national retention and governmental responsibility for stewardship of natural resources, the laws enabling disposal and development that were enacted during the nation's first century continued to leave their mark. These laws were not repealed until much later and in some cases, like the General Mining Law,<sup>28</sup> they persist. Meanwhile, the ethic of the Roosevelt era transcended the first half of the twentieth century and retention of the public land estate became the dominant policy.

*Udall: The Stirrings of Environmentalism*

In the 1960s, the rhetoric of natural resources conservation changed again. Stewart Udall served as Secretary of the Interior throughout the administrations of Presidents John F. Kennedy and Lyndon B. Johnson. Udall was concerned that the nation had become apathetic about its conservation heritage and foresaw an impending tension between technology and ecology. So he wrote *The Quiet Crisis*.<sup>29</sup> Calling on the works of the great conservation authors and philosophers who had preceded Theodore Roosevelt—Thoreau, Marsh, Powell, Muir, Shurz, and Olmsted—he synthesized our heritage and made it relevant to the rapidly emerging technological era of the 1960s, a time when air pollution was killing people, rivers burst into flames, and nuclear power was seen as the panacea to future energy demands. Rachel Carson sounded an alarm in her contemporary book, *Silent Spring*,<sup>30</sup> about the threat to birds posed by proliferation of chemicals in modern society. Udall's eloquent use of the bully pulpit and Carson's popularization of the idea of an environmental crisis incited what became called the environmental movement.<sup>31</sup> It was clear that more active management of natural resources held by the government and a commitment of the national government to environmental protection would be necessary.

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28. General Mining Law of 1872, 30 U.S.C. §§ 21-54 (2000).

29. STEWART L. UDALL, *THE QUIET CRISIS* (1963).

30. RACHEL CARSON, *SILENT SPRING* (1962).

31. STEWART L. UDALL, *THE QUIET CRISIS AND THE NEXT GENERATION* 195-244 (1988).

These literary and philosophical contributions shaped a new era. Udall saw the Wilderness Act<sup>32</sup> and the Wild and Scenic Rivers Act<sup>33</sup> signed into law during his time in government. These were tangible results, though the most remarkable accomplishments under their rubrics were chalked up over the following forty years as 96.9 million acres were added to the original 9.1 million acres of designated wilderness<sup>34</sup> and as 155 rivers or river segments were added to the eight originally designated rivers.<sup>35</sup>

*Nixon: The Rise of Federal Statutory Environmental Law*

In modern times, the Nixon Administration coincided with a period of cementing into law long-term accomplishments favoring environmental protection. In a truncated two-term presidency (1969-1974) more major, domestic environmental laws were passed under Nixon than under any other President.<sup>36</sup> By this time there was a national consensus supporting environmental protection, and the administration of Republican Nixon obliged by forging the tools of environmental protection that had been inspired by the rhetoric of Udall (who served two Democratic Presidents). Not until years later did the ideal of environmental protection become a sharply partisan issue.

*Carter: An Alaska Legacy*

One of the most lasting accomplishments of any presidential administration was President Jimmy Carter's setting aside of more than 100 million acres of national interest lands in Alaska. The law enabling this huge, measurable accomplishment was enacted and implemented during his one-term presidency.<sup>37</sup>

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32. Wilderness Act of 1964, Pub. L. No. 88-57778 Stat. 890 (codified as amended at 16 U.S.C. §§1131-1136 (2000)).

33. Wild and Scenic Rivers Act of 1968, Pub. L. No. 90-542, 82 Stat. 906 (codified as amended at 16 U.S.C. §§1271-1287 (2000)).

34. COGGINS ET AL., *supra* note 24, at 1110.

35. National and Wild Scenic Rivers System, *Wild and Scenic Rivers Study Status*, at <http://www.nps.gov/rivers/study.html> (last updated Jan. 2003).

36. E.g., National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (codified as amended at 42 U.S.C. §§ 4331-4344 (2000)); Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (codified as amended at 42 U.S.C. §§ 7401-7671 (2000)); Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (passed over a veto by Nixon) (codified as amended at 33 U.S.C. §§ 1251-1387 (2000)); Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (codified as amended at 16 U.S.C. §§ 1531-1544 (2000)).

37. Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. §§3101-3233 (2000).

*Reagan: A "Hands-off" Approach*

Ronald Reagan's Administration (1981-1989) was a turning point, during which James Watt as Secretary of the Interior forcefully laid out a new rhetoric that challenged the need for environmental protection laws.<sup>38</sup> Watt took actions in office that teased the edges of legality, such as attempting to transfer public lands to private interests.<sup>39</sup> Yet the Administration ended with rather limited damage measurable on the ground or in terms of repealed protective legislation or new, environmentally harmful legislation. Still, the polarization of environment versus development interests that arose in this administration, and the Republicans' abdication of environmentalism to the Democratic Party were lasting products of the Reagan-Watt era.

*Clinton: A Monumental Record*

The Clinton Administration had little to show for its record in natural resources in its first four years, but the second term chalked up historic, permanent accomplishments. Most notably, Secretary Babbitt motivated the President to set aside twenty-one national monuments and to expand three existing monuments,<sup>40</sup> comprising 5.6 million acres<sup>41</sup> that are likely to be preserved largely as they are for generations to come. Other attempts by the Clinton Administration in its second term were facilely reversed by the Bush II Administration. For instance, the Clinton Administration adopted rules that seemed to protect 58.5 million acres of

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38. Secretary Watt openly espoused the view that the new environmental laws impeded development and stated that he would always "err on the side of public use versus preservation." George Cameron Coggins & Doris K. Nagel, *"Nothing Beside Remains": The Legal Legacy of James G. Watts Tenure as Secretary of the Interior on Federal Land Law and Policy*, 17 B.C. ENVTL. AFF. L. REV. 473, 489 (1990) (quoting Drew, *Reporter at Large: Secretary Watt*, NEW YORKER, May 4, 1981, at 128). Reagan also appointed Anne Gorsuch as Administrator of the Environmental Protection Agency. She, too, was seen as hostile to environmental protection. Richard J. Lazarus, *Assessing the Environmental Protection Agency After Twenty Years: Law, Politics, and Economics, The Neglected Question of Congressional Oversight of EPA: Quis Custodiet Ipsos Custodes (Who Shall Watches the Watchers Themselves)?* 54-AUT LAW & CONTEMP. PROBS. 205, 216-17 (1991).

39. See, e.g., *Nat'l Audubon Soc'y v. Hodel*, 606 F. Supp. 825 (D. Alaska 1984) (holding Secretary's wilderness land exchange to Alaskan oil corporations invalid as Secretary's "Public Interest Determination" misapplied the law and failed to consider adverse environmental effects). Secretary Watt attempted to augment the coal leasing program and to privatize any outstanding unleased coal during his term. Although he planned a series of coal lease sales, little coal was sold before his resignation and the coal leasing program was left in ruins. COGGINS ET AL., *supra* note 24, at 529.

40. John D. Leshy, *The Babbitt Legacy at the Department of the Interior: A Preliminary View*, 31 ENVTL. L. 199, 218 (2001).

41. Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 474 (2003).

roadless areas<sup>42</sup> and other rules that would phase out snowmobiles in Yellowstone National Park;<sup>43</sup> those attempts to lock in the status quo now appear transitory. It is relatively easy for a new administration to reverse administrative regulations. Thus, the extensive use of the Antiquities Act to create national monuments is likely to be the signature environmental accomplishment of the Clinton Administration because only congressional action could reverse it. Nearly every President since the Act's passage in 1906 has used it to set aside significant land areas by executive order, and despite the controversy surrounding many of these executive actions, Congress has rarely mustered the votes to reverse a President's proclamation. It appears that once proclaimed these monuments gain substantial public support and become permanent.

### *Bush II*

As suggested by the evidence offered by its critics, as well as the Administration's announced intentions, the Bush II Administration has significant goals for natural resources development and deregulation of the environment. But to produce results of historical significance the Administration must create permanent impacts on land and resources or on the legal frameworks governing land and resources.

If the Bush II Administration succeeds in some of its announced major initiatives, it could make its mark on the ground as well. The Administration aims to open the Alaska National Wildlife Refuge to oil exploration. It also intends major oil exploration in the National Petroleum Reserve in Alaska and has targeted wide expanses in the American West for coalbed methane gas development. The energy plan developed by the Administration says that it hopes to facilitate the development of 1300-1900 new power plants,<sup>44</sup> including many coal-fired plants.<sup>45</sup> If all these plans come to fruition, the Administration will have a place in history, having used its energy policy to make a tangible impact on natural resources.

The Bush II Administration would also like to reform the Endangered Species Act to simplify procedures for exemptions and to

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42. Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads, 66 Fed. Reg. 3,206 (Jan. 12, 2001) (to be codified at 36 C.F.R. pts. 212, 261, and 295); Special Areas; Roadless Area Conservation, 66 Fed. Reg. 3,244 (Jan. 12, 2001) (to be codified at 36 C.F.R. pt. 294). *See generally* Glicksman, *supra* note 5, at 1146.

43. Special Regulations; Areas of the National Park System, 66 Fed. Reg. 7,259 (Jan. 22, 2001).

44. National Energy Policy, Report of the National Energy Policy Development Group, May 2001, at <http://www.whitehouse.gov/energy/National-Energy-Policy.pdf>.

45. Patrick Leahy, United States Senator, Vermont, *Comment on Outline of Bush Administration's Energy Plan*, May 18, 2001, at <http://leahy.senate.gov/press/200105/010518.html>.

insist on greater proof before species are listed. For many years the Act has been ripe for reauthorization and a wide variety of interests ranging from developers to environmentalists have called for its modification. Enacting substantial changes in the Act would also be a way to make the Administration's mark on history.

In short, the Bush II Administration has an agenda, the full implementation of which would give it an enduring legacy. Some have suggested that while the motivation exists, and the President's party controls Congress, during the next four years the Administration is likely to be preoccupied with other issues like the increasing entanglement in the Iraq war, growing economic troubles, and a mounting health care crisis. In addition, the Administration has announced that it wants to change the Social Security system, enact additional tax cuts, and reform the intelligence establishment. The scope of problems inevitably confronting the Administration may preempt efforts to carry out many of its ambitious natural resources policy goals.

Nevertheless, the forceful rhetoric of the Bush II Administration may have a lasting impact even without achievement of measurable consequences on the ground or in the law books. The Administration has been remarkably successful in gaining the political support of the American people. It went from a failure to win the presidential election by a majority in 2000 to winning by the greatest number of votes in any Presidential election in history in 2004, notwithstanding dire economic problems and continuation of a war undertaken on erroneous intelligence. This suggests that it may be able to inspire popular sentiment for its "message" on natural resources and the environment. This message, in turn, could be embraced by a future administration. The Administration of President Ronald Reagan created the beginnings of a new economic order founded on smaller governmental institutions, lower taxes, and a tolerance for government spending in excess of revenues. Presidents after him, including William Clinton, embraced the ideal of smaller government,<sup>46</sup> if not deficit spending, and it is now common to hear rhetoric opposing big government and taxation embraced by leaders of both parties.

If the Bush II Administration can synthesize a message on environmental and natural resources policy that attracts public support, whether or not it succeeds in making progress on the specifics of its agenda, the professed ideals could endure beyond the Administration

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46. An initiative known as the "National Performance Review" or "Reinventing Government" was spearheaded by Vice President Gore and resulted in reform of federal procurement, cutting over 400,000 government jobs, and reduction of federal spending to the lowest share of the economy in 30 years. *History of the National Partnership for Reinventing Government Accomplishments, 1993 - 2000: A Summary*, at <http://govinfo.library.unt.edu/npr/whoware/appendixf.html> (last visited Apr. 11, 2005).

and ultimately have a major influence on future policy. Is the essential message driven by a conservative philosophical lodestar? Professor Barton Thompson has thoughtfully surveyed several strains of "conservatism" and tested Bush II policies against their tenets.<sup>47</sup> He finds that the Bush II Administration and its policies are supported by some elements of conservative thought and are opposed by others. Indeed, there seems to be a substantial tension within the Administration involving use of government power and resources to subsidize or control private property, states rights, and involvement of the public in decision making. While the Administration's policies are not entirely what one would expect of a "conservative" administration, an unwavering allegiance to a particular theory may not be necessary for the policies to be attractive to the public.

A consistent theme for the Bush II Administration, linked to some brands of conservatism, is that government regulation should be relaxed. Getting the government off the backs of people and businesses is an ideal that has rhetorical appeal. It is easy to find examples of clumsy, costly, and burdensome regulatory programs. A policy of deregulation directly benefits major economic interests and may indirectly benefit society by keeping costs of production low just as lowering taxes for large economic interests can result in lower prices and more investment indirectly benefiting all of society. Thus, it is relatively easy to engage the public against "excessive regulation" as well as "excessive taxation." By contrast, it may be harder for the public to have faith that federal regulatory programs will produce social benefits of improved health and protection of natural amenities. Ultimately, gaining public support will rest on a clear and simple message, and its artfulness of crafting that message may determine the legacy of the Bush II Administration in natural resources policy. A philosophical legacy that inspires future anti-regulation policies and reforms that free up public resources for wider, less-inhibited exploitation may not be palpable on the ground for many years but nevertheless could be profound.

It is too soon to know what the Bush II legacy will be. Success in implementing its energy development initiatives such as oil exploration in ANWR will create tangible, permanent impacts. And whether or not there are such impacts, an anti-regulation theme may become embedded in future policy making. However, one must not discount the possibility of a reaction. If the Administration goes too far, for instance by pressing energy development into areas treasured by the American public, it may cause a backlash that rejects aggressive development of public resources and anti-regulatory philosophies. Thus, a counter-legacy of renewed

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47. Barton H. Thompson, Jr., *The Bush Administration and Environmental Policy: Insights into Conservative Environmental Thought*, 32 *ECOLOGY L.Q.* 301 (2005).

public commitment to environmental protection and natural resources stewardship could become the most influential result of the Bush II Administration's policies.