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by

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Policy After Politics: How Should the New Administration Approach Public Land Management in the Western States?¹

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I want to go just as far in preserving the forests and preserving the game and wild creatures as I can *lead* public sentiment. But if I try to *drive* public sentiment I shall fail, save in exceptional circumstances.

Theodore Roosevelt²

[I]n the long run Forestry cannot succeed unless the people who live in and near the forest are for it and not against it.

Gifford Pinchot³

I. INTRODUCTION

A. The Goal of the Policy after Politics Conference

Management of the public lands in the West isn't working very well. Without regard to one's perspective on individual issues, almost anybody close to the land will tell you that we have problems that have gone unaddressed and that now must be confronted. The two previous conferences sponsored by the Andrus Center have helped us define the problems.

¹ This paper is based on remarks and conclusions of a bipartisan group of current and former governors of western states who gathered at the Policy After Politics Conference in Boise, Idaho on June 1, 2000.

* Former four-term governor of Idaho, and chairman of The Andrus Center for Public Policy. He resigned as governor in 1977 to become secretary of the interior in the Carter Administration. In his four-year tenure as secretary, Andrus played a pivotal role in developing a common-sense approach to off-shore oil leasing, and his leadership was instrumental in resolving the bitter dispute over the Alaska wilderness lands and in piloting the Alaska Lands Legislation through Congress. During his years in public service, he championed protection of wild and scenic rivers and the passage of local land-use planning laws, and he helped engineer a comprehensive agreement between industry and conservation groups to assure the protection of Idaho's water quality. He is also the coauthor of the recently published *Cecil Andrus: Politics Western Style* (Sasquatch Books 1998).

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² Theodore Roosevelt, *Letter from Theodore Roosevelt to Roger S. Baldwin*, in *The Letters of Theodore Roosevelt* vol. 3, 629 (Elting E. Morison, et al. eds., Harvard U. Press 1951).

³ Gifford Pinchot, *Breaking New Ground* 17 (U. of Wash. Press 1972).

In the 1998 and 1999 conferences, we heard a great deal from the national directors of the Bureau of Land Management (BLM), the United States Forest Service (USFS), the National Park Service (NPS), and the United States Fish and Wildlife Service (USFWS) about the tangled web of overlapping and often contradictory laws and regulations under which our federal public lands are managed. It became apparent that little was going to change in the Washington-based, top-down decision-making process that has been the rule for so long. Consequently, it seemed appropriate this year to reverse the process and to ask for advice from those on the front lines of implementing the policy decisions made in Washington: the governors of the most affected states.

For the 2000 Conference, we invited both current and former governors to come to Boise in June to tell us what public land management policies look like from their perspectives. The particular question we asked them to consider was: "How should the next administration approach public land management in the western states?"

They told us . . . in spades. With remarkable candor and clarity, they laid out problems and possible solutions for the next administration to consider. After the election was resolved, I personally delivered a copy of the governors' suggestions to the president-elect and to the appropriate cabinet appointees. The policies suggested here by the governors can best be put in place early in the "honeymoon" of a new administration, and it is our sincere hope that the president will listen to what they have said.⁴

II. THE POLICY OBJECTIVES

A. POLICY OBJECTIVE NO. 1: Public land and natural resource management bureaus and agencies should be consolidated into a single cabinet-level department.

The point that public land and natural resource bureaus and agencies should be consolidated into a single department was made by a number of speakers. Jay Shelledy⁵ set the stage in his luncheon address when he called for the consolidation of natural resource agencies, including those with oceanic natural resource management responsibilities.⁶ As he bluntly put it, "It makes as much sense for forest management to be under Agriculture—with its corn, beets,

⁴ Cecil D. Andrus, *Policy After Politics* (June 2000).

⁵ Editor, *Salt Lake Tribune*, and award-winning columnist, reporter, and keen observer of western politics.

⁶ Jay Shelledy, Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

and hog bellies—as it does for banks to put Braille on the keys of drive-up ATMs.”⁷

The governors agreed and added other insights. Governor O’Callaghan⁸ urged that all the agencies limit the number of supervisory positions to no more than four levels, along the model of the “old Forest Service.”⁹ Governor Racicot¹⁰ pointed out that such reorganization would allow for a reconciliation of policy positions within the executive branch. He used bison policy in Montana as an example where the Montana Department of Livestock and the Montana Department of Fish, Wildlife and Parks were asked to reconcile their positions.¹¹ As John Kitzhaber¹² noted, “It is impossible to determine what the federal position is on Columbia Basin issues,” and he urged that the federal agencies speak with a “common voice.”¹³ Governor Batt¹⁴ reminded attendees that this proposal had merit but that “Congress has an interest in perpetuating a multi-agency perspective through its committee system.”¹⁵ Thus, congressional approval of reorganization is essential.

It is clear that the governors’ emphasis was on process considerations regarding reorganization. Reorganization was favored, not because it would lead to a more “pro-development” or “pro-environmental” outcome, but because it would lead to a clearer federal position. All participants recognized that further analysis of such consolidation would be required. The goal of such consolidation would be for the federal government to administer its public lands under a single, unified policy.

There is an abundance of evidence that agencies have a number of reasons to resist reorganization, coordination, and mandated deference to other agencies’ positions on issues when it appears to violate the core mission or belief system of the first agency. For example, at the second Andrus Center Conference on Public Land Management, Jamie Clark, director of the USFWS, remarked that “issues like organization and reorganization tend to crater.”¹⁶ They crater because

⁷ *Id.*

⁸ Mike O’Callaghan, former two-term Democratic governor of Nevada.

⁹ Governor Mike O’Callaghan, Keynote Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

¹⁰ Marc Racicot, two-term Republican governor of Montana.

¹¹ Governor Marc Racicot, Keynote Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

¹² John Kitzhaber, a senior, two-term Democratic governor of Oregon, and recent advocate of breaching the four lower Snake River dams in order to aid salmon recovery.

¹³ Governor John Kitzhaber, Keynote Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

¹⁴ Phil Batt, former Republican governor of Idaho and leader on nuclear waste issues.

¹⁵ Governor Phil Batt, Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

¹⁶ Jamie Clark, Address, *The Future of Our Public Lands* (Boise, Idaho, March 24, 1999) (copy of

there is organized resistance to the proposals, often orchestrated by the agencies being proposed for reorganization, industry groups with vested interests, and members of Congress with committee assignments. Thus, a new administration's strategy to bring such coordination about needs to be carefully and completely analyzed, given priority among competing initiatives by the new administration, and given enough political capital to succeed. Such capital is most available at the beginning of a new administration.

B. POLICY OBJECTIVE NO. 2: Public land policy should be decentralized whenever feasible.

Jay Shelledy illustrated the dilemma facing public land management when he pointed out that:

It is not rational for someone in the seat of government, two thousand miles away, to decide on a daily basis who mows the lawns and turns on the sprinklers. Nor is it rational for the people who own the federal land, the American taxpayers, to subordinate the public interest to the greed of those who may live closest to a given chunk of federal real estate or run of water.¹⁷

Public lands are national lands with national constituencies; yet, it may not follow that decisions must be made in Washington, D.C. Shelledy went so far as to urge that the federal land agencies be moved out of Washington, closer to the land and people whose lives are affected by their policies. He maintained, "the BLM headquarters belongs in the West."¹⁸

The governors' emphasis was on keeping the decision making within the current public land system, rather than on other mechanisms discussed by some advocates, including land transfer or privatization. Governor Racicot remarked:

I trust Dale Bosworth [Regional Forester]. He lives in a community in the state of Montana. If I were the Chief of the Forest Service, I would invest him with more authority to make thoughtful decisions about what's occurring on the ground and give him the resources to be able to do that.¹⁹

transcript on file with The Andrus Center for Public Policy).

¹⁷ Shelledy, *supra* n. 6.

¹⁸ *Id.*

¹⁹ Racicot, *supra* n. 11.

Forest Service employees, Governor Racicot said, are often “absolutely demoralized because they no longer have the ability to be professionals and to make discretionary decisions.”²⁰ There is shared blame in this area, particularly as it relates to funding or the lack thereof. He noted:

Congress is as much engaged in these issues as anyone in the executive branch of government. Quite frankly, they have a long way to go in terms of becoming responsible partners in this process, providing proper resources, and not using the budgetary process strategically to obstruct, retard, and delay appropriate things that ought to occur on the ground, not questioning every single decision. They’re just as bad as anyone else on the other side of the Potomac, questioning what’s happening at the local level and requiring every decision to be made inside the walls of Congress rather than trusting people at the local level to do it.²¹

Governor O’Callaghan used the example of water to remind people that sometimes policy solutions do take on a more regional scope, as in the case of the Colorado River Commission and water allocation of the Colorado River. He praised Secretary of Interior Bruce Babbitt for taking a regional approach and not giving in to the water needs of California, by far the largest state in the Colorado River Basin.²² Notably, resolution of interstate water conflicts in the Colorado River Basin could not be solved by single state action.

C. POLICY OBJECTIVE NO. 3: Decisions made through collaboration work best. Command-and-control regulation is one of many tools available to reach the goal of environmental quality but should be used infrequently.

Various speakers pointed out over and over again that the most workable solutions come from collaborative decision making. Governor Kitzhaber offered a number of examples from Oregon. He noted that the Eastside Panel, made up of a group of scientists, and a Forest Health Advisory Committee, worked together to compile eleven management principles for restoring ecosystem health.²³ Through a collaborative process they developed a plan that recommends:

²⁰ *Id.*

²¹ *Id.*

²² O’Callaghan, *supra* n. 9.

²³ Kitzhaber, *supra* n. 13.

[A]ctive management to promote ecosystem health while avoiding highly sensitive or highly controversial areas. It also emphasizes learning from our effort through a monitoring component. The restoration treatment includes understory and commercial thinning; road maintenance, closure, and/or obliteration; prescribed burning; noxious weed treatment and prevention; riparian planting; and streamside restoration. The by-product of many of the thinning treatments is wood for local mills to help stabilize rural communities. The thinning also reduces the risk of catastrophic fires, which have increased significantly as the forest health has deteriorated.²⁴

This effort led first to a focus on individual USFS and BLM projects that met the eleven-point plan's criteria and, more recently, on an entire watershed project of three million acres, called the Blue Mountain Demonstration Project. That project is also being proposed to the secretaries of Commerce and of Agriculture as a pilot study to demonstrate how federal public land decision making might be accelerated and decentralized through the collaboration process. It was also suggested that part of the USFS' "K-V" funds for forest restoration could be used to accomplish some of these objectives.

Governor Kitzhaber then turned to a discussion of federal policies, notably the Endangered Species Act (ESA) and the Clean Water Act (CWA), which impact the management of private lands, as well as the behavior of individuals. His point was that reliance on the command-and-control style of these laws was of limited utility. Governor Kitzhaber stressed that rather than command-and-control actions to improve water quality, a more successful example is the use of local watershed councils, as exemplified by the Oregon Plan for Salmon and Watersheds. These voluntary councils have worked to improve water quality and protect coho salmon habitat in Oregon. Governor Kitzhaber also stated that regulation would not control the actions of thousands of individuals, actions that create nonpoint source pollution. Only learned and voluntary "sustained environmental stewardship" could accomplish that end.²⁵ Finally, he urged that the next administration place people in regulatory positions who are committed to "trying to get to yes."²⁶

Governor Racicot continued to amplify the theme that forest health could be achieved through collaboration. He asked people to reconsider the question of below-cost timber sales, or what might be called the subsidizing of timber production on some of the federal public lands:

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

If we want to vindicate the environmental ethics we all claim to believe in our national forests and roadless areas, then we're going to have to pay something to keep those lands in the proper condition. If we're going to pay something, then that means the rest of the country doesn't just get to get engaged in this process to tell others that rely on the land presently, 'you are no longer part of the equation.' We have to discover ways for us to be able to engage them and to keep them whole.²⁷

The maintenance of forest health conditions is a way to achieve this goal. Governor Racicot went on to suggest that Montana has been more successful at selling timber on state lands but also noted that the state has been able to craft the sale of "viewshed protection" instead of timber as a way to make money for state school lands.²⁸

Governor Andrus reminded attendees that modernization in the timber industry, such as mill automation, has reduced the number of timber jobs in a manner different from public land policy making.²⁹ Governor Bangerter³⁰ elaborated on this theme, noting that "when I was a boy, people got a job, stayed in that job, and retired in that job. That isn't the same anymore."³¹ There are certain economic changes, then, that may well go beyond public policy shifts and be less amenable to a public policy solution.

Governor Racicot also urged people to take a look at a consensus project on grizzly bear delisting in Idaho, Montana, and Wyoming—an effort that involved a number of different groups and represented a type of decision making worth emulating. Their recommendations were endorsed by the governors of these three states and were sent on to the USFWS. He also informed people that, although he and Governor Kempthorne disagreed about grizzly bear reintroduction in the Selway Bitterroot Mountains between the two states, the recommendations from the citizens' advisory group associated with that project had been well received by USFWS. Finally, he reminded people that only the state of Montana had resisted earlier federal attempts to eradicate the bear.³²

Several speakers urged caution on the question of consensus decision making. As Governor O'Callaghan noted, "I don't think you can make policy by everyone sitting down and agreeing. We don't demand that we agree, but we

²⁷ Racicot, *supra* n. 11.

²⁸ *Id.*

²⁹ Governor Cecil Andrus, Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

³⁰ Norm Bangerter, former two-term Republican governor of Utah and former chairman of Western Governors' Association.

³¹ Governor Norm Bangerter, Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

³² Racicot, *supra* n. 11.

demand to be included and heard.”³³ Sometimes consensus happens. When it doesn’t, we shouldn’t just duck the issue. Federal stewardship of the land and water may require a decision. As Jay Shelledy said:

In the federal-versus-state debate over public land management are New Age problem-solving systems: holistic management, watershed coalitions, resource advisory councils. All are based on loosely defined principles of consensus building. It is inherently flawed Senseless consensus building is the easy way out for federal land managers who don’t want to do their jobs. Indeed, they ought to listen to the arguments, weigh carefully the evidence and science, make a decision, and then take the heat. And don’t congratulate yourself if all sides are foaming at the mouth over your decision. It only means you failed on all fronts. Be a leader.³⁴

D. POLICY OBJECTIVE NO. 4: Political appointments to land agencies should single out individuals who have an intimate understanding of western issues and a record of inclusive decision making.

There was unanimity on the point that political appointments should understand western issues and have a history of involving people in decision making. Governor Kempthorne³⁵ reported, “President Clinton seemed surprised when I told him that his administration’s roadless policy could have an impact on Idaho’s access to revenue-producing state lands.”³⁶ Whether Clinton should have known this fact is not the point; the implication is that none of his staff were aware of it.

Governor Kitzhaber noted that, although appointees need not be from the West, most “should be someone who is very creative in his or her outlook . . . and someone who is committed to a hands-on involvement with the western political and community leadership in making those decisions.”³⁷ Both he and Jay Shelledy went even further, urging key agency people to spend time traveling in the West, regardless of where the headquarters might be located.³⁸

In Shelledy’s mind, Secretary of Interior Bruce Babbitt, met these criteria: “He was raised on an Arizona ranch and is as close to the earth as any of

³³ O’Callaghan, *supra* n. 9.

³⁴ Shelledy, *supra* n. 6.

³⁵ Dirk Kempthorne, Republican governor of Idaho.

³⁶ Dirk Kempthorne, Address, *Policy After Politics* (Boise, Idaho, June 1, 2000) (copy of transcript on file with The Andrus Center for Public Policy).

³⁷ Kitzhaber, *supra* n. 13.

³⁸ *Id.*; Shelledy, *supra* n. 6.

us and, it would seem, close enough for the people of Arizona to elect him governor twice.”³⁹ As to debate over the new national monuments, Shelledy praised Babbitt for learning how to work the process better as he went along by listening to people. In addition, Shelledy noted that with Katie McGinty’s departure as head of the Council on Environmental Quality, the secretary had more influence inside the administration.⁴⁰ Governors Kitzhaber and Racicot were also supportive of the way Secretary Babbitt is approaching potential national monuments in their two states. Governor Racicot said:

[T]he Secretary has provided an example, a model, of exactly what it is that we’re suggesting today. He has listened, he has visited, he has looked into the eyes of the people that live here, he has tried to find flexible solutions that allow for the continuation of traditional uses, he’s tried to leave people whole, and I think there is every reason to believe that we can accomplish this in a positive, thoughtful way.⁴¹

Governor Andrus asked about the utility of the new administration using the western governors as a key advisory group. Governor Bangerter said it could be useful, but that it would depend on the quality of western governors and on a commitment from the new administration to “build policy from the bottom up instead of imposing from the top down.”⁴² In the experience of Governor Batt, the “Western Governors’ Association [WGA] is way ahead of its national counterpart because the western governors are willing to leave the politics out of it and look at the mutual concerns of the West.”⁴³ This regional focus of the WGA would make it a natural advisor to the new administration.

E. POLICY OBJECTIVE NO. 5: There must be an underlying set of realistic, widely acceptable principles that allow public land management to proceed with less conflict.

One of the least discussed concepts today in public land policy making is that there must be an underlying set of acceptable principles in order for land management to be successful. The governors’ remarks showed their clear appreciation of the point. As Governor Kitzhaber succinctly put it, “To recast the debate, federal land management must be built on the foundation of a single

³⁹ Shelledy, *supra* n. 6.

⁴⁰ *Id.*

⁴¹ Racicot, *supra* n. 11.

⁴² Bangerter, *supra* n. 31.

⁴³ Batt, *supra* n. 15.

overarching policy objective that drives the management plan.”⁴⁴ Governor Kitzhaber then expanded this notion of overarching policy objectives by referring to the Enlibra principles,⁴⁵ which he and Governor Mike Leavitt of Utah have developed and which have been adopted by the WGA. He noted that one of the principles of Enlibra is “National standards, neighborhood solutions.”⁴⁶ This indicates that one size doesn’t fit all. He argued that overarching policy objectives might very well be determined nationally but should be implemented locally by groups like the watershed councils in Oregon.⁴⁷

Governor Racicot added to this discussion by recasting some of the traditional multiple use doctrines:

To me, the notion of bringing about sustainability on federal lands has to do, first of all, with recognizing that different lands should be used for different purposes at different points in time. We have to recognize that multiple uses are appropriate on some of those lands although exclusive use may be appropriate to others.⁴⁸

Criticism of multiple use as a working, implementable doctrine for public land management has been growing. On some occasions, temporary use of the land for a particular purpose may be in order. A new idea, such as watershed health, may become an overarching policy driver for public lands with the result that multiple use, as it is understood today, would need to be revised.

F. POLICY OBJECTIVE NO. 6: Land management agencies should be allowed by Congress and by the Office of Management and Budget to have multi-year budgets for landscape and watershed management.

Jay Shelledy called for a multi-year budget cycle for natural resources. As he said, “Nature does not conform to fiscal years.”⁴⁹ No enterprise as large and complex as the federal land management bureaucracy should be required to constantly justify its policies and objectives through the budget-making process. It only stands to reason that multi-year budgets would ensure less frequent and less rancorous debate in the Congress, provide more flexibility to land managers

⁴⁴ Kitzhaber, *supra* n. 13.

⁴⁵ For more information on the Enlibra Principles, see Western Governor’s Association, *Enlibra* <<http://www.westgov.org/wga/initiatives/enlibra/default.htm>> (accessed Oct. 17, 2000).

⁴⁶ Kitzhaber, *supra* n. 13.

⁴⁷ *Id.*

⁴⁸ Racicot, *supra* n. 11.

⁴⁹ Shelledy, *supra* n. 6.

on the ground, and force congressional and administrative policymakers to commit to a long-range vision.

III. CONCLUSION

We are in an era of continuing, contentious debate over the purpose of public lands. At the Andrus Conference, the governors suggested that we need an agreement about public lands that will allow management to proceed without continuing contention and confrontation. Several important possible solutions were heard at the Andrus Conference. The governors discussed policy reform at a level not discussed since the days of the Progressive Conservation Movement of the late nineteenth century when a set of ideas and principles were developed that allowed this country to maintain a unifying public land policy.

Though the governors were talking about consensus and collaboration as useful processes, they cautioned that process alone will not succeed. Definition of terms and a commitment to scientifically sound principles, when consistently applied, will allow for sustainable management of the public's western lands. Decentralized decision making, well-chosen political appointments, collaborative processes, and intelligent governmental and scientifically-based principles may then work together to ensure that such a new shared vision is accomplished where it matters most: the landscapes of the American West.