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## BUSH ADMINISTRATION ENVIRONMENTAL POLICY: 18 MONTHS LATER

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Over a year ago I suggested in a talk to the Environmental Law & Property Rights Practice Group that “the Bush Administration . . . has taken more heat on its environmental policies than on any other single issue.” A few months later our world was turned upside down by the terrible events of September 11 and environmental issues, along with most domestic matters, disappeared to the back pages of the newspapers. While most Americans have embraced the Administration’s war on terrorism as evidenced by the President’s continuing high standing in the polls, some environmentalists were quick to express concern that the high profile nature of the war on terrorism would provide cover for an administration bent on dismantling the environmental protections put in place over the last three decades.

Now, a year later, the President’s recently released “Healthy Forests” proposal has ignited a firestorm of dismay and protest from environmentalists who object that the plan is a ruse for putting loggers back to work and lining the pockets of timber companies. There have been similar reactions to the President’s decision not to attend the Johannesburg follow-on to the Kyoto and Rio meetings on the global environment. After the announcement of the Healthy Forests plan, Chris Wood of Trout Unlimited was quoted in the Seattle Times saying “[i]t took 25 years to build this network of environmental laws and protections and, in the span of 10 double-spaced pages, this would undo about half of them relative to public lands.” Mike Anderson of the Wilderness Society is quoted in the same article saying “[i]t’s outrageous; far worse than we expected.”

Anderson’s statement underscores the nature of the now resurfacing debate over the Bush Administration’s approach to environmental and natural resource issues. Environmentalists have expected the worst from the outset. There was never really much room for discussion and compromise. Perhaps that is just the way it is in today’s environmental politics. Each side takes the most extreme position in hopes of ending up somewhere in the reasonable middle. As political strategy this probably makes some sense, but it does little to advance our thinking about how best to solve environmental problems while sustaining the viable economy necessary to that end.

Nor is our thinking advanced by the hyperbole of much environmentalist argument, perhaps best evidenced over the past year by the environmentalist reaction to Bjørn Lomborg’s book *The Skeptical Environmentalist*.<sup>1</sup> If Lomborg makes no other case in his lengthy and heavily referenced book, it is that environmentalists have misrepresented and overstated the realities of environmental problems consistently and often brazenly. A failure to acknowledge the serious limits of environmental science, and a refusal to stand corrected when better knowledge indicates that an environmental problem is not as severe as first believed, combine to deceive the general public and to secure the place of environmental activists in our political hierarchy. That place is firmly in the Democratic Party, mak-

ing it difficult for Republicans who care about the environment to be taken seriously. Even environmentalists with the credentials of Bjørn Lomborg in Sweden, or Randal O’Toole and David Schoenbrod in this country (to name only two), quickly become the Uncle Tom’s of the environmental movement when they suggest that the orthodoxy of mainstream environmental politics is often more about maintaining power than about improving the environment.

The environmentalist response to Lomborg’s book, though disappointing, was to be expected. More surprising has been the response of scientists and some of the leading scientific journals. In a recent article in *Commentary*,<sup>2</sup> David Schoenbrod describes the attack on Lomborg’s book (and, regrettably, on Lomborg) by scientists, noting that “it was the very opposite of the free give-and-take that is supposed to characterize responsible scientific discourse.” Schoenbrod went on to observe that “[i]n choosing to treat *The Skeptical Environmentalist* as an attack on environmental science, Lomborg’s scientific critics inadvertently revealed the degree of their own complicity with the misrepresentations and propagandistic distortions he so skillfully exposed.” Because of this complicity, which exists among many of the scientists who staff the federal bureaucracies responsible for enforcing our environmental laws, the Bush Administration faces an additional hurdle in its effort to bring reason to environmental policy. Environmentalists have long sought the policy high ground by arguing that science, not politics, should govern. To the extent that our environmental laws have embraced this “science rules” approach, and to the extent we have scientists who are willing to compromise their professional calling to their political ends, competing interests are diminished by being nothing more than competing interests.

Of course there is hyperbole on the other side of these environmental debates, and there is an orthodoxy among free market advocates, neither of which is helpful to understanding or to the development of better policies. But there has not been a lot of either coming from the Bush Administration which helps to explain that the more ideological free marketeers have sometimes been as critical of the Administration as have been the environmentalists. As is often said, you must be doing something right if both sides are unhappy.

Of course the Bush Administration has not gotten it right in every case, and no doubt they have been responsive to the political pressure exerted by their supporters. It should not surprise anyone that the Administration has paid less attention to the environmentalist agenda in light of the total lack of political support from those interests and the reality that no amount of catering to the environmentalists will result in tangible support in the 2004 election. When a special interest so clearly allies itself with one party or the other, it finds itself either on the inside or the outside.

But the Administration does deserve credit for challenging some of the unfounded and ill-supported environmen-

tal orthodoxy rooted in extreme caution, uncertain science and a rigid reliance on public ownership or command and control regulation. My comments of more than a year ago noted three early actions that confirmed environmentalists' worst fears about the Bush Administration: arsenic, Kyoto and the appointment of Secretary of Interior Gale Norton.

On arsenic one has to conclude that the Administration erred from a political perspective. Although they were right to suggest that the regulation proposed by the Clinton Administration warranted a second look, the ultimate implementation of something very much like the original proposal left the Administration looking like a fox in the hen house. A more reasonable way to look at it would be that after review we could proceed with better assurance that the arsenic standard makes sense, but that is not the way of environmental politics. Any suggestion that we review an existing or proposed standard with an eye to lowering the standard is viewed as antienvironmental. If aspiring to zero pollution could ever make sense in a world of complex tradeoffs, it might be fair to describe a goal of less than zero pollution as antienvironmental, but that is not a world we will ever live in. The only defensible goal is to achieve optimal pollution; a goal we are more likely to realize if we periodically review our regulatory standards.

On Kyoto, the Administration continues to experience criticism both at home and abroad. In a year's time our understanding of climate change is not much advanced, but that has little to do with the politics of Kyoto. An unusually warm summer in many part of the United States and extreme weather events in Europe carry far more weight in climate change politics than does the fact that the science remains uncertain at best. And it is undeniable that the predicted costs of Kyoto compliance remain staggering in light of competing human needs on the planet. The oft-made argument of some Kyoto opponents that we will do far more good by spending our resources on human health and education, though true, is somewhat disingenuous since incurring expenses as a result of regulatory mandate is a far different matter from agreeing to tax ourselves at the same level of expense to achieve these worthy ends. But it is nonetheless true that when subjected to cost-benefit analysis, the case for Kyoto is not very convincing.

It is interesting to note that much of the criticism of Kyoto has focused on the Administration's failure to go along with the many other nations that have embraced Kyoto – it is a part of the broader objection that the Administration has been unilateralist in its foreign policy. But going along because other nations have signed on, particularly on matters of great national importance, is never a persuasive argument. Of course the United States could sign on to Kyoto with the same intention of noncompliance that many other nations have with respect to most international agreements, but that does not conform to the American way of doing things. As President Bush's recent speech to the United National General Assembly made abundantly clear, international rules that are ignored are irrelevant.

The Administration has also been criticized for its greenhouse gas policy by one of the most respectable of free market think tanks, the Competitive Enterprise Institute. Marlo Lewis of CEI's Environmental Studies Program argues that the

“most pernicious” climate policy is that promulgated by the Bush Administration in its February 14, 2002, modifications of the Department of Energy's Voluntary Reporting of Greenhouse Gases program.<sup>3</sup> Those modifications provide “transferable credits” for voluntary greenhouse gas emission reductions. The theory is that issuance of transferable credits will assure that those who voluntarily cut emissions today will not be disadvantaged in the event of a Kyoto style regulatory regime in the future. On the face of it, it is not surprising that a sort of “thousand points of light” approach combined with a free market environmentalist's tradable emissions credit would appeal to the second Bush Administration. But as Lewis points out, it is an approach that will build a constituency for Kyoto-style regulation since the future value of the credits is dependent on such regulation.

Notwithstanding that the idea was originally proposed by the Clinton-Gore Administration and promoted by the environmentalist Pew Center on Global Climate Change, mainline environmental groups have opposed the voluntary approach as window dressing and another example of the Bush Administration serving as handmaiden to industry. It seems that even when the Administration does their bidding (albeit it, perhaps, unwittingly), environmentalist condemnation will be its reward.

While Secretary Norton was accused, tried and convicted of antienvironmentalism before taking office, her track record warrants better. She has taken seriously Interior's mandate to protect and conserve resources, while also taking seriously its mandate to develop natural resources. The Department of Interior, like the Forest Service, straddles the historic divide between natural resources development and environmental protection. As much as the environmentalists dislike the mining, grazing and water development laws enacted in the past, those laws remain a significant part of Interior's legislative mandate. Secretary Norton has sought to find the elusive balance implicit in these often conflicting mandates of development and protection. She inherited a department that for eight years had pursued a largely environmentalist agenda. Bringing things back into balance, like questioning existing pollution standards, is inevitably viewed as anti-environmental. Although one has to assume that Norton has been subjected to constant pressure from the resource development industries that supported the Bush campaign, she has taken environmental protection seriously in the context of the competing objectives her Department is mandated to pursue.

Illustrative of the management challenges posed by public lands laws born in the 19<sup>th</sup> Century, when settlement and resource development was the point, and modified over the past four decades to reflect modern environmental values is the ongoing controversy over forest fire management. The Clinton Administration would have faced less of a challenge given its pragmatic willingness to find environmental mandates where none existed in the law (e.g. ecosystem management), but for the Bush Administration, with its constituency of rural and resource dependent communities (and one hopes with a higher respect for the rule of law), improved forest fire management policy is both difficult and critical. Fires are clearly an important part of forest ecosystems, but in a world of intermingled forests

and human communities where the communities continue to have some dependence on the wood products of the forests, just letting it burn will not do.

The Administration's Healthy Forests initiative has been criticized from both sides of the environmental political divide. As suggested previously, environmentalists see it as the wolf of renewed timber harvesting in the sheep's clothing of forest protection. Although it is clearly unfair to contend that the Administration's only objective is renewed cutting of timber, the criticism is fair enough from those who cry wolf every time a tree is cut. There is certainly nothing inherently wrong with a policy of zero or very limited timber harvesting on the public lands. There are opportunity costs to not cutting those trees (including environmental costs both here and abroad), but it is a perfectly defensible position if we are prepared to accept those costs.

But the Healthy Forests plan has also been criticized for being ineffective to the extent its objective is to protect human communities and private property. Randal O'Toole of The Thoreau Institute estimates it will take at least 80 years to accomplish the Plan's prescribed treatment (removal of fuels) of the federal forest lands at a cost of \$100 billion.<sup>4</sup> And O'Toole argues that excess fuel in the forests is not even the reason for this summer's fires, which he attributes to drought. Whatever the cause of the forest fires and whatever the best solution, it is not possible to settle on a fire management policy without first knowing what you are trying to accomplish and why. If the forests are no longer to be a source of wood products, perhaps our only reason for fire suppression is the protection of human settlement and private property. In that case, according to O'Toole, the treatment should focus on private lands and the relatively few public forest acres adjacent to those lands.

If O'Toole is right, and there is good reason to believe he is, the Administration should reassess the Healthy Forests initiative. But it can rest assured that there is nothing it can do that will satisfy environmentalists, short of closing down all of the public land forests. As I have indicated above, that might well be a defensible policy depending on the values of the American public, but it is not a policy that can be implemented under the existing public lands laws. It might be tempting to just do it, but that is not the role of the executive in our system of government.

Another issue that surfaced early in the Bush Administration was proposed drilling in the Alaskan National Wildlife Refuge. At that time the "energy crisis" in California gave the issue greater urgency than it has today, even with the many problems in the Middle East. That ANWR has become less of an issue confirms the suggestion in my earlier speech that it has more to do with philosophy than with environmental protection or energy. ANWR, which will no doubt surface again, became a symbol for both sides of the environmental debate. Like the Spotted Owl, Three Mile Island and Love Canal before it, ANWR has come to symbolize the philosophical differences that define our environmental politics. The Administration's judgment about whether or not to press for drilling in ANWR, therefore, should turn not on the energy that would be produced but on its assessment of the broader political debate on

the environment. That is certainly the approach taken by environmentalists. My own sense of the matter is that there are better and bigger fish to fry from the Administration's perspective.

And speaking of fish to fry, the Administration found itself embroiled in the great Sucker Fish controversy in the Klamath River Basin of Oregon last summer. While some human damage was done as a result of cutting off water to farmers (unnecessarily some later studies have suggested), the Administration appears to have found a satisfactory middle ground, except from the perspective of those who would prefer to shut down irrigation permanently. Some anadromous fish runs in other parts of the Northwest have been surprisingly abundant this year, a situation sure to result in increased pressure for the roll back of fish protection measures. It is unlikely that the Administration will make it through its current term without having to face another battle in the salmon wars.

I argued in my speech of last year that a coherent environmental policy should reflect five basic considerations. I reiterate those considerations here along with some brief reflections on how the Bush Administration is doing in satisfying them.

**First, the policy must recognize that zero pollution and other forms of purity are seldom possible or desirable.**

The Administration's approach to pollution in general seems to recognize this fundamental premise. Its early, if ill-advised, review of proposed arsenic standards was rooted in a recognition that some level short of zero is going to be optimal at any point in time. What has been reported as a relaxation of snowmobile emission standards (actually snowmobiles have been unregulated, so the recent EPA proposal sets a lower standard than had been previously proposed, but would impose a higher standard than currently exists) is another illustration of the Administration's recognition that pollution control has its own opportunity costs.

**Second, the policy should be integrated in the sense that individual policy initiatives should contribute to an overall improvement in environmental quality.**

Not only should environmental policy be integrated to provide the most environmental protection possible for any given expenditure, but it should also be integrated with other policy objectives for the same reason. Given the unintended consequences that flow from every regulatory measure, the parochial nature of environmental politics where specific environmental objectives are pursued without regard for these unintended consequences, and the multitude of federal agencies with environmental responsibilities, it is unlikely that this or any administration will accomplish much in the way of integrated environmental policy. But it remains a worth objective if we care about getting the most impact for the dollars we spend.

**Third, environmental policy should be founded upon, but not dictated by, sound science.**

The nature of environmental politics makes this a difficult goal to achieve. So long as political interests on both sides of the debate continue to insist that science can and should displace politics, we will face distortions of fact and the

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corruption of science in the process. The climate change debates illustrate that the problem is not unique to environmentalists. On their side the claim is that climate change is happening and that it is caused by human activity. On the other side the claim is that whatever climate change we are experiencing is the product of natural cycles and not human activity. The hard reality is that the best science can do is offer predictions, not certainties, and that policy makers must then make judgments based on those predictions. In my judgment, the Bush Administration has, on some issues, sought to achieve this necessary separation of science and policy. But they are swimming upstream in a political climate where many people seem to believe that science can trump politics.

**Fourth, environmental policy should be formulated and implemented with the understanding that incentives matter.**

The Administration clearly understands the importance of incentives as evidenced by its effort to use so-called market based approaches in environmental regulations. Its endorsement of the transferable credits in the voluntary greenhouse gas reporting program is well intended and will, if implemented, surely lead to more voluntary reductions (depending on how people assess the likelihood of Kyoto style regulation), but an unintended consequence may be to assure the U.S. ratification of Kyoto or something like it. The message the Administration should take from this example is that proponents of regulation sometimes have political incentives to favor market incentives.

**Finally, environmental policy must set sustainable objectives, which means that the conditions for economic prosperity must continue to exist.**

If there is any theme that runs through Bush Administration environmental policy thus far, it is a recognition of this fundamental truth. It has been said repeatedly, but seems to bear saying again and again, that environmental protection requires economic prosperity. The evidence is everywhere around the globe.

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**Footnotes**

<sup>1</sup>Cambridge University Press (2001)

<sup>2</sup>"The Mau-Mauing of Bjørn Lomborg," 114 *Commentary* 51 (2002)

<sup>3</sup>"If You Build It, They Will Come," CEI *Enviro Wire*, September 13, 2002.

<sup>4</sup>"Administration Plan Will Cost Taxpayers Billions But Will Not Stop Fires," The Thoreau Institute, August 22, 2002.