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## Successes and Failures of Federal Environmental Policy: Reviewing Federal Ecosystem Management and Federal Approaches to Environmental Justice

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**SUCCESSSES AND FAILURES OF FEDERAL  
ENVIRONMENTAL POLICY: REVIEWING  
FEDERAL ECOSYSTEM MANAGEMENT AND  
FEDERAL APPROACHES TO  
ENVIRONMENTAL JUSTICE**

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Heather E. Campbell<sup>‡</sup>

JAMES R. SKILLEN, *FEDERAL ECOSYSTEM MANAGEMENT: ITS RISE, FALL, AND AFTERLIFE* (UNIVERSITY PRESS OF KANSAS 2015). Pp. 272. HARDCOVER \$45.00.

DAVID M. KONISKY, ED., *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* (THE MIT PRESS 2015). Pp. 296. HARDCOVER \$53.00. PAPERBACK \$30.00.

INTRODUCTION

The 1970s was a watershed decade for environmental protection in the United States. With a rush of new environmental laws, processes evolved for the management of federal lands and resources, but ongoing challenges in environmental inequities were left unrecognized, unaddressed, or dormant. By the 1990s, federal agencies began addressing these concerns through the development of ecosystem management and environmental justice policies. Both of these policies were means of changing the federal process of managing the environment and environmental concerns. Ecosystem management was broader and more ambitious, seeking to balance the complex of demands on federal lands. Processes for environmental justice were more focused and designed to reduce environmental inequities, especially those based on race, ethnicity, and income.

*Federal Ecosystem Management*, by James R. Skillen, and *Failed Promises*, an edited volume by David M. Konisky, are two unique treatments of the history, evolution,

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and effectiveness of federal ecosystem management and environmental justice policies, respectively.<sup>1</sup> While Skillen's treatise is a historical narrative of federal land management policies of the past and present, Konisky's volume is a collection of writings that assess the Environmental Protection Agency's (EPA) (and some other federal agencies') attempts to correct environmental inequities in accordance with federal environmental justice policy created by President Clinton's Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.<sup>2</sup> While the books differ in approach and environmental policy sub-area, common themes are evident. Both books address the context and efficacy of federal-level environmental policy implementation and evaluation and provide critiques of the federal agencies' efforts to execute these activities. In addition, both works broadly address the effects of presidential administrations' defining, or suppressing, the principles and objectives of their respective policy sub-areas.

Both *Federal Ecosystem Management* and *Failed Promises* are policy-analytic books, yet they differ in approach and content. *Federal Ecosystem Management* is an accessible historical narrative suitable as supplementary text for upper-division undergraduate and graduate courses in U.S. environmental policy. *Failed Promises* is a denser and more empirical treatment of its subject matter. Its range of subject material that the authors expertly assess has enough substance for scholars and researchers of environmental justice, environmental policy, related legal issues, and quantitative analysis. It may be too narrowly focused and quantitative for undergraduate studies, but it is appropriate for graduate environmental studies, environmental law and policy, and perhaps public health classes. Practitioners, particularly attorneys and environmental justice advocates, will also find the book useful.

#### SKILLEN'S FEDERAL ECOSYSTEM MANAGEMENT

For most of the twentieth century, federal land and resource management was guided by the principles of preservation and multiple-use conservation. By the 1970s, those management philosophies became outdated as failures developed; the old paradigms were insufficient to meet the changing technical and political realities faced by federal agencies.<sup>3</sup> During the 1990s, federal policymakers, land managers, and environmental scholars conceptualized and suggested a new paradigm-ecosystem management-to correct prior deficiencies in light of changing understandings of ecology and growing legal and political complexities.<sup>4</sup> In *Federal Ecosystem Management*, James R. Skillen, an Assistant Professor of Environmental Studies at Calvin College, traces the emergence of ecosystem management as official federal policy. He describes how the new paradigm was supported by a transformation in the intellectual history of

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1. See JAMES R. SKILLEN, *FEDERAL ECOSYSTEM MANAGEMENT: ITS RISE, FALL, AND AFTERLIFE* (2015); see also *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* (David M. Konisky ed. 2015) [hereinafter *FAILED PROMISES*].

2. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

3. SKILLEN, *supra* note 1, at 1-2.

4. *Id.*

ecology and political science (specifically, the field of public administration).<sup>5</sup> This shift called for more public participation and scientific expertise in the federal environmental management policy process to address the dynamic complexities of national ecosystems.<sup>6</sup> However, ecosystem management as policy was broad and ill-defined, leading to multiple policy interpretations by competing interests—those who wanted more environmental preservation and those who wanted more resource extraction opportunities.<sup>7</sup> Skillen, in great detail, describes how the new paradigm and resulting divergent perspectives led to the rise and fall of ecosystem management as federal policy.

Skillen focuses on a central and reoccurring characteristic of the political realities of policymaking—striking balances between different and often competing principles, interests, and objectives.<sup>8</sup> In the case of ecosystem management, federal agencies found themselves trying to balance prior adherence to multiple-use principles—the idea that federal lands should be used for the competing purposes of extraction, tourism, and preservation—with the principles of ecosystem management.<sup>9</sup> At the same time, agencies were under pressure to incorporate direct public participation in the environmental policy process, even when public participation was contrary to scientific expertise in the subject matter.<sup>10</sup> Here, agencies encountered contradictions between the goals of democratic administration and the goals of using the best science possible.<sup>11</sup> Federal agencies sought a new paradigm of ecosystem management developed around a three-pronged framework of land and resource management: integration of consistent policy across factitious jurisdictional boundaries; amelioration of the conflict between biodiversity protection and economic development; and re-structuring federal management to make the process “more collaborative and less hierarchical.”<sup>12</sup> Adding to the complexity, scientists consistently argued for natural boundaries, such as watersheds or natural ranges, which often had little to do with official boundaries.<sup>13</sup>

In the introduction to *Federal Ecosystem Management*, Skillen warns the reader that this is not another natural-science or social-science treatment of ecosystem management.<sup>14</sup> Rather, he takes the “road less traveled” by examining ecosystem management from a humanities approach: namely, the emergence of ecosystem management as federal policy; how emerging federal environmental laws shaped the adoption, implementation, and evaluation of the new policy; and lastly, the future path of ecosystem management.<sup>15</sup> At its core, the book is an administrative history, and, as such, it

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5. *Id.* at 18-19, 34.

6. *Id.* at 52.

7. *Id.* at 17.

8. SKILLEN, *supra* note 1, at 1-6 (discussing the two competing interests).

9. *Id.* at 76-86.

10. *Id.* at 65-67.

11. *Id.* at 233-60.

12. *Id.* at 1.

13. SKILLEN, *supra* note 1, at 198.

14. *Id.* at 6.

15. *Id.*

is qualitative and narrative-based.

Skillen introduces his first argument by describing his perspective on the intellectual foundation of ecosystem management.<sup>16</sup> He summarizes the transformations of ecological sciences and public administration during the twentieth century, which led to the rise of the federal policy.<sup>17</sup> Skillen traces early theories and practices of range management and timber production yield-maximization techniques, which emphasized control over ecology.<sup>18</sup> By the 1950s, a more systematic and quantitative approach was used to guide ecology management, thus replacing the prior models, which focused on the development of an equilibrium that would maximize production (of timber, forage, etc.).<sup>19</sup> Research acknowledging the changing demands of ecology and conservation biology led to “scientific emphases on managing along ecological rather than political boundaries and managing for ecological processes and functions,” rather than for production purposes.<sup>20</sup> During this time, ecologists came to believe that ecosystems were more complex than had been believed and that healthy ecosystems required both diversity of organisms and larger ranges than had been thought.<sup>21</sup> New insights called into question the very idea that a static equilibrium—whether intended for production or for other purposes—was even possible.<sup>22</sup> Federal agencies used this framework to balance older multiple-use approaches with what was increasingly being seen as a need to protect biodiversity.<sup>23</sup>

This shift in perspective leads to the other side of the policy coin—changes in understandings of the roles and importance of public participation and governance. Similar to his assessment of the transformation of the science of ecology, Skillen traces the shift in public administration during the second half of the twentieth century from the traditional top-down hierarchical framework advocated by noted public administration theorists such as Woodrow Wilson and Herbert Kaufman to one incorporating democratic accountability and collaborative governance.<sup>24</sup> Skillen argues that the Clinton administration’s efforts to “reinvent government” in the early 1990s inevitably interacted with the new approaches to ecology and public administration.<sup>25</sup> The new approaches highlighted the new understanding that both ecology and policy administration were too complex to control; instead, ecologists and public administrators adopted a new approach to management—that of adapting to complexities inherent in both frameworks rather than trying to control them.<sup>26</sup> As Skillen notes,

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16. *See id.* at 17-51.

17. *Id.*

18. SKILLEN, *supra* note 1, at 19-21.

19. *Id.* at 22-24.

20. *Id.* at 34.

21. *Id.* at 24-25.

22. *Id.* at 26-28.

23. SKILLEN, *supra* note 1, at 33-34.

24. *Id.* at 34-51.

25. *Id.* at 48; *see generally* DAVID OSBORNE & TED GAEBLER, *REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR* (1992).

26. SKILLEN, *supra* note 1, at 28-29, 48-50

“It was in this context that ecosystem management looked so promising . . . providing some of the central concepts and commitments of the new paradigm.”<sup>27</sup>

*Federal Ecosystem Management* is separated into two major discussion sections: the background of federal ecosystem management and the adoption and implementation of the policy. Chapters 2 and 3 address the policy context of ecosystem management. Skillen notes that the ecological perspective applied to federal land and resource policy was largely induced by a “transformation of American perceptions of nature.”<sup>28</sup> As a result, Americans demanded that Congress do more to protect the environment.<sup>29</sup> This transformation precipitated landmark environmental legislation, most notably, in Skillen’s assessment, the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).<sup>30</sup> The ESA broadened the scope of species protection to include large swaths of ecosystems, most of which crossed jurisdictional boundaries.<sup>31</sup> Skillen utilizes a case-study approach to describe the influence of ESA and ecosystem management in the Greater Yellowstone Ecosystem (a phrase adopted by 1975), describing it as the first time that the principles of ecosystem management were applied on a grand scale.<sup>32</sup>

While public participation was not a new requirement of the environmental protection process, NEPA certainly expanded the scope of participation, particularly in the context of land-use planning and decision-making.<sup>33</sup> Not only did the “ecological turn” result in sweeping new legislative measures, but it also impacted the focus and management operations of the federal agencies charged with implementing the new legislation.<sup>34</sup> ESA produced guidelines for agency management, while NEPA helped transform agency procedural requirements that forced the agencies “to consider new ecological science and to encourage broad public participation” when assessing the impact of federal agency land-use and resource planning.<sup>35</sup>

The heart of the book lies in Chapters 4 and 5, where Skillen demonstrates the effect of two divergent presidential administrations in the application of the substantive and procedural requirements of ecosystem management to federal land and resource management activities. In particular, the George H. W. Bush administration promised to be environmentally-friendly, but at the same time resisted regulatory policy, particularly where it impeded economic development.<sup>36</sup> The Clinton administration used ecosystem management as a laboratory for experimenting with the reinventing-government movement.<sup>37</sup> This approach fit within the framework of NEPA

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27. *Id.* at 51.

28. *Id.* at 61.

29. *Id.* at 62.

30. *Id.* at 53, 68; *see also* National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370m-12 (1970); *see also* Endangered Species Act, 16 U.S.C. §§ 1531-44 (1973).

31. SKILLEN, *supra* note 1, at 72-76.

32. *See id.* at 87-114.

33. *Id.* at 71-72.

34. *Id.* at 61-65.

35. *Id.* at 72.

36. SKILLEN, *supra* note 1, at 117-18.

37. *Id.* at 164-65.

and the call for greater public participation in the process.<sup>38</sup> This new model embraced the use of collaboration while avoiding “predetermine[d] ecological or economic goals.”<sup>39</sup> The spotted owl crisis of the Pacific Northwest was the perfect demonstration experiment for this model.<sup>40</sup> The collaborative effort broke the logjam between federal court injunctions and timber industry interests, particularly those in the old-growth areas of the region.<sup>41</sup>

In the final chapters of *Federal Ecosystem Management*, Skillen notes that the quick ascension of ecosystem management to the macro-policy level was followed by an equally rapid devolution to the sub-system policy level during the George W. Bush administration.<sup>42</sup> However, despite this quick policy-level devolution, the principles of ecosystem management are still in use today by the federal agencies, though in a less overarching and visible manner.<sup>43</sup> Furthermore, Skillen notes that the public discourse on federal land-use planning and resource management has likely changed forever, as the notion of ecosystem complexity has left an indelible mark in this area.<sup>44</sup> While the less-visible use of ecosystem management principles likely will stay in stasis for some time, a future ecological crisis may propel it to national-level attention once again.

Lastly, in the final chapter, Skillen discusses how recent presidential administrations have treated and applied ecosystem management ideals to the area of federal land-use policy. Skillen supplies ample anecdotal evidence on the direct application and effect of substantive ecosystem management policies under the presidencies of George H.W. Bush, Bill Clinton, George W. Bush, and, most recently, Barack Obama.<sup>45</sup> Skillen concludes with an optimistic message that, though the visibility of ecosystem management policy has declined, attention to ecosystem management over the years has set a precedent for the inclusion of scientific assessment in the creation of future environmental policies. This enduring characteristic is the most important component of its afterlife. For, no matter what we call the process, current understandings of the society-ecology interface attempt to balance the many demands placed on our national resources, while ignoring factitious boundaries created for other purposes.<sup>46</sup>

#### FAILED PROMISES

While ecosystem management issues were rising to the federal macro-policy

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38. *Id.* at 165.

39. *Id.*

40. *Id.* at 177.

41. SKILLEN, *supra* note 1, at 183-85.

42. *Id.* at 218-19.

43. *Id.* at 220.

44. *Id.* at 266.

45. *Id.* at 222-70.

46. SKILLEN, *supra* note 1, at 266.

level, national policy attention was simultaneously becoming focused on environmental justice issues.<sup>47</sup> For the past forty years, policymakers, environmental advocates, and interested scholars have grown increasingly concerned about the disproportional exposure to environmental pollution and the resulting health risks facing predominantly minority and low-income communities throughout the United States.<sup>48</sup> However, despite the best of intentions, the resulting body of environmental legislation, which was designed to address and ameliorate exposure to environmental pollution, failed to equitably allocate the benefits of environmental policy outcomes in all communities.<sup>49</sup> *Failed Promises*, edited by David M. Konisky, who was Associate Professor of Public Policy at Georgetown University,<sup>50</sup> is a unique contribution for policy and legal scholars concerned with environmental justice. The book's chapters address specific failures of environmental justice policy as well as policy implementation challenges of the EPA and other federal agencies.<sup>51</sup>

The authors provide a comprehensive retrospective of federal environmental justice policy, complete with a systematic evaluation of environmental legislation, implementation, and consequences for environmental justice effects.<sup>52</sup> Each chapter is written by scholarly and professional experts in the fields of political science, law, public policy, regulation, criminology, and economics, applying their knowledge to the different dimensions of environmental justice.<sup>53</sup> Taken as a whole, their chapters evaluate the extent to which federal agencies effectively implemented President Clinton's Executive Order 12898 (EO 12898).<sup>54</sup> EO 12898 requires that federal agencies consider environmental justice in government decision making.<sup>55</sup> How this directive was carried out—and barriers to its success—are at the heart of *Failed Promises*.<sup>56</sup>

*Failed Promises* frames the analysis by reviewing key environmental legislation and related regulatory activities designed to address environmental protection inequities.<sup>57</sup> Despite the progress made in protecting the environment at the federal level over the past 40 years, the authors reveal evidence that the benefits of these efforts to improve environmental quality have not been evenly distributed across the country, particularly among low-income and racial and ethnic minority populations.<sup>58</sup> This discourse is salient; countless observers of environmental justice issues and related federal agency responses are critical of the EPA's failure to meaningfully involve low-income and minority groups in its decision-making processes and its continued lack

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47. FAILED PROMISES, *supra* note 1, at xi.

48. *Id.* at xiii.

49. *Id.*

50. Prof. Konisky has since moved to Indiana University's School of Public and Environmental Affairs.

51. FAILED PROMISES, *supra* note 1, at xiii.

52. *Id.*

53. *Id.*

54. *See* Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

55. *Id.*

56. *See generally* FAILED PROMISES, *supra* note 1.

57. *Id.*

58. *Id.*

of resolving complaints under Title VI of the Civil Rights Act.<sup>59</sup> The majority of the analyses are qualitative, though Chapter 6 (Konisky and Reenock) uses statistical methods including multivariate regression analysis (logit).<sup>60</sup>

The chapters of *Failed Promises* are focused on Konisky's definition of three principle elements of environmental justice: distributive, procedural, and corrective.<sup>61</sup> Some environmental justice scholars and advocates would likely add another dimension to the discussion, "recognition equity," which, by definition, ensures that differences in social, economic, and cultural aspects are recognized, valued, and respected in the process. This dimension is not fully developed in the book, yet would add to the premise that the EPA has largely failed to ensure greater public participation in the environmental protection process (it is generally presumed that greater public participation will help agencies understand and meet the needs of vulnerable communities).

The chapters of *Failed Promises* are organized by the various environmental justice processes.<sup>62</sup> Notable processes discussed in the book include facility permitting, federal rulemaking (specifically standard setting and economic effects of federal rules and regulations), public participatory processes, policy implementation, and adjudication.<sup>63</sup> The culmination of the chapter analyses lead the reader to the book's central argument: U.S. environmental justice policies, and the agencies tasked with their implementation failed to live up to their promises, instead yielding to legal challenges, inadequate bureaucratic coordination, political resistance, analysts' tendency to focus on overall benefits and costs rather than those to vulnerable subpopulations, and weak definitions of federal policy intent and target communities.<sup>64</sup>

The first two chapters of *Failed Promises*, solely authored by Konisky, provide the historical context for EO 12898, including its effectiveness and limitations from the Clinton administration to that of President Obama.<sup>65</sup> Konisky sets the stage for U.S. environmental protection policymaking, which is that policy issues are debated within a classic conflict framework of anti-regulation business concerns versus social interests, particularly those associated with environmental inequities.<sup>66</sup>

In Chapter 3, Eileen Gauna, a professor of law at the University of New Mexico School of Law, evaluates the extent to which environmental justice considerations have become integrated into the EPA permitting process.<sup>67</sup> The EPA permitting process is paramount to mitigation of environmental damages from economic activity.

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59. See Civil Rights Act of 1964, 42 U.S.C.A. § 2000d (1964).

60. See FAILED PROMISES, *supra* note 1.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. David M. Konisky, *Introduction*, in FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE 1 (2015), David M. Konisky, *The Federal Government's Response to Environmental Inequality*, in FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE 29 (2015).

66. See *id.*

67. See generally Eileen Gauna, *Federal Environmental Justice Police in Permitting*, in FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE 57 (David M. Konisky ed., 2015).

This chapter pays particular attention to Environmental Appeals Board decisions, which Gauna considers to be “an instructive lens into” the area of federal policy and difficult permitting decisions.<sup>68</sup> Yet, despite the infrastructure available (Gauna offers the example of the Environmental Appeals Board), there is a striking lack of guidance and definition, which hinders the efforts of EPA permitting officials.<sup>69</sup> Because of ill-defined criteria, regional EPA offices find it difficult to determine if a permit will or will not have an impact on a vulnerable community.<sup>70</sup> Making matters worse, the definition of what constitutes a vulnerable community is murky.<sup>71</sup> Sole discretion is left to the permitting agencies themselves, whether at the federal level, or at any number of state, local, and tribal government agencies.<sup>72</sup> Despite the institutional challenges, Gauna finds hope in future empirical analyses of permitting-agency discretionary assessment mechanisms to ensure greater effectiveness in protecting vulnerable communities.<sup>73</sup>

The assessment of EPA discretionary practices continues in Chapter 4. Douglas S. Noonan, an associate professor of public and environmental affairs and research director at the Indiana University Public Policy Institute, addresses the discretion that the EPA has in standard-setting and how the EPA has integrated the standards for pollution control within the environmental justice policy area.<sup>74</sup> Noonan contends that, despite the intent of EO 12898, the emphasis of EPA actions has been focused mainly on pollution control rather than on equalizing the burdens of regulations and of pollution.<sup>75</sup> Noonan argues that this is largely due to the aims of the major pieces of environmental legislation (e.g., NEPA and ESA).<sup>76</sup> What Noonan is attempting to rationalize is that the standard-setting process of the EPA has not provided adequate mechanisms for incorporating environmental justice concerns in its actions. While standards have become more uniform, the efficiencies gained from uniformity have diluted localized policies that could more effectively address burden inequities. A common thread in *Failed Promises* begins to reveal itself: EO 12898, due to its ill-defined and inadequate policy guidance, lacks the substance to affect burden equalization. At the conclusion of the chapter, Noonan provides some policy recommendations that he believes can positively affect the quality of life for impacted and disadvantaged populations in several areas including environmental, health, social, and economic.<sup>77</sup> Among others, these include pegging standards to the needs of vulnerable populations and combining a market-based approach with a focus on “hotspots”

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68. *Id.* at 58.

69. *Id.* at 60.

70. *Id.* at 69.

71. *Id.* at 70.

72. *See* Gauna, *supra* note 67, at 70.

73. *Id.*

74. *See generally* Douglas S. Noonan, *Assessing the EPA's Experience with Equity in Standard Setting*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* 85 (David M. Konisky ed., 2015).

75. *Id.* at 86.

76. *Id.* at 97.

77. *Id.* at 110.

(specific areas that may receive excess levels of pollution even while wider-area efficiency is served).<sup>78</sup> Noonan also warns that focusing on environmental justice is often technically difficult.<sup>79</sup>

Ronald J. Shadbegian and Ann Wolverton authored Chapter 5.<sup>80</sup> Both are economists at the EPA, and Shadbegian also serves as an adjunct professor of economics at Georgetown University.<sup>81</sup> Supporting the earlier claim that *Failed Promises* is a unique empirical assessment of environmental justice, this chapter's focus is on analytic issues.<sup>82</sup> Drawing from their background in economics, the authors acknowledge that the EPA "has been criticized for not incorporating environmental justice more fully into economic analyses of rulemakings."<sup>83</sup> This judgment is supported by five analytic issues related to the effects of regulation on disadvantaged communities: choice of geographic scope, identification of potentially affected populations, selection of a comparison group, spatial identification of effects on population groups, and measurement of exposure or risk.<sup>84</sup> Shadbegian and Wolverton compare the academic treatments of these issues with the practices of recent environmental justice analyses at the EPA.<sup>85</sup> The authors note that "a key challenge for the EPA [in addressing these analytic issues of environmental justice] is data constraints for evaluating the effects of national level policy," thus limiting the EPA's use of quantitative assessments of the rulemaking categories.<sup>86</sup>

Chapter 6 is authored by Dorothy M. Daley and Tony G. Reames.<sup>87</sup> Daley is an associate professor at the University of Kansas with a background in environmental and public health policy.<sup>88</sup> Reames is a postdoctoral research fellow at the School of Natural Resources and Environment at the University of Michigan.<sup>89</sup> The authors evaluate public participation as a mechanism to address the challenge of implementing EO 12898 with respect to the "diversity and distribution of environmental justice problems."<sup>90</sup> Because the public participation process in environmental justice is only lightly covered in the literature, this chapter will be of particular interest to those scholars and practitioners who argue its salience for community protection. Daley and Reames evaluate the EPA's public participation process since the executive order went into effect, and compare and contrast those processes with public participation

78. *Id.* at 92.

79. *Id.* at 111.

80. See Ronald J. Shadbegian & Ann Wolverton, *Evaluating Environmental Justice: Analytic Lessons from the Academic Literature and in Practice*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* 117 (David M. Konisky ed., 2015).

81. *Id.*

82. See generally *id.*

83. *Id.* at 119.

84. *Id.* at 121-34.

85. *Id.*

86. *Id.* at 135.

87. See Dorothy M. Daley & Tony G. Reames, *Public Participation and Environmental Justice: Access to Federal Decision Making*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* 143 (David M. Konisky ed., 2015).

88. *Id.*

89. *Id.*

90. *Id.* at 143.

mechanisms implemented by other federal agencies, namely the Department of Energy (DOE) and the Department of Transportation (DOT).<sup>91</sup> Not surprisingly, the authors find that there is considerable variation across federal agencies and that public participation is compromised by a complex decision-making environment and an observed secular decrease in public engagement, particularly with respect to disadvantaged communities.<sup>92</sup> But a positive takeaway resides in this chapter's conclusion. Daley and Reames provide examples of the EPA's public engagement efforts, particularly as a result of *Plan EJ 2014*,<sup>93</sup> that have become model initiatives to disseminate information and empower communities while facilitating greater public participation.<sup>94</sup>

Konisky teams with Christopher Reenock for Chapter 7.<sup>95</sup> Reenock is an associate professor of public policy at Florida State University.<sup>96</sup> Continuing the theme of empirical assessments of environmental protection policy and implementation efforts, Konisky and Reenock use "a simple interrupted time series research design" to study the effects of the environmental justice initiatives, specifically focusing on the Clean Air Act (CAA).<sup>97</sup> They (1) identify the locations of major pollution sources, (2) characterize communities located within one mile from the pollution sources, and (3) observe the number of enforcement actions taken either by the EPA or state governments in each community from 1990 to 2008.<sup>98</sup> They also control for demographic attributes, industrial sectors, air pollution severity, economic conditions, state political conditions, and presidential administrations, because those variables might be correlated with the enforcement outcomes.<sup>99</sup> The model estimates the probability of inspections and punitive actions for a target community (i.e., African-American, Hispanic, and low-income community) and a non-target community (e.g. wealthy and/or non-minority communities) for both the pre- and post-CAA policy periods.<sup>100</sup> The results of the analysis show disparities between EPA inspection and enforcement activities and those of state agencies with respect to the target communities.<sup>101</sup> Disparities also existed pre- and post-policy periods within the EPA and within state agencies.<sup>102</sup> The authors conclude with a discussion of the different interpretations and policy implications generated by the results of their analysis.<sup>103</sup>

91. *Id.* at 163.

92. Daley & Reames, *supra* note 87, at 165.

93. *Plan EJ 2014* is the EPA's guidance document for actively integrating environmental justice into agency programs, procedures, and policies.

94. *Id.* at 165.

95. See generally David M. Konisky & Christopher Reenock, *Evaluating Fairness in Environmental Regulatory Enforcement*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE* 173 (David M. Konisky ed., 2015) (Both authors thank CGU doctoral student Nyonho O for assistance with review of Chapter 7 of *Failed Promises*).

96. See *id.*

97. *Id.* at 182.

98. *Id.* at 184.

99. *Id.* at 185.

100. Konisky & Reenock, *supra* note 95, at 186.

101. *Id.* at 191.

102. *Id.* at 189.

103. *Id.* at 191-94.

Chapter 8 is written by Elizabeth Gross and Paul Stretesky.<sup>104</sup> Gross is a Colorado-based attorney practicing real estate law, while Stretesky is a professor of criminology at Northumbria University in Newcastle, England, focusing his research interests on issues of environmental justice and crime.<sup>105</sup> In this chapter, the authors address the corrective justice dimension of environmental protection by analyzing federal environmental justice policies in the judicial system.<sup>106</sup> The authors focus on claims and their outcomes with respect to Title VI of the Civil Rights Act and the National Environmental Policy Act (NEPA).<sup>107</sup> The authors argue that claims filed under Title VI are few, which suggests, according to the authors, “that the courts have played a very limited role in achieving environmental justice through Title VI.”<sup>108</sup> Again, *Plan EJ 2014* is identified as important for the future of environmental justice, because it seems to unleash a more active role for the EPA in corrective justice issues.<sup>109</sup> As the authors state, the *Plan EJ 2014* Progress Report calls for the EPA to lay “the cornerstones for fully implementing [the EPA’s] mission of ensuring environmental protection for all Americans, regardless of race, color, national origin, income, or education.”<sup>110</sup> Similarly, the authors note, the EPA indicated in 2011 that NEPA would be used much more aggressively during the Obama administration.<sup>111</sup> Gross and Stretesky pose an interesting hypothesis that the NEPA “may [be] a viable basis on which to successfully assert an environmental justice claim,” even though at the time of writing, this had not been tested in any court.<sup>112</sup>

Konisky concludes *Failed Promises* with a restatement of the analyses and findings of each chapter.<sup>113</sup> He also suggests some broad thematic takeaways that may prove useful to policy scientists and analysts, environmental advocates, and interested scholars: (1) EO 12898’s modest impact on federal environmental decision-making demonstrates limited effectiveness of federal administrative action, such as presidential executive orders; (2) the EPA was not given clear policy direction through EO 12898, and has also come up short in developing policy guidance and implementation activities where the EPA does have power and discretion to act; (3) there is a systemic failure on the part of federal and state agencies to coordinate activities in many areas of environmental policy, not just in environmental justice; and (4) there is a lack of strong and consistent leadership in the executive branch and within federal and state

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104. See Elizabeth Gross & Paul Stretesky, *Environmental Justice in the Courts*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT’S RESPONSE TO ENVIRONMENTAL JUSTICE* 205 (David M. Konisky ed., 2015).

105. See *id.*

106. *Id.*

107. *Id.*, see Civil Rights Act of 1964, 42 U.S.C.A. § 2000d (1964), see also National Environmental Policy Act, 42 U.S.C.A. § 4321 (1970).

108. Gross & Stretesky, *supra* note 104, at 208.

109. *Id.* at 209.

110. *Id.*

111. *Id.*

112. *Id.* at 224.

113. See DAVID M. KONISKY, *Federal Environmental Justice Police: Lesson Learned*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT’S RESPONSE TO ENVIRONMENTAL JUSTICE* 234 (2015).

agencies themselves with respect to guiding, implementing and evaluating environmental policy.<sup>114</sup> Finally, Konisky looks to the future, asking, “[i]f the past twenty years have largely been a disappointment, what should we expect in the years and decades to come?”<sup>115</sup> He finds hope in *Plan EJ 2014*, but with the current federal administration, under a president who has stated an intention of eliminating the EPA altogether, this question looms much larger than at the time the book was written.<sup>116</sup>

#### CONCLUSIONS

*Federal Ecosystem Management* delivers on its promise to evaluate the rise and fall of a new paradigm of environmental protection in the United States.<sup>117</sup> The strength of the work lies in its ability to accurately portray the tremendous complexities of managing diverse and ever-changing ecologies and social circumstances, and the difficulties faced by federal agencies undertaking this management task. Taken together, the requirements of federal environmental laws and policy compliance, changing judicial interpretations, and competing interests associated with environmental advocates and those of economic development make the task nearly insurmountable.

A weakness of his treatment is that Skillen tends to belabor certain elements; some portions of the text border on repetitious. For example, the rather lengthy narrative of the history and evolution of public administration in Chapter 2 is likely of limited interest to scholars and researchers of the environment (and is certainly over-viewed in many public administration texts).<sup>118</sup> Arguably, the transformation of public administration is a crucial nexus to the shift to a new paradigm of environmental protection management, but does not warrant the detailed treatment of foundational principles.

*Failed Promises* blazes a new trail in the scholarly examination of environmental justice in the United States and, specifically, the performance of the EPA in implementing Executive Order 12898 and related policies. This focus is the strength of the book, partly because it is a unique, empirical treatment of the impacts of the policy change, but also because it addresses different facets of the policy implementation process, ranging from permitting to judicial interpretation of environmental inequities. It is surely the most comprehensive evaluation of the federal response to principal aspects of environmental justice.

However, the book focuses on the effectiveness of the EPA’s implementation of EO 12898 overshadows the influence the order had on other federal agency implementation efforts and its importance in addressing environmental inequities in U.S. communities. For example, even if symbolic, the increased federal attention to environmental justice concerns generated a potent grassroots, community-driven movement throughout the country. A salient example is the effort by the Army Corps

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114. *Id.*

115. *Id.* at 248.

116. *Id.* at 250.

117. See SKILLEN, *supra* note 1.

118. See *id.* at 52-86.

of Engineers to “green” the Los Angeles River. This local effort, that will promote environmental justice and public health, is a direct result of the guidance provided by EO 12898.<sup>119</sup>

As discussed earlier, both *Federal Ecosystem Management: Its Rise, Fall, and Afterlife* and *Failed Promises: Evaluating the Federal Government’s Response to Environmental Justice* are policy-analytic books, examining two distinct sub-areas of federal environmental policy. While both books illustrate failings of federal policy in their respective areas, the authors express hope that future administrations and agencies will champion ecosystem management and environmental justice principles to better manage our national environment, ensure that the benefits of environmental legislation are equally shared, and that no community is disproportionately burdened by environmental inequities. Furthermore, the authors’ unique and thorough examinations provide a wealth of background and analysis to educate tomorrow’s policy practitioners and scholars while guiding future environmental policy development.

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119. U.S. Army Corps of Engineers Best Practice For Revitalizing L.A. River For All, THE CITY PROJECT, <http://www.cityprojectca.org/los-angeles-river>.