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## Nature of the Beast: An Introduction to the Issue

Paul Stanton Kibel

*Golden Gate University School of Law*, [pkibel@ggu.edu](mailto:pkibel@ggu.edu)

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# NATURE OF THE BEAST: AN INTRODUCTION TO THE ISSUE

PAUL STANTON KIBEL\*

When it comes to the conservation of wild places and endangered species, the Republican Party has long been a complex beast. For the past century, two competing camps have competed for control of the party's conservation policy.

One camp contends that conservation is a natural expression of a conservative political philosophy in that it preserves resource capital and calls for the type of restraint that maintains social order.<sup>1</sup> Members of this faction have at times referred to themselves as green elephants, in reference to the GOP's mascot.<sup>2</sup> Another camp, however, argues that conservation needs to be curtailed because it interferes with the economic development of public lands and private property rights. This faction is often associated with the sagebrush rebellion that began in western states the early 1980s, in which logging, mining, grazing, and off-road vehicle interests coalesced to push for policies to scale back conservation protections on both public and private lands.

With the election of Republican George W. Bush as President in 2000, there were contrary indications as to which camp would set the administration's agenda for wilderness and wildlife issues.

Conservation advocates within the party were cautiously hopeful that George W. Bush policies would follow in the footsteps of his father, former President George H.W. Bush. Although not generally viewed as a strong environmentalist, during his Presidency from 1988-1992 George

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\* Adjunct Professor, Golden Gate University School of Law, and Faculty Editor for the *Wild Ideas* symposium edition of the Golden Gate University Law Review. Mr. Kibel is an environmental attorney with Fitzgerald Abbott & Beardsley, and is Co-Chair of the Natural Resources Subsection of the California State Bar's Real Property Section. He holds an LL.M from Berkeley's Boalt Hall Law School.

<sup>1</sup> Senator John McCain, Op-Ed, *Nature is Not a Liberal Plot*, THE NEW YORK TIMES (Nov. 22, 1996); See also John R.E. Bliese, *The Greening of Conservative America* (2001).

<sup>2</sup> *But You Don't Sound Like a Republican*, HIGH COUNTRY NEWS (February 3, 2002), p. 7.

H.W. Bush showed considerably more restraint than his predecessor, President Ronald Reagan, when it came to federal policies that threatened wilderness and wildlife. Conservation advocates within the Republican Party were also encouraged by some of George W. Bush's appointments, such as Christine Todd Whitman as Administrator of the United States Environmental Protection Agency and Dale Bosworth as head of the United States Forest Service. Whitman, who had served as Governor of New Jersey since 1993, and Bosworth, a thirty-five year forest service veteran, had demonstrated a commitment to conservation throughout their careers.<sup>3</sup>

There were other appointments by George W. Bush, however, which suggested that he might be poised to pursue a more anti-conservation agenda than that of his father. For instance, at the United States Justice Department, Bush appointed Thomas Sansonetti to head the Environment and Natural Resources Division. Sansonetti had served as Associate Solicitor for energy and resources at the United States Interior Department ("Interior Department") during the Reagan Administration, and since that time had represented the National Mining Association, Peabody Coal and other mining interests as a private attorney.<sup>4</sup> At the Interior Department, Bush appointed Steven Griles as Assistant Secretary. Griles had also worked in Reagan's Interior Department, as well as a lobbyist for the oil industry in its efforts to expand drilling off California's coast.<sup>5</sup> At the United States Agriculture Department, Bush appointed Mark Rey as Undersecretary for Natural Resources and the Environment. Rey had previously served as Vice President of the American Forest and Paper Association, a timber industry trade group, and in 1995 Rey drafted the controversial salvage-logging rider while working for the United States Senate Committee on Energy and Resources.<sup>6</sup>

Although the appointments of Sansonetti, Griles, and Rey caused concern among conservation-minded Republicans, it was Bush's appointment of Gale Norton as Secretary of the Interior Department that proved the most troubling. Norton began her career as an attorney with Mountain States Legal Foundation in Denver, Colorado, the anti-conservation law firm founded by James Watt, Reagan's first Secretary of the Interior Department.<sup>7</sup> From Mountain States Legal Foundation, Norton went on to serve in Reagan's Interior Department and then as

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<sup>3</sup> *Bush and the Environment: A Citizen's Guide to the First 100 Days*, League of Conservation Voters (2001), pp. 14-17 [hereinafter *Bush and the Environment*].

<sup>4</sup> *Id.* at 18-19.

<sup>5</sup> *Id.* at 15; *Senate Confirms Griles for Pivotal Energy Post*, THE WALL STREET JOURNAL (July 13, 2001) at A2.

<sup>6</sup> Hal Bernton, *Nominee for Forest Service Post Has Strong Timber Ties*, THE SEATTLE TIMES (June 24, 2001).

<sup>7</sup> Todd Wilkinson, *Bushwacked*, THE AMICUS JOURNAL (Spring 2000) p. 11.

Attorney General for the State of Colorado.<sup>8</sup> In these various positions, Norton had consistently served as an advocate for the restricted application of wilderness and wildlife protection laws, and an expansive interpretation of the property rights of logging, mining and petroleum interests.<sup>9</sup>

In this special symposium edition of the Golden Gate University Law Review, entitled *Wild Ideas: George W. Bush on Wilderness and Wildlife*, we take stock of how the conservation debate within the Republican Party has played out in the first half of Bush's term. *Wild Ideas* contains five outside articles and two student contributions.

The lead outside article is co-authored by Jim DiPeso and Tom Pelikan, and chronicles the history of wilderness policy struggles within the Republican Party. DiPeso is Policy Director of Republicans for Environmental Protection ("REP America") and Pelikan serves on the national board of directors of REP America and as Policy Director for Scenic America. Beginning with President Theodore Roosevelt in the early 1900s and ending with the current Bush Administration, DiPeso and Pelikan provide a roadmap for understanding the ideas, interests and individuals that underlie the current party divisions.

The second piece, by Rob Roy Smith, focuses on recent developments concerning the proposed reintroduction of the grizzly bear into the Selway-Bitterroot Ecosystem along the Idaho-Montana border. Smith represented Idaho's Nez Perce Tribe in the development of the grizzly reintroduction plan. Smith's article documents the collaborative process that led the United States Fish and Wildlife Service to select the reintroduction plans as its preferred alternative to restore the endangered grizzly in 1997. The article then analyzes the political forces that led the Bush Administration to abandon the reintroduction plan in 2001.

Next, David Wegner addresses the interrelated issues of salmon restoration and dam breaching proposals in the Pacific Northwest. In the 1990s, as part of its effort to restore dwindling salmon runs on the Columbia River System, the United States Army Corps Engineers, the United States Bureau of Reclamation, the National Marine Fisheries Service and other federal agencies evaluated the economic and ecological feasibility of breaching the Ice Harbor, Lower Monumental, Little Goose and Lower Granite dams on the Snake River. The Snake River empties into the Columbia River, which then flows out to the Pacific Ocean. In December 1999, after four years of study, a Draft Environmental Impact Statement was released which included as one of its alternatives the breaching of the Snake River dams. The Bush Administration, however,

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<sup>8</sup> *Id.*

<sup>9</sup> Jeff Woods, *Norton vs. the Environment*, Defenders (Summer 2002), pp. 6-7.

ultimately rejected the breaching alternative in 2001. Wegner, a 20-year veteran of the Bureau of Reclamation and currently Principal Scientist for Ecosystem Management International, explains the forces that contributed to the recent demise of the Snake River dam breaching proposals.

In the fourth article, Mike Senatore, John Kostyack, and Andrew Wetzler examine the Bush Administration's policies regarding the designation of critical habitat under the federal Endangered Species Act ("ESA"). As attorneys, respectively, for Defenders of Wildlife, the National Wildlife Federation, and Natural Resources Defense Council, Senatore, Kostyack, and Wetzler have been directly involved in litigation challenging recent federal administrative ESA habitat designation decisions and policies. Among other things, their article examines the on-the-ground effects of the Bush Administration's expansive interpretation of the Tenth Circuit Court of Appeals decision in the 2001 case of *New Mexico Cattle Growers Association v. United States Fish and Wildlife Service*.<sup>10</sup>

The final outside article is co-authored by Stephen Bloch and Heidi McIntosh, attorneys with the Southern Utah Wilderness Alliance. This piece considers the Bush Administration's policy toward Utah's Redrock wilderness area. In particular, Bloch and McIntosh review the impact of Bush's issuance of Executive Order 13,212 (entitled "Actions to Expedite Energy-Related Projects") in 2001, the current administration's reliance on an 1866 law known as R.S. 2477, and the prospects of the proposed America's Redrock Wilderness Act.

In addition to the five outside articles noted above, *Wild Ideas* also includes two articles by students on law review. The first student article, by Sara Pasquinelli, evaluates the controversy over the Bush Administration's proposal to permit oil drilling in Alaska's Arctic National Wildlife Refuge. The second student article, by Lynn Sletto, examines the conflict between coastal states and the federal government over offshore oil drilling.

The outside articles in *Wild Ideas* contain some common observations. To date, the Bush Administration's approach to wilderness and wildlife has generally not involved the outright declaration of anti-conservation policy objectives. Instead, the administration's public pronouncements have continued to stress the importance of protecting wilderness areas and endangered species. Notwithstanding these pronouncements, however, significant changes appear to be afoot. Through the settling of industry-initiated lawsuits against federal agencies, unannounced shifts in internal agency policy, and discretionary inaction on

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<sup>10</sup> 248 F.3d 1277 (10th Cir. 2001).

proposals inherited from the Clinton Administration, President George W. Bush has quietly set a new course for wilderness and wildlife policy.<sup>11</sup> Perhaps this explains why the National Mining Association, the Utah Mining Association and the Federal Lands Program of the National Cattleman's Beef Association did not accept our invitation to contribute articles to the *Wild Ideas* symposium. Like the current administration, for now these interests seem inclined to pursue their agenda outside the limelight.

Although the Bush Administration's approach to conservation policy may be to operate below the public radar, the enclosed articles suggest that this policy is nonetheless having an important impact on wilderness and wildlife. These articles also suggest that, two years into the current Republican Administration, the sagebrush rebels appear to have gained the upper hand over the green elephants. Judgments regarding the wisdom or folly of these events are left to the reader.

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<sup>11</sup> California Attorney General Bill Lockyer, *California's Thin Green Line: The State's Battle to Maintain Environmental Protections in the Face of Federal Rollbacks* (Testimony before the California Assembly's Natural Resources Committee, January 27, 2003), p. 6: "... In the past few years, the federal agencies have regularly failed to designate critical habitat except in response to citizen lawsuits. Once they do designate habitat, their decisions are often challenged in court. Instead of litigating industry challenges to these designations, and the accompanying economic impact analyses, the federal agencies have been entering into consent decrees providing for court-approved annulment and remand of their critical habitat decisions to the agencies for further review . . ."

