

AN ADDRESS TO THE NATURAL RESOURCES UNDER THE BUSH ADMINISTRATION SYMPOSIUM

LYNN SCARLETT†

Of course, we are all aware of the high-spirited verbal volleys on environmental issues and the strident headlines of the rhetorical chasms that sometimes divide folks on these issues. But the short discourse often obscures, it seems to me, the textures and complexities of environmental issues and the realities of a plural America. In many respects, the Department of the Interior (“DOI”) lies at the confluence of those complexities and those pluralities; it lies at the confluence of people, land, and water. And that confluence brings not only tensions but also opportunities and challenges.

Before considering those challenges, one needs to consider a few of DOI’s vital statistics to put into context the sweep of decisions we need to make on a daily basis that our predecessors also faced. We manage one in every five acres in the United States; that is, 20 percent.¹ We manage about 800 dams and irrigation facilities that provide drinking water to 31 million people and irrigation water to farmers who produce 60 percent of the nation’s vegetables.² The lands and waters, the offshore waters, the 1.7 billion acres of outer continental shelf, together with some of the multiple use lands, generate about one-third of the nation’s domestic energy supply.³ We are, of course, host to some of this nation’s most spectacular and special historic cul-

† Assistant Secretary of Policy, Management, and Budget at the Department of the Interior. This is an edited transcript of an address Secretary Scarlett gave at the Duke University School of Law on November 14, 2004. While this is a near verbatim transcript, stylistic and contextual changes have been made. DELPF thanks Secretary Scarlett for her willingness to publish her address. Ed.

1. U.S. Dep’t. of the Interior, *DOI Quick Facts*, U.S. Dept. of the Interior, at <http://www.doi.gov/facts.html> (last visited April 8, 2004) (noting that 507 million acres of surface land (approximately 20% of the land in the United States) is managed by the DOI).

2. *Id.* (stating that the DOI manages 476 dams and 348 reservoirs).

3. *Id.* (indicating that the DOI has jurisdiction over approximately 1.76 billion acres of the Outer Continental Shelf, and supplies with combined land use, approximately 28% of the nation’s energy production).

tural and natural sites. We work with some 520 tribes.⁴ Those statistics are linked to real people, and that means that how well we do our jobs really does affect the lives of each and every American. It determines to some degree whether there is food on the table. And it determines whether some folks in the West can turn on the tap, whether you will be able to warm your homes, or, in Washington in particular, where we like to think of cooling them in the summer, whether we and our children can enjoy the grand vistas of Zion or Bryce, Shenandoah, and so many other places. It determines whether eagles and condors will soar, whether manatees can swim in the waters, and whether some 48,000 Indian children will have opportunities for a quality education. So you can see with that very brief set of vital statistics that our mission is multi-faceted. Congress bequeathed to us great complexities; our mission is both one of recreation and recreation access by statute. It is one of access to resources for resource use, by statute. It is one of resource protection. We are probably the nation's premier conservation agency. And of course, also by statute, we have obligations to serve tribes with special trust responsibilities. The fulfillment of that mission beyond the headlines, the fulfillment of that mission, is shaped by the statutory framework. You have heard allusions to some of those statutes, but they are deeper and broader even than those mentioned. Some of them conflict with one another. We have court cases where one court opines in one-way and another in another way, in the same location, and we are sort of between a rock and a hard place. Shaped also by legal dynamics, much of what goes on in the endangered species realm is driven by court decisions on critical habitat designation, not by priority setting of critical species and their needs. There is a National Research Council ("NRC") report on Klamath Valley and the fish kill that made the headlines.⁵ The report states that we do not really know what caused it⁶ and yet in the midst of that uncertainty we cannot wait; we have to make some decisions about management. The ever present reality of finite budgets and the kaleidoscope of values, preferences, and needs within human communities all shape the context in which we operate and make our decisions really tough.

4. *Id.* (stating that the Bureau of Indian Affairs manages relations with approximately 562 Indian tribes).

5. BD. OF ENVTL. STUDIES AND TOXICOLOGY, ENDANGERED AND THREATENED FISHES IN THE KLAMATH BASIN: CAUSES OF DECLINE AND STRATEGIES FOR RECOVERY (2004).

6. *Id.*

What is our vision with this administration? Again, beyond the headlines, it is a vision of healthy lands and waters, combined with dynamic economies and an appreciation for the importance of thriving communities that involve recreation and outdoor opportunities. All of these, I think we would agree, are part of a sustainable world. Now that is easy to envision—healthy lands, thriving communities, and dynamic economies. But it is hard to achieve. And I want to just give you a sampling of the challenges to get a flavor for just how difficult these decisions can be.

I. FORESTS

We heard allusions to the challenges of managing our forests and to our recognition and the recognition shared, I think, by many scientists that our forests have fuel buildups now and sometimes densities that are ten and twenty times their pre-European settlement densities. Invasive species, such as pinion juniper, spread in areas where once it was just on outcroppings. Tamarisks and other invasives are changing the dynamics of landscapes. Now that fuel buildup is also accompanied by population growth—60 percent in Nevada, 20 percent in New Mexico, 30 percent in Colorado just over the last decade—and that means more tentacles of civilization out into lands once uninhabited.⁷ So that makes the challenges difficult for forest management as the fuel buildup turns what once would have been a natural event into catastrophic fires, fires sometimes that burn at the intensity, or with the energy release, of an atomic bomb. What is left in the wake of those catastrophic fires are lands that are incinerated with soils that are not technically unable to grow things, but that, in fact, take many years beyond what would have been natural to recover.

So in that context we have proposed our Healthy Forests Initiative. That initiative primarily focused on trying to pull out some of that built-up fuel.⁸ Now this is not about commercial logging. You may have heard headlines to whit, but I ask you to actually look at the data. In 2003, eighty-three percent of the projects we undertook were prescribed burns, which, by definition, cannot be commercial

7. U.S. CENSUS BUREAU, POPULATION DIVISION, PHC-T-2 TABLE 3 STATES RANKED BY PERCENT POPULATION CHANGE: 1990 to 2000 (Apr. 2, 2001), *available at* <http://www.census.gov/population/cen2000/phc-t2/tab03.pdf>.

8. OFFICE OF THE PRESIDENT OF THE UNITED STATES, HEALTHY FORESTS: AN INITIATIVE FOR WILDFIRE PREVENTION AND STRONGER COMMUNITIES 9 (2002), *available at* http://www.whitehouse.gov/infocus/healthyforests/Healthy_Forests_v2.pdf.

logging. Of the remainder some projects were biological treatments through grazing of buffer zones around urban areas, and others involved the thinning out of trees. Stewardship contracting is a problem because we reckon that some 190 million acres are in poor condition. Now, we cannot touch all of that ourselves, but perhaps more would be possible if we partnered with communities and had those communities go and remove some of this material with a performance focus. Our guidelines state that a performance focus with landscape health is the test of success.⁹ The stewardship contractors may be able to capture some value and therefore offset some of the cost of doing these treatments. I went recently up to an Applegate partnership in southern Oregon and to Hayfork in Northern California where local communities are working to pull out some of this material, and then work to transform it into products that can be utilized.

II. WATER

Water is another realm of substantial challenge and, in fact, I might argue the single biggest challenge of the Twenty-first Century is resource constraints. There is just not enough of it or at least not enough of it in the way we currently manage it. We have a recent effort started by the previous administration and followed through by ours to bring California within its 4.4 million acre feet diet—a diet agreed upon over seventy years ago, but which the state has exceeded for many years.¹⁰ Now, believe me, bringing them back within that diet was not easy. It took virtually round-the-clock negotiations, cooperation, dialogue, mediation, with water districts, irrigators, seven states, and many others. But we succeeded; we have a quantification settlement agreement so that the state will begin on a glide path to staying within that diet. The Bureau of Reclamation has initiated Water 2025,¹¹ a vision of water trading and transfers, conservation, and some new technologies, designed to make every drop of water count and to get the water where it is needed for the multiple purposes to which water is put, including endangered species protection, farming, and other uses.

9. BUREAU OF LAND MGMT. & FOREST SERV., DEP'T OF INTERIOR & DEP'T OF AGRIC., THE HEALTHY FORESTS INITIATIVE AND HEALTHY FORESTS RESTORATION ACT: INTERIM FIELD GUIDE 36 (2002), available at http://www.doi.gov/hfi/HFI/home/background/Healthy_Forests_v2.pdf.

10. Press Release, Dep't of Interior, Secretary Norton Addresses California Water Issues (Nov. 21, 2002), at <http://www.doi.gov/news/021121.htm>.

11. Bureau of Reclamation, Dept. of Interior, *Water 2025: Preventing Crises and Conflict in the West*, (2003), available at <http://www.doi.gov/water2025/Water2025.pdf>.

III. NATIONAL PARKS

I am going to pause very briefly on parks and our historic culture of natural resources therein. One of our big challenges upon arriving was that we inherited a backlog estimated at some \$5 billion.¹² This president made a commitment to tackle that backlog. When I came on board, I was surprised to find out we do not even have a full inventory, we do not know what facilities we have, and we certainly do not know what condition they are in.¹³ We put in place some management processes so that by the end of next year we will have full inventory, and all of the facilities will have a condition assessment so that we know how to prioritize and how to tackle this problem. And in the president's 2004 budget, an extra nearly quarter billion dollars applied to maintenance backlog, combining his road investment or proposed investment.¹⁴

IV. ENERGY

Energy is one of those areas most subject to that strident discourse that I mentioned. It lies at the center of contention, but the issues and debates therein raise important issues that deserve more than headlines. They deserve a careful look and the asking of some tough questions.

A. ANWR

ANWR is a refuge created some years back of some 19 million acres.¹⁵ At the time of its creation, a certain portion, 1.5 million or thereabouts, was designated as potential for oil and gas exploration.¹⁶ This administration has proposed that what would amount to about

12. Barry T. Hill, U.S. Gen. Accounting Office, *Pub. No. Gao/T-Rced-98-61, Nat'l Park Serv.: Maint. Backlog Issues 4* (Feb. 4, 1998), available at <http://www.gao.gov/archive/1998/rc98061t.pdf>.

13. *See id.* at 5-6 (questioning the reliability of the dated park service data used to determine the maintenance backlog).

14. Press Release, National Park Service, President's FY 2004 Proposed Budget Accelerates Efforts To Restore National Parks (Feb. 3, 2003), at <http://data2.itc.nps.gov/release/Detail.cfm?ID=356>.

15. Alaska National Interest Lands Conservation Act § 303(3), Pub. L. No. 96-487, 94 Stat. 2371 (codified as amended in scattered sections of 16 U.S.C.); *see also* U.S. Fish & Wildlife Serv., *Potential Impacts of Proposed Oil and Gas Development on the Arctic Refuge's Coastal Plain: Historical Overview and Issues of Concern* (2002), at <http://www.r7.fws.gov/nwr/arctic/issues1.html> (detailing the region protected by the Act and explaining the natural resources affected by the Act).

16. Alaska National Interest Lands Conservation Act § 1002.

2,000 acres of that actually be explored.¹⁷ Now, some estimate yields of at least a million barrels a day,¹⁸ which is not an insignificant amount. This quantity amounts to seventy-seven years of Missouri's entire energy needs.

Now, the challenges. Is it possible to actually capture some of that resource while lightening our environmental footprint so we do not harm the caribou and other species that reside thereby? Our ability to build wells today relative to the 1980s is such that we can reduce our footprint by some seventy percent since that 1985 timeline.¹⁹ Through use of ice roads we can bring equipment in and take it out without damaging the tundra. Sound reduction is another challenge, one worthy of thinking about if one were moving forward.

B. *Energy and Minerals*

I want to underscore that the issues relating minerals and energy are not as they are often cast as environment versus industry. It really is about how and whether we warm our homes, power our transportation needs, have resources for taking photos, for turning on lights, for having light bulbs, and for brushing our teeth. On the lower forty-eight states, to give you a sense of the context of this multiple use purpose and the degree to which we actually access resources, of the seven hundred million subsurface acres managed by the Bureau of Land Management about 1.6 percent is in oil and gas exploration.²⁰ Of the 260 million surface acres managed, about .06 percent is actually managed for minerals access.²¹ I put out those numbers with some trepidation because, when you say small percents, I do not want to suggest that each and every one of those acres is insignificant. Those acres count, too, and it deserves our attention to ask whether we ought to disturb them or whether we are striking the right balance. But let us ask those questions and think about how, when, where, and what are the consequences of inaction.

17. Letter from Spencer Abraham, Secretary of Energy, to Sen. Pete Domenici 4 (Sep. 10, 2003), available at <http://www.anwr.org/docs/SAP9-10-03.pdf>.

18. U.S. Fish & Wildlife Serv., *supra* note 15.

19. Arctic Power, *Arctic Technology*, available at <http://www.anwr.org/techno/techno1.htm> (last visited Sept. 12, 2004).

20. BUREAU OF LAND MGMT., DEP'T OF INTERIOR, PUBLIC LAND STATISTICS 2002, TABLE 1-3 (2003), available at http://www.blm.gov/natacq/pls02/pls1-3_02.pdf.

21. *Id.*

V. CHANGING TO A PARADIGM OF INNOVATION

Earth Day 1970 perhaps marked the milestone of modern environmentalism and unfurled, or resulted thereafter in the unfurling, of our banner statutes. It was a wake-up call. I was in Santa Barbara in 1969 during the oil spill. I took part in the cleaning of some of the birds damaged by that spill. But the tools unfurled in that set of banner statutes, while they helped us to achieve some substantial improvements—the air is cleaner, the water is cleaner, and so on—also yielded, in some instances, high conflict. And this is because the tool to motivate human behavior tended to be the stick rather than the hand in partnership. High costs sometimes reigned as prescription prevailed instead of allowing innovation to flourish. And there were high unintended consequences because we had piecemeal decisions by which we treated one species separate from another, air separate from water, separate from waste. We would fix one problem here, and it would pop out somewhere else. One need only think of MTBE for example and air emissions. Now we have an evolution underway as people realize that environmental progress is a journey, not a destination, and there is no reason to think that we got all our institutional arrangements exactly right the first time around or in the intervening years since. So we have an institutional discovery process underway. I think we have a discovery process underway where people are seeking four features in the decision arrangements through which we achieve environmental goals.

A. *Integration*

I celebrate the work of the Duck Trap River Coalition. This coalition consists of twenty-six partners across a mosaic of landscapes that are addressing a myriad of challenges and issues, working to take that river, which hosts the Atlantic salmon, and replant native grasses, change old gravel pits into vernal pools, and thereby reduce erosion and sedimentation. This work is done across a mosaic of land ownerships and in partnership and cooperation, in an integrative way.

B. *Local Ideas*

The second feature is the need to tap local ideas and insights, what I call experiential knowledge, or what Nobel laureate F. A. Hayek called the knowledge of time, place, and situation.²² We have

22. F. A. Hayek, *The Use of Knowledge in Society*, 35 THE AM. ECON. REV. 519, 521 (Sept. 1945), available at <http://links.jstor.org/sici?sici=0002-8282%28194509%2935%3A4%>

employed the knowledge, for example, of the fishermen off the coast of Alaska who were fishing and finding through the information scientists provided them that their techniques were actually adversely affecting albatross. The initial inclination of our Fish & Wildlife Service was to say, "Thou shall not fish." But, in sitting down with the fishermen and tapping their insights and ideas, the fishermen said, "you know, we have a way to do this differently, a way that will allow us to achieve reconciliation ecology, allow us to fish and protect the albatross too." This is a technique that we could not have invented in Washington. It took local insight and local ideas.

C. *Inspiration*

Third feature is that, having used the stick, we lost the opportunity for inspiration. Working in cooperation and with a handshake at Buffalo Creek, our Fish and Wildlife Service, through our partners in the Fish and Wildlife Program, is cooperating with dozens and dozens of farmers to do streambank fencing, replant warm spring grasses, create some vernal pools, put up wood duck boxes, bat boxes, barn owl boxes, reduce the water, or improve the water quality from 2500 parts per million of bacterial count to 25 parts per million. This is a phenomenal achievement, and it was reached by applying a caring hand to the landscape in partnership.

D. *Innovation*

And that leads me to the final feature I think we continue to seek in our organizational and decision arrangements, and that is more elbowroom for innovation. Not just technological innovation. Not the technological innovation, for example, of the El Dorado Refinery who took nature's capital and built a wetland rather than a mechanical treatment plant to treat wastewater. But rather, I am talking about the organizational innovation such as the Maw Pie borderland where they have created a grass bank, a new concept, a new institutional innovation.

3C519%3ATUOKIS%3E2.0.CO%3B2-1 ("Today it is almost heresy to suggest that scientific knowledge is not the sum of all knowledge. But a little reflection will show that there is beyond question a body of very important but unorganized knowledge which cannot possibly be called scientific in the sense of knowledge of general rules: the knowledge of the particular circumstances of time and place. It is with respect to this that practically every individual has some advantage over all others because he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are left to him or are made with his active co-operation.").

VI. TAKING THE NEXT STEP

In closing, let me just draw a ribbon around this package, the “four Is” of innovation, integration, inspiration and local ideas and insight and say that all of these arrangements that I briefly touched on, all of them are about cooperative conservation, cooperation across a mosaic of land ownership and a plurality of interests. This is not new. We did not invent it. It is emergent, spontaneous, an upwelling; but it is gaining momentum, and it holds infinite possibilities. This administration is seeking to nurture those possibilities at Interior. And I will conclude on that note, by pointing to how we are doing that. We are putting our money where our mouth is. We have proposed, in the president’s budget, over a half a billion dollars in cooperative conservation grants of various sorts, a substantial increase over our predecessors.²³ We are looking at the Endangered Species Act and building upon the innovations of the previous administration with Safe Harbor, a tool that better allows our neighbors and landowners across the country to work to protect species. With NEPA, we have put out new guidance documents on adaptive management to put the focus on performance and then adjustment according to how well you are achieving performance. And we are also shifting the focus to consensus-based decisions, turning NEPA on its head instead of being a back-end “stand up when the green light goes on, sit down when the red light goes on.” We are working to change a back-end participatory process to a front-end process, where we all engage and sit down and try to hammer out a consensus management alternative which we will then import into our scoping document, potentially as a preferred alternative.

With stewardship contracting, I mentioned, we are working on joint fact-finding, recognizing the data battles. The notion that I have my mountain of data and you have yours often stands in the way of results, decisions, and consensus. So, instead, we would inaugurate joint fact-finding, where up front we sit with communities, say what information is important, what do you need to know, and what methodologies can we agree on.

At MIT, I recently spoke, and someone said, “well, is this cooperative conservation stuff mere snowflakes on the horizon, or is it the tip of an iceberg?” I think it’s more the tip of an iceberg. We have

23. Press Release, Bush Administration Proposes Increased Funding to Maintain and Restore Forest and Rangeland Health, (Jan. 28, 2004), *available at* <http://www.doi.gov/news/040128a.htm>.

been looking maybe at the tip and not seeing what lies beneath. Consider wetlands. Each year, through our regulatory actions, Section 404 wetlands mitigation, we protect about 20,000 acres per year over the last decade. Through cooperative conservation, our non-regulatory partnering tools by contrast; we restore, recreate, rehabilitate, or protect some 300,000 acres per year over the last decade.²⁴ Now, cooperative conservation does require better metrics. It requires monitoring, and it requires the art of mediation to supplant habits of debate. It requires new methods of governance, new methods such as some of the tools I mentioned. It does set forth through cooperative conservation a vision of citizen stewards, a vision held by Aldo Leopold in his writings where he imagined a nation of self-motivated stewards. It is a vision that brings together healthy lands, thriving communities, and dynamic economies that we all want.

24. U.S. Dept. of the Interior, *Departmental Highlights; Listening to all Voices on Conservation*, at <http://www.doi.gov/budget/2003/03Hilites/DH15.pdf> (last visited Apr. 9, 2004). For example, in Muddy Creek, Wyoming, 35 partners including ranchers, environmentalists, miners, a local conservation district, federal agencies and other are cooperatively working to manage 500,000 acres. *Id.*