Introduction

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INTRODUCTION

Who would have guessed that the staid, academic *Natural Resources Journal* might get caught on the edge of fast-breaking news? We usually deal with the fixed past or the unknown future, not the protean present. But with the range of articles in this issue we find ourselves on the cusp of change.

For starters, there's George Hoberg's opening essay on the battle over regulations governing planning for Forest Service lands under the 1976 National Forest Management Act (NFMA). Hoberg eloquently describes, analyzes, and criticizes the planning regulations issued late in 2000 in the waning days of the Clinton administration, regulations based on an obscure NFMA statutory provision and a sketchy use of science.

Now in 2004, in the waning days of the first Bush term, a new administration has proposed overhauling the Clinton rules by replacing ecological sustainability as the key to planning for the national forests and by restoring multiple use as the guiding principle. At this writing, early in the summer of 2004, no new final rule has been issued, although it may come any day now. If a new final rule does emerge, the context of Hoberg's discussion will change. However, the underlying issue will remain: the complex relationship between forest science and forest policy and between ambiguous congressional forest statutes and contradictory executive regulations.

The following articles by Reed Benson, Gregory Broderick, and Kevin Regan deal with different aspects of another fast-changing hot topic, the federal Endangered Species Act (ESA). Here too tomorrow's news may alter today's terrain. But like the Hoberg essay, the Benson, Broderick, and Regan articles point to more fundamental problems from interesting and different perspectives.

Benson focuses on the similarities between the federal ESA and state prior appropriation water law at a time when others emphasize their differences. He suggests that the real conflict between the two stems not so much from their radically different goals as from their shared fundamental inflexibility. For his part, Broderick analyzes three intermediate court decisions striking a new judicial balance in the uneasy fit between federal- and state-based resource claims. Intermediate court rulings are always subject to review by higher courts, but Broderick's analysis points to a new direction in ESA judicial construction. Finally, Regan adds a new perspective by turning the federal/state ESA problem on its head and by focusing on state efforts to protect endangered plants and the conflicts that result with federal law. Together these three articles suggest just how quickly, subtly, and fundamentally natural resources law may change.

The balance of the articles in this issue do not so obviously lead the resource parade. Creating attention rather than marking it, Steven Ingram pleads for a brand new twenty-first century commitment to new
principles of international water law in common Mexican and United States governance of the Rio Grande. Denise Forte explains the resurrection of the turn of the twentieth century’s John Wesley Powell in current water policy debates. Jana Milford adds Native American tribes to the mix of quasi-sovereign governments struggling to deal with transboundary air pollution problems. Two student pieces, one dealing with the specifics of pipeline safety, the other canvassing various land use efforts to protect agricultural lands, round out a set of relatively timeless resource articles.

In the meantime, stay tuned for inevitable developments on the forest planning and ESA fronts. The changes will not so much change the articles in this issue as make even more important the new perspectives that each article offers.