



Environmental Report Card

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Reginald Urfangler*

Energy and the Environment: Success in Adverse Conditions

Over the last 30 years, our Nation has made great progress in providing for a better environment and improving public health. In that time, our economy grew 164 percent, population grew 39 percent, and our energy consumption increased 42 percent, yet air pollution from the six major pollutants decreased by 48 percent.

The goals of sound policy are to build upon these environmental success stories by increasing our freedom to make wise decisions about our natural resources. The Bush team is succeeding by building on America's ethic of stewardship and personal responsibility, keeping in mind that opportunities for environmental improvements are not limited to Federal Government actions.

The Bush team has been achieving meaningful results in environmental policy despite stalwart resistance from heavily funded partisan groups. These groups argue that because some administration policies result in baseline pollutant increases, the Bush team is "weakening" environmental regulations. With polls indicating that only seven percent of Americans say they want to "weaken environmental regulations," this creates a condition in which it is extremely difficult to make policy advances that will ensure economic success and stability in the future. Indeed, some high-profile legislative efforts like the Clean Skies Initiative, Arctic drilling, and the 2002 Energy Bill have been stalled for precisely these reasons. But even as those high-profile initiatives attract attention of the liberal media, the Bush team is achieving and surpassing environmental goals using innovative techniques that attract less attention and less negative spin. Using procedural tactics and fiscal leverage the Bush team is effectively bypassing the partisan blockages, cutting out the red tape, and delivering immediate results on the environment.

The purpose of this document is to review the basic blueprint for the Bush team's success, in order that we can replicate these procedures easily at every level of government. By understanding the Bush Administration success, we can ensure increased freedom in the area of natural resource allocation and in the long run will ensure the stability of this country, by securing strength, prosperity and economic health for future generations.

Making Appointments: Hiring The Experts

The first component of the Bush team's success has been to put the right people in charge of our Nation's environmental stewardship. It is imperative that people with hands-on experience are put in charge of the resources they will be responsible for allocating. For example:

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- Former American Forest and Paper Association executive Mark Rey was appointed to determine a course of action for the nation's forests as Undersecretary of Natural Resources and Environment.
- Former mining company lawyer Rebecca Watson was appointed to help increase the utilization of our nations mining claims as the Assistant Secretary for Land and Minerals Management.
- Former environmental lawyer Jeffrey Holmstead, who represented Montrose Chemical, the Alliance for Constructive Air Policy, and the American Farm Bureau Federation in a case against the EPA, was appointed to develop forward-thinking air and radiation policies as the Assistant Administrator in Air and Radiation of the Environmental Protection Agency.

This is just a partial list of the string of wise appointments that demonstrates the administration's commitment to allowing stewardship to be placed in the hands of those who have demonstrated interest in their respective areas. And these appointments have proven fruitful. In the appendix of this paper, you can find a list administration appointments and policy successes.

Making Bold Proposals: Long passes into the end zone

A key to the success of the Bush Team has been to make bold proposals that grab attention and if passed will be wildly successful at promoting private stewardship, economic growth, and stability.

Some of those proposals include:

- The Healthy Forests Initiative
- The Clean Skies Initiative
- The 2002 energy bill

These high-profile proposals have received a great deal of media attention and perhaps as a result have been stalled by partisan agents in congress and the courts, whose interest is to prevent the president from succeeding so that their own special interests can be advanced.

But it is important to understand that despite being stalled, these proposals have not failed. They must be seen as part of the overall game. If this were football, each one of these big proposals would be a long touchdown pass. But there are other ways to score touchdowns. When the opposing team is busy covering your players in the end zone, you can use a running game that they are not prepared for. You can move the ball up the field in tiny increments, yards at a time, moving around defenders or pounding through them little by little until you achieve your goal. The end zone is the same; it is just the method that is different.

Thus with the high-profile efforts at environmental protection attracting the defenders, a far more significant and effective method for achieving the same results has been a series of smaller offensive measures, most of them enacted by the executive branch through the EPA, the Interior Department, and other federal agencies.

These proposals have received little national media attention. Taken as a group, however, these measures may well be a greater long-term success for business than would have any of the more public proposals.

Making Incremental Advances: The Running Game

Roughly, five tactics have been employed to move the environmental agenda forward without having to pass the major new environmental laws all at once.

Those five tactics are: **Rollbacks, Exemptions, Updated Protections, Management Streamlining, and Differentiated Enforcement.**

Rollbacks

The rollbacks—which as of this writing have numbered at more than 200—began on the administration’s first day in office, when Chief of Staff Andrew Card suspended regulations passed in the final days of the Clinton Administration, including rules on sewage discharge, air-conditioner efficiency, and roadless areas, among others.

The air-conditioner standard, which called for a 30 percent reduction in energy use, was eliminated entirely; the sewage discharge rule is still suspended, and the general flow of waste has been further abetted by budget cuts (fiscal leverage). The roadless rule, which halted the building of new roads in one third of the U.S. Forest Service’s holdings, was later reinstated by the Ninth Circuit Court of Appeals—although, like many court decisions made against the administration, this one has had less practical meaning than might be expected because the administration has been successful in its efforts to gut the rule regardless (see “Exemptions,” below).

Air- and water-pollution have been improved across the board. Unable to replace the Clean Air Act because of the partisan blockage, the administration revised the New Source Review section of the act, which controls how industrial facilities and utilities may upgrade their plants. Many consider the New Source Review the heart of the act, and the provision was functionally eliminated by the new language. In a related move by the EPA, mercury is no longer classified as a “hazardous air pollutant” and is now allowed to be treated in the same manner as less toxic forms of smog or soot.

As for water, the administration has successfully weakened a rule requiring the federal government to oversee “non-point” pollution sources, which include runoff from lawns, roads, and parking lots. Although these sources are the leading cause of water pollution, the restriction of freedoms necessary to uphold this rule are unacceptable in America. This was already proven since states proved unwilling or unable to oversee the pollution themselves. Also removed were proscriptions against dumping mine tailings into streams, facilitating projects such as a proposed mine in Martin County, Kentucky, which is slated to fill twenty-six separate valleys with mountaintops, creating hundreds of jobs, and reducing our dependence on foreign oil.

The rules preventing the public from using public lands have successfully been weakened. The Bureau of Land Management has revoked grazing restrictions designed to moderate use of public lands and has set up a more lenient system, which, among other things, gives away public water rights on BLM land and restricts public involvement in the decisions. Logging projects no longer need to sustain “viable” populations of species,

which ensures that any single inconsequential pocket of flora or fauna will not prevent people from making their livelihood.

Restrictions on oil and gas drilling, as well as on mining, have been successfully weakened or dropped. The BLM has relinquished its power to block mines that would cause changes to the environment. The agency has also increased the amount of land a mine can use for waste and has lifted moratoriums on mining in numerous desolate and uninhabited areas, effectively creating jobs and new revenue streams. Not coincidentally, mining and drilling applications have ballooned, creating an economic boom wherever they are applied. In Wyoming's Powder River Basin alone, the BLM has approved 40,000 new wells, the largest natural-gas field ever approved by the department.

All of these "rollbacks" will promote greater freedoms, local autonomy, and economic growth that will contribute to the stability of this country. Together, they have been even more effective than passing any single large bill.

Exemptions

When the administration has had trouble revoking unjust rules or passing legislation, it has been masterful at devising exemptions. These exemptions recognize that if there is a resource that needs to be exploited, sometimes one can pinpoint it in law even when it is impossible for it to pass on a broader level. Even opponents of the Bush Administration have admired their tactics in this regard. Joan Mulhern of the liberal law firm Earthjustice likens the White House to a chess player who, finding himself in a bad position, simply plucks the threatening piece off the board. This brilliant tactic, used with powerful effect in the matter of the roadless rule (in which logging was outlawed in roadless areas), enabled the administration to exempt all of Alaska's National Forests, including the Tongass rainforest, which will ensure a continued supply of wood for economic growth and stability. Furthermore, the administration has announced its intention to let state governors opt out of the roadless rule entirely.

The administration has wisely asked that forest planning be excluded from partisan public review. It has also encouraged the Pentagon to ask Congress to remove its liability for the unnecessary and expensive toxic cleanups at military bases, which will help shore up the military in a very direct manner. In an effort to allow our domestic sources to remain competitive and unhampered by unfair laws, the administration has pressed to exempt fuel-additive manufacturers from liability for groundwater contamination. It has also specifically exempted the oil and gas industries from new EPA rules covering water discharge from construction sites, and exempted factory farms from Clean Water regulation on the condition that the farms write their own pollution-control policies.

Updated protections

Beyond exemptions, the administration has made every effort to allow the development and use of valuable resources, while remaining the first administration in a century not to set any new territory aside. They have successfully stemmed efforts to take more land from the people. More than 6 million acres were removed from wilderness consideration in Utah alone, in a settlement struck between Utah and the BLM. In the same settlement, the BLM renounced its power to study and identify new wilderness areas, halting not only the present but all future removal of these lands from the discretion of the citizenry.

As for the watery places, the administration is working to remove the outer 197 miles of the nation's proprietary 200-mile radius of coastal waters from consideration under the National Environmental Policy Act, which required costly, unnecessary impact studies and public review for development of those areas, greatly hampering the petroleum industry and others. Updating these protections will streamline our ability to develop and exploit the resources in those areas.

The White House has also moved to reinterpret the language of the Clean Water Act, once again allowing the use of "isolated waters," which include countless ponds, streams, and wetlands that have been off limits since the act was passed.

There are many other notable successes, among them- again- in forestry: Forest Service tracts under 250 acres are no longer subject to the stalling of public comment before logging or sale, which means that in the event of a stalled deal the land does not simply remain unused, since it can be sold and used piece by piece.

And the silver lining in all this is with the citizens. Recreational use of the land that has been restricted is finally being lifted. For example, 50,000 acres of the Algodones Dunes in California and Arizona are now open to recreational dune buggies, which will help the town of Glamis boom in ways never before imagined.

Streamlining

The administration frequently streamlines bureaucratic decision making. The net effect, is to ease access to public lands, especially for development interests that can have a long-term bearing on economic stability and national security. The BLM has granted almost universal waivers to "stipulations" formerly attached to gas and oil leases. These stipulations once limited activities that *might* harm wildlife or the environment— pursuits which have *no proven effect* on the environment, such as driving trucks along the beach in Texas's Padre Island National Seashore during turtle nesting season. Streamlining has also meant that the Forest Service is no longer required to mire themselves in the lengthy process of consultation with Fish and Wildlife Service biologists before giving the go-ahead to projects. Such streamlining, combined with the rollbacks, has helped to put through plans for the largest timber sale since the 1930s, with more than 500 million board feet slated to be taken out of the Siskiyou National Forest. As for local claims to roads passing through public lands, the Department of the Interior has issued policy memoranda offering bulk "disclaimers of interest," which may amount to thousands of miles of essentially new roads crisscrossing public lands, which will properly enable the public to make use of our resources.

Differentiated enforcement

In 2002, EPA Director Christine Whitman was wise to announce that polluters involved in lawsuits would be unwise to settle. Her advice has proved sound. The EPA has abandoned dozens of major cases and has filed few significant new actions. As a testament to the success of this policy, the number of criminal cases has declined by 40 percent since the Clinton Administration. Inspections of polluters have declined by 15 percent, and, violation notices overall have dropped 58 percent.

Huge amounts of tax money have been saved by bringing the agency's enforcement staff

to its lowest level ever, and many senior agents have found so little to do given the new climate that they have quit, which is useful in that it avoids the costly process of firings. By February 2003 the administration had cut 200 compliance and enforcement positions, largely through attrition.

Conclusion

The only place where the current administration deserves some criticism on their handling of environmental policy is in the outright gift of tax money to industry players to help them further exploit our vast resources. The huge handouts of tax dollars this administration has made to the energy sector are too numerous to mention in this paper. But they are entirely unnecessary. The administrations success at offering bold proposals, and then playing a running game with Rollbacks, Exemptions, Updated Protections, Management Streamlining, and Differentiated Enforcement are enough to allow the important players to fully exploit our resources without government handouts.

The effects of all these decisions will extend well beyond the term of the present administration, whether it is four years or eight. Not only has Bush administration policy set a landmark precedent for our courts; it also has encouraged companies and individuals to accelerate production in their areas, taking advantage of all that is beautiful around us. Should a future administration attempt to return the government to a regressive and restrictive role, it will face the formidable task of untangling these precedents. It will also have to reverse the exodus of staff, the budget cuts to every agency, and the institutionalization of science that supports a philosophy of liberty.

APPENDIX: PARTIAL LIST OF BUSH ENVIRONMENTAL APPOINTMENTS

Following are some examples of the kind of wise appointments that have been made by the Bush administration.

MARK REY

Undersecretary for Natural Resources and Environment, Department of Agriculture

Mark Rey spent years working for the Forest Industry, having held positions such as Vice President of Forest Resources for the American Forest and Paper Association.

As the administration's top forestry official, Rey has been a key force behind two administration measures benefiting timber companies and workers - the "Healthy Forests" initiative accelerates logging in wildfire-prone areas, and the decision to grant exemptions to the ban on logging in roadless areas of national forests. When successful these measures will allow the harvest of more, bigger trees in areas such as the Tongass National Forest and the Giant Sequoia National Monument.

JAMES L. CONNAUGHTON

Chairman, Council on Environmental Quality

Mr. Connaughton worked for power companies and major electricity users and represented companies fighting unfair Superfund cleanup rules. He co-authored a 1993 law journal article, "Defending Charges of Environmental Crime -- The Growth Industry of the '90s."

As the president's senior environmental adviser, Connaughton has helped develop the White House's position to wisely heed climate change, reduce wasteful spending in the Superfund, and create new air-quality rules.

ALLAN FITZSIMMONS

Wildlands Fuels Coordinator, Department of the Interior

Mr. Fitzsimmons was President of Balanced Resource Solutions (BRS), a consulting firm formed in 1993 and based in Woodbridge VA and he was an Adjunct Scholar at the Center for Market Processes at George Mason University. While at BRS Mr. Fitzsimmons wrote a number of articles that explain how the concept of an "ecosystem" is questionable at best, and therefore not a solid indicator for policy decisions.

As the administrator in charge of the administrations newly created post of Wildlands Fuels coordinator, Fitzsimmons is in charge of implementing the president's Healthy Forests Initiative, which leverages his knowledge to allow proactive forest management that benefits everyone.

REBECCA WATSON

Assistant Secretary for Land and Minerals Management, Department of the Interior

As a lawyer in Montana, Watson represented mining interests including Fidelity Exploration and Production Co, a coalbed methane drilling company active in the Powder River Basin.

As the top official controlling land that contains minerals, Watson has won battles for increased drilling and mining across the country. For example, she was instrumental in passing a badly needed update to the 1872 Mining Law in order that companies can use as much public land as they need to help develop claims.

DAVID BERNHARDT

Director of Congressional and Legislative Affairs, Department of the Interior

As an attorney with Brownstein, Hyatt, and Farber, Bernhardt worked with Congress and federal administrative agencies on behalf of Delta Petroleum Corp., Timet-Titanium Metals Corp., NL Industries (an international chemical company), and the Shaw Group (a maker of piping for oil companies and power plants).

Bernhardt has been one of the administration's point people in the push to promote oil drilling from the Arctic to Wyoming; in 2001, he helped prepare congressional testimony on Arctic drilling for Interior Secretary Gale Norton.

JEFFREY HOLMSTEAD

Assistant Administrator, Air and Radiation, Environmental Protection Agency

From 1993 until his appointment to the EPA, Holmstead worked at the Washington law firm Latham & Watkins, representing the American Farm Bureau Federation in a case against the EPA, as well as Montrose Chemical and the Alliance for Constructive Air Policy.

As the man in charge of our Nation's air and radiation policies, Holmstead is overseeing the administration's overhaul of Clean Air Act rules, which will allow many industrial plants to expand. He has also succeeded in loosening restrictions on nuclear waste matter in order to ensure the success of Yucca Mountain and other nuclear related environmental issues.

MARIANNE L. HORINKO

Acting Administrator, Environmental Protection Agency

Before joining the EPA, Horinko was president of the environmental consulting firm Clay Associates, where she represented industry hazardous waste clients regulated by the EPA.

As the acting Administrator of the EPA, she has overseen the Superfund program, which she has successfully shrunk to a manageable size.

BENNETT RALEY

Assistant Secretary for Water and Science, Department of the Interior

As a lawyer, lobbyist, and property-rights activist in Colorado, Raley represented irrigators, water districts, and property-rights groups. Raley was also a member of the Board of Litigation at Mountain States Legal Foundation, and the Defenders of Property Rights Attorney Network, a Washington-based legal foundation dedicated to defending private property interests against unjust government regulation.

As the Assistant Secretary for Water and Science, Raley has overseen a major shift in water policy, away from cumbersome regulation and toward property owners' rights. In 2002, he allotted water from Oregon's Klamath River to irrigators which recognized the rights of farmers to prosper outweighed the rights of salmon.

PATRICIA LYNN SCARLETT

Assistant Secretary for Policy, Management, and Budget, Department of the Interior

In 1979, Scarlett began working for the libertarian Reason Foundation, becoming its president and CEO in 2001. The Reason Foundation is funded by industry groups such as the American Forest and Paper Association, the American Petroleum Institute, American Plastics Council, Chevron Corporation, Dow Chemical, etc.

As the Assistant Secretary, Scarlett is leading the charge to privatize National Park Service jobs and has led the administration's opposition to making the Gaviota Coast of California into a National Seashore in favor of allowing Vandenberg Air Force Base officials and local agricultural interests to care for the land on their own, as they have successfully done for years.

THOMAS SANSONETTI

Assistant Attorney General for Environment and Natural Resources

As a member of the law firm Holland and Hart, Sansonetti lobbied on behalf of corporate mining interests, including Arch Coal and Peabody Coal. Since 1998, he has been a member of the Federalist Society, a property rights group.

Sansonetti is behind the Department of Justice's decisions to settle a string of lawsuits, giving up the government's legal right to protect millions of acres of wetlands and wilderness.

WILLIAM G. MYERS

Solicitor General, Department of the Interior

Before joining the Bush administration, Myers headed the National Cattlemen's Beef Association and, as a lawyer and lobbyist for the firm Holland & Hart, represented companies including Kennecott Energy and Peabody Coal.

Myers has led the administration's established pattern of settling environmental lawsuits filed by industry. "The biggest disaster now facing ranchers is not nature," Myers said in

a speech before the cattlemen's association, "but a flood of regulations designed to turn the West into little more than a theme park."

In May, Bush nominated Myers to the U.S. Court of Appeals for the 9th Circuit. The nomination is pending at the time of this writing.

MIKE SMITH

Assistant Secretary for Fossil Energy, Department of Energy

Smith operated an independent oil and gas company in Oklahoma, serving on the Oklahoma Independent Petroleum Association's board of directors from 1981 to 1995

Smith is an outspoken advocate of drilling in the Arctic National Wildlife Preserve and has overseen how to best utilize taxpayer dollars to the benefit of industry.