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SYMPOSIUM

PUBLIC LANDS MANAGEMENT AT THE CROSSROADS: BALANCING INTERESTS IN THE 21ST CENTURY

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<i>Sandra Zellmer</i>	

Professor Zellmer discusses federal tools for protecting the nation's wild lands. First explaining that wild land protection is a necessary component of conservation, she then explores the effectiveness of the Wilderness Act of 1964 in achieving its goal of wild land protection. Following up with a discussion of other mechanisms of wild land protection—including presidential proclamation and agency rulemaking—Professor Zellmer concludes that these executive branch mechanisms, in addition to legislative wilderness designation, are necessary components of a comprehensive federal wild land preservation strategy.

Recreation Wars for Our Natural Resources	1091
<i>Jan G. Laitos and Rachael B. Reiss</i>	

Public land policy initially sought commodity development and then environmental controls over such development. Both policies have largely been supplanted by decisions addressing recreational and preservationist interests in our nation's public lands. The wishes of preservationists, nonmotorized recreationists, and motorized recreationists are competing and conflicting and ultimately are incompatible with each other. Courts and policy makers must determine whether pure preservationists and low-impact recreationists should prevail under a dominant-use regime, or whether motorized recreationists should continue to have an equal right to the use of our lands and resources under a multiple-use regime.

Ride 'Em Cowboy: A Critical Look at BLM's Proposed New Grazing

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Joseph M. Feller

Professor Feller critically analyzes recent proposed amendments to the regulations governing livestock grazing on western public lands managed by the United States Bureau of Land Management (BLM). He finds that the proposed amendments would, in effect, exclude public input from critical decisions affecting important public resources, suspend the implementation of environmental standards, and significantly hamper BLM's ability to manage rangelands in the public interest. Professor Feller's article also discloses the Bush Administration's suppression of a draft environmental impact statement critical of the proposed regulatory amendments.

Traveling in Opposite Directions: Roadless Area Management Under the Clinton and Bush Administrations	1143
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Robert L. Glicksman

One of the most far-reaching of the environmental initiatives taken by the Clinton Administration was the United States Forest Service promulgation of a rule prohibiting most timber harvesting and road construction in the national forests. The rule was controversial from its inception and generated several lawsuits seeking its invalidation. The administration of George W. Bush backed away from the Clinton Roadless Rule as soon as it took office and has since taken preliminary steps to make dramatic changes in the rules that govern roadless area management. Comparing the Clinton and Bush approaches, this Article argues that the attacks on the legality of the Clinton approach were misguided and that the Bush approach to roadless area management promises to sacrifice ecological sustainability and natural resource preservation in order to promote resource extraction and to protect private property rights.

COMMENT

The Healthy Forests Initiative: Unhealthy Policy Choices in Forest and Fire Management.....	1209
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Jesse B. Davis

Mr. Davis examines the Healthy Forests Initiative, a multifaceted plan developed by President George W. Bush aimed at improving forest health and reducing losses of life, private property, and public resources to wildfire. The Comment discusses the natural and political forces that brought the Initiative to life. It then examines in detail the Initiative's substantive legislative and regulatory components, which implicate the protections of such prominent environmental statutes as the National Forest Management Act, the National Environmental Policy Act, and the Endangered Species Act. The Comment argues that from the Initiative's unsound factual premises flow its unwise policy choices. The Comment concludes that the Initiative appears calculated less to improve forest health and community safety than to promote greater timber harvest from public lands.

NOTE

Frankenstein and Pitbull? Transmogrifying the Endangered Species Act and “Fixing” the San Juan–Chama Project After <i>Rio Grande Silvery Minnow v. Keys</i>	1247
<i>Ethan R. Hasenstein</i>	

In 2003, the United States Court of Appeals for the Tenth Circuit held that the U.S. Bureau of Reclamation, the federal agency responsible for irrigation development in the arid and semiarid West, had a duty to suspend water deliveries to private irrigators to protect the endangered Rio Grande Silvery Minnow. The government argued that the Bureau lacked such discretion to reallocate water to instream uses protective of wildlife in light of contractual agreements predating the enactment of the Endangered Species Act. The Note critiques the Tenth Circuit’s ruling in *Rio Grande Silvery Minnow v. Keys*, which substantially relied upon a suite of Ninth Circuit cases interpreting similar reclamation contracts, and the political and judicial response to the case. The Note then discusses the diminishing hegemony of agricultural water use interests as the West becomes increasingly urbanized, and the tense cooperative federalism arrangement between federal water management and traditional state authority to control the use of waters within the state. The crisis in drought-stricken New Mexico, the author contends, brings into clear focus the diverging interests of traditional agricultural water use, expanding urban areas in the semiarid West, and federally protected wildlife species pushed to edge of survival by chronic dewatering and development of their native habitat.

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