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The Contentious Lands: A Book Review of WESTERN PUBLIC LANDS AND ENVIRONMENTAL POLITICS¹

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Out where the buffalo roam and the spotted owls nest, public land law is more than an academic exercise. In many communities, either a town's economic future, or its citizens' maintenance of a more intangible "quality of life," is entangled with the fate of federally-owned western lands, including those under the jurisdiction of the Bureau of Land Management, National Forest Service, or the National Park Service. Increasingly, moreover, citizens who do not live near or even visit the lands are interested in some of these lands and their resources. This is not surprising perhaps in the case of the National Parks, especially the "crown jewels" of public lands such as Yellowstone and Yosemite. It is a more recent phenomenon that attention also has focused on the less flamboyant public lands. Ecological protection for the resources on these lands has become some people's priority. The tension between such members of the environmental movement and traditional user groups has, in the words of editor and author Charles Davis, led to "increasingly strident" policy debates.³ These debates and the forces behind the rhetoric are the focus of his book, WESTERN PUBLIC LANDS AND ENVIRONMENTAL POLITICS.

The book is the product of political scientists; it grew out of the editor's need for up-to-date materials for a seminar he taught on public lands policy. Six of the book chapters explore the various public land resources (i.e. forest, range, mining, energy, recreation, and wilderness). Each contributor was asked to examine the changes in their programs since the environmental movement gained momentum in the 1960s. More particularly, the resource-specific authors were asked to consider whether policy changes were

¹ CHARLES DAVIS, ed., WESTERN PUBLIC LANDS AND ENVIRONMENTAL POLITICS (Westview Press (Harper Collins) 1997).

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³ DAVIS, *supra* note 1, at vii.

“attributable to a new demographic landscape such as the urbanization of the West, presidential policy priorities, economic conditions, or value shifts.”⁴ The publisher’s “blurb” describes the result as an accessible book for the student or scholar in the area as well the general public. For the most part, the description is accurate and the questions posed were answered.

Organization and Contents

In addition to the six program-specific reviews, the book contains four general chapters. The editor provides two: an introductory overview and a final chapter with conclusions. In the interim, the second and third chapters appear under the heading *Participants, Processes and The Policy Framework*. These chapters provide analytical frameworks and background material that will reappear in the policy reviews that are focused on individual programs.

The first of the generalized analytical chapters⁵ looks at policy interplay between various layers of government, namely those of the state, federal, and local governments. The author, Sandra K. Davis, argues that issues have remained similar over the years, but the mosaic of participants tended to change. She identifies the basic dispute as between westerners wanting greater control over the resources of the public lands and the federal government. These disagreements are put in historical perspective by detailing the three pre-1960 Sagebrush Rebellions: the reaction to withdrawals for irrigation (late 1880s), forest preservation (1893), and grazing fees (1920-late 1940s). With the more recent Sagebrush Rebellion in response to President Carter’s policies there was a change in the participants.

Although similar to its predecessors in being triggered by policies deemed hostile to development and marked by a vocal

⁴ *Id.* at viii.

⁵ Sandra K. Davis, *Fighting over Public Lands: Interest Groups, States and the Federal Government*.

president, the author argues that the big difference in the fourth Sagebrush Rebellion lie in the participation of opposition groups with some familiarity with national politics. These were the environmentalists and they brought new issues to the forefront. Moreover, unlike earlier rebellions, states actually passed laws claiming ownership of the public lands. Of course, the Forest Service and Bureau of Land Management remained relevant players but, the author argues, they became players modified by their multiple use mandates and became the venue for intervention by the rebels. Unlike earlier disputes, relevant decisions now were being made outside of Congress, although western legislators continued to try to influence the fate of the lands. As another point of difference and analytical insight, the author argues that the Reagan Administration stymied the Sagebrush Rebels. The members of the administration shared some of the philosophical bent of the rebels in dislike of preservationism, but differed about state ownership, favoring either privatization or wiser federal management. Therefore, the author argues, public land policy did not follow the ostensible agenda of the rebels, namely forwarding states rights. Nevertheless, the rebels may have succeeded in a *sub rosa* agenda: turning policy from an environmentalist agenda.

The author then looks at the Wise Use movement of the 1990s as a fifth Sagebrush Rebellion. She notes that while it has some similarities to the earlier rebellions, it differs because the “clarion call” is not states’ rights, but property rights. The members of the movement actively use the courts and, unlike prior rebellions, seek allies in county governments as opposed to at the state level. The author concludes: “The movement supporters are a more diverse group with potentially stronger legal arguments, and they are pursuing policy decisions in multiple branches and levels of government. As of 1996, these movements have not faded away; rather the 1994 elections have provided them with a rejuvenated forum for public land issues—Congress.”⁶ In sum, public land issues have become

⁶ *Id.* at 25.

more complex by the widening participants in and the venues for arguments.

The third perspectives chapter is entitled, *A Critique of the Multiple Use Framework in Public Lands Decisionmaking*. Its authors, R. McGregor Cawley and John Freemuth, argue that the gridlock in federal lands policy is not a result of competing interests, but identify the key problem as “the structure of the decisionmaking process.”⁷ More particularly, they blame the concept of multiple use, first codified in the Multiple Use and Sustained Yield Act.⁸ “Multiple use” provides that National Forests and BLM-managed lands should be managed to provide for recreation, range, timber, watershed, and wildlife and fish purposes. Although a particular tract of land may be dedicated to one use, overall there is a quest for diversity of uses. There is no overall guidance to the agency on how to manage the lands, in contrast to the unquestioned pre-MUSY mandate that the Forest Service provide a long-term source of timber. According to the authors, beginning in 1960, the multiple use philosophy made it more difficult for the Forest Service and later the Bureau of Land Management to resolve problems over public land management, although the ostensible purpose of multiple use management was to provide a framework for dispute resolution. They argue that because the management philosophy creates a zero-sum game and a level playing field, the impetus to compromise is squelched. Each resource user seeks to thwart all other users to protect the favored use. If the competing players are relatively equal, stalemate is an obvious result. The authors intriguingly review the political theories of James Madison’s writings in the *Federalist* and more recent political scientists to explain the logic of factions. The authors suggest a way out of the stasis.

The authors conclude that it is an error to attempt to reach consensus within the current framework. A new consensus must be built. This will require political or agency leadership and the

⁷ *Id.* at 33.

⁸ 16 U.S.C. §§ 528-31 (1994 & Supp. 1996).

participation of the affected citizenry. They suggest three ways out of the gridlock. The first is Congressional action that would embody a "dominant use" theory of land management and provide more direction to the managers. A subdivision of this approach would have a commission to review public land law be appointed prior to Congressional action. Both of these approaches leave resolution to the political arena. A third suggested approach is quite different: it would empower scientific management by embracing ecosystem management as a lodestar. The authors conclude that ecosystem management, however defined, views the people who live in various ecosystems as "another component to be managed rather than as a public to be consulted."⁹ The authors note that until the science of ecosystem management is perfected and accepted, community opposition may make such management impossible. Nevertheless, the authors suggest that it is necessary to move away from interest group liberalism in some manner in order to dissolve the gridlock.

The six program oriented chapters reexamine the general in the particular setting of forestry, range, mining, energy, parks, and wilderness. To a certain extent, there is a sameness to the stories. Major happenings such as the rise of the environmental movement and the more-industry oriented administration of Ronald Reagan and Interior Secretary James Watt are part of all the accounts. Nevertheless, due to the astuteness of the players and the inherently different natures of the resources, there are some differences.

The forestry chapter, *From Localism to Legalism: The Transformation of Federal Forest Policy*, is perhaps the most compelling read, but of course, it has the dramatic tale of the northern spotted owl to arrest the reader's attention. The major thesis of author George Hoburg is that environmentalism transformed the Forest Service, but not until the 1990s, and the trend may be in danger from the Republican Congress. He argues that the most successful transformations ensued when issues were nationalized and judicialized; therefore the Pacific Northwest spotted owl controversy

⁹ *Id.* at 42.

was resolved in a manner more satisfactory to environmentalists than the controversy over below-cost timber sales.

Editor Charles Davis himself wrote the next chapter, *Politics and Rangeland Policy*. As in the forestry chapter, a dramatic tale unfolds: thirty years of futile attempts to raise grazing fees for public land grazing. The author delineates several reasons why the livestock industry successfully maintained a favorable grazing fee formula, while the "governmental subgroup" in power allowed some program modifications to accommodate environmental concerns. The author traces industry success to a stable dominant coalition, including representation on key Senate and House committees and subcommittees and strategic alliances with other resource user groups. Extensive information is given on voting patterns in the House and Senate on relevant issues; the politics are laid out in vivid fashion to demonstrate the issue control westerners maintained. In addition, the author argues the pro-grazing coalition has been able to respond to changing political circumstances, such as the appointments environmentally-oriented presidents made. Therefore, the author concludes that even modest changes in range policy face formidable political challenges.

The title of the next chapter reveals a similar conclusion: Christopher McGrory Klyza entitled his study of mining *Reform at a Geological Pace: Mining Policy on the Federal Lands, 1964-1994*. He notes that one core belief behind the Mining Law of 1872 was economic liberalism, which mandated minimal governmental interference in society and the economy. Additionally, historically, there was no administrative mechanism to effectuate mining policy. Moreover, Congress and the agencies involved respected the property rights gained under and defined by existing mining codes. The author argues that the legacy of these forces remain operative today. A "privatized policy" developed that is difficult to change.

In the energy chapter, David Howard Davis discusses three themes that are common to other areas: interest group politics (primarily developers versus environmentalists), partisan politics, and bureaucratic routines. However, in *Energy on Federal Lands*, the

author argues that a fourth element provided disproportionate influence. This was international politics. The chapter delineates key events from the Reagan, Ford and Carter years in reference to international oil. More unique to the public lands situation is the saga of coal development, which is well developed and discusses the beleaguered Office of Surface Mining. The author concludes that after the "Reagan Revolution" and the return to the center of the Bush years, current energy policy is simply to allow it to be on the "back burner." This stasis is possible because of two factors, one a so-called Democratic victory and one a Republican victory: environmental values are now entwined in state and federal agency activities and markets are the accepted price arbiter.

The fifth resource examined is that of the National Parks. The statutory framework for national parks provides a basic tension because it directs them to be managed for two goals that might conflict: the act requires the Park Service "[to] conserve the scenery and the natural and historic objects and the wild life therein *and* to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."¹⁰ In *National Parks Policy*, William R. Lowry argues that the rhetoric of preservation, common in the 1970s and 1980s, did not bear fruit. The failure partially was caused by the popularity of national parks and increases both in their numbers and people using them. The old philosophy of "parks are for people" found resonance in the Reagan years and, with no strong political support, parks ended up underfunded. The author delineates plans that were never implemented and the political backwashes that thwarted agency attempts to turn rhetoric into policy. With pressures on park resources from both internal and external forces, park management became more complex. By the beginning of the 1990s, the goal of preservation was not as vocal as previously, and park personnel were actively seeking a coherent vision for the parks. Although the author

¹⁰ 16 U.S.C. § 1 (1994 & Supp. 1996) (emphasis added).

cites some hope for the Clinton years, he notes that a true policy shift requires political consensus.

The final resource considered is wilderness. Two periods are discussed in the chapter entitled *Wilderness Policy*. The first is the period from the passage of the Wilderness Act in 1964¹¹ to the passage of the Alaska National Interest Lands Conservation Act of 1980.¹² The second period continues to the present. In this strong chapter, Craig W. Allin argues that wilderness policy, once mostly concerned with questions of distribution, has now moved to questions of management. He concludes that the shift has involved more actors, created more conflicts, and increasingly has moved control from agency bureaucrats to Congress and the courts. Regulatory wilderness policy reveals less stable patterns of influence than were present for distributive problem solving, which centered on what lands would be allocated to wilderness. Interest groups have been and will remain active.

The editor authored the last chapter of the book and, in it, provides some judgments. He concludes that policymaking in the last thirty years has changed from the rather closed systems of Congress, commodity user, and agency that flourished in the past. Added players—such as environmentalists, western recreationists and property rights advocates—have made the policymaking process simultaneously more open and unpredictable. Factors in the change have included presidential influence, economic conditions, political support, and involvement from Congress, federal courts, and state officials. He concludes that agency decisionmaking has become more balanced among resource uses than in the past and no longer are captive of commodity users. He believes that even with a more conservative Congress, strong public support for environmental goals and the public participation requirements of more recent public land laws will result in continued attention to protectionist concerns.

¹¹ 16 U.S.C. §§ 1131-36 (1994 & Supp. 1996).

¹² 16 U.S.C. §§ 3101-3233 (1994 & Supp. 1996).

Conclusion

Although I recommend the book, two minor areas of discomfort may arise for the reader accustomed to legal scholarship. The first is that the format of citation differs from that in law reviews and at first seems discordant, but is soon comfortable. The second is the sense of landing in a "parallel universe." The laws, cases and events examined, and ultimately the conclusions drawn by these political scientists, are familiar to the legal scholar. However, the citations generally are not to the same body of scholarship. The major exception is the work by Charles Wilkinson, whose *CROSSING THE NEXT MERIDIAN: LAND, WATER, AND THE AMERICAN WEST*¹³ is cited by scholars from both disciplines. This reference to a less-familiar body of scholarship, however, is perhaps one of its strengths for both legal scholars and practitioners. It abounds with historical facts and interpretational tools that supplement traditional legal scholarship. For students, who may not have personal experience with the recent past, the book could be invaluable. It provides a social context for the law and also demonstrates how law, in turn, influences the lives of its participants.

¹³ Washington, D.C.: Island Press (1992). A few other exceptions or cross-overs exist. Political scientists also cite John Leshy's *MINING LAW: A STUDY IN PERPETUAL MOTION* (Baltimore: John Hopkins University Press) (1987). There are also limited references to work by George Coggins and Robert Keiter. Additionally, to turn the tables, legal scholars frequently cite the political scientists Helen Ingram and Sally Fairfax.