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**Whither the West:  
A Call to Action**

*By William Perry Pendley*



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# Whither the West: A Call to Action

By William Perry Pendley

It has been a tough four years. We have been learning what George Bush meant, or maybe more precisely, what the bureaucrats thought he meant, when, during the campaign of 1988, Mr. Bush said, "I am an environmentalist." It has not been a pretty picture.

I worried about the President's campaign promise. I worried even more when I heard his first State of the Union address in which he announced two "environmental policies."

First, he placed off limits to oil and gas exploration and development three areas of the Outer Continental Shelf (OCS)—two offshore California and one offshore Florida. Congress quickly followed suit, adding more areas to the moratorium, so that today there is little of the OCS available—a most unfortunate policy since energy experts believe there is enough oil in the OCS to replace all that we get from the Persian Gulf for the next 25 years.

Second, he announced an aggressive federal land acquisition program to buy land from private landowners, to take it off the tax rolls, and to put it into federal hands. That aggressive land acquisition policy continues today. The budget of the Bureau of Land Management, for buying privately owned lands, went up 200 percent, and the budget for the U.S. Forest Service up 38 percent in fiscal year 1992. (Parenthetically, the government's land-acquisition program received a stinging rebuke from the Inspector General of the Department of the Interior who severely attacked the improper, and often illegal, manner in which that program is being conducted.)

After President Bush's first State of the Union address, I wondered what would happen next. The answer was not long in coming. It happened in Denver, Colorado, an area I now call home.

## The "Environmental President" and His Legacy

For one hundred years, the people of Denver have planned for a water project—a water project they call Two Forks—at the two forks of the South Platte River. Forty local units of government did something unique. They worked together to plan for future water needs. They spent \$47 million to study the project. They agreed to spend \$90 million in mitigation measures to make local environmentalists happy with the project, but that was not enough for the national environmental groups. They went to their friend Bill Reilly, Administrator of the Environmental Protection Agency, and said, "Veto this water project." So he did.

In a bit of irony for us Westerners, he sent an EPA official from Atlanta, Georgia—where they get 80 inches of rainfall a year—to Denver—where we get 13 inches of precipitation annually, mostly in snow—to tell us whether or not we need the water. He decided we did not.

Administrator Reilly has used the Clean Water Act, and the provision in that statute which was adopted to protect the water quality of municipal water supplies, to embark upon an aggressive land management, land use planning program. Not surprisingly for someone who has called for "sustainable growth" and has called property rights a "quaint anachronism," he vetoed water projects from South Carolina to San Diego and from Miami to Massachusetts.

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**The Northern Spotted Owl.** You no doubt have been following in the national media the agony in the Pacific Northwest—in Washington, Oregon and northern California—over the Northern Spotted Owl. Experts from the University of Washington and the University of Oregon predict that 100,000 men and women will lose their jobs; \$100 million in timber revenues will be lost to counties and local government; and Americans will begin spending \$4.3 billion to purchase timber from Russia and New Zealand because we will not be able to harvest trees in the Pacific Northwest.

Recently the Bush Administration adopted a draconian critical habitat plan under which nearly 6 million acres of land in Washington, Oregon, and California will be placed off limits to timber harvesting. That 6 million acres is equivalent to a three-mile swath stretching from Portland, Oregon, to Portland, Maine, all in two and one-third states.

Incredibly, when given the opportunity to grant relief to the timber communities of Oregon, the Bush Administration blinked. In May 1992, the Endangered Species Committee (the so-called “God Squad”) permitted only 13 of 44 Bureau of Land Management timber sales to go forward. This despite the evidence which Mountain States Legal Foundation—representing the Oregon Lands Coalition and its 81,000 members—helped to present that these sales would provide much needed jobs while not posing harm to the Northern Spotted Owl.

As if this weren’t enough trauma for the timber communities of the Pacific Northwest, the Bush Administration—in a misguided attempt to defuse the negative publicity of the U.S. bashing going on at the Earth Summit in Rio—announced it was all but abandoning clear cutting as a harvesting technique. You cannot grow Douglas Fir without clear cutting.

“No Net Loss Of ‘Wetlands.’” President Bush traveled to my home state of Wyoming, stood at the foot of the Grand Teton Mountains and announced a “no net loss of wetlands” policy. While that sounds fine at the stratospheric level at which the President operates—he and his duck-hunting buddies; and I’m for shooting birds—in the bowels of the bureaucracy, where millions of Americans must operate, the “no net loss of wetlands” policy is a major problem. As the *National Law Journal* once reported, under such a policy, even the deserts are “wet.”

I will confess, as a lawyer, that one of the reasons we have such problems with “wetlands” is because of the definitions we lawyers use. We have a joke in the law. Many regard the practice of law as a joke. As a lawyer, I am ethically prohibited from thinking that. Our joke is, “How much water does it take to have a stream in interstate commerce?” If you have a stream in interstate commerce, Congress can pass a law about it and federal bureaucrats can regulate it. Our punch line is, “only so much water as to float the first page of a Supreme Court opinion.” With definitions like that you can see why millions of Americans have a problem with “wetlands” policy, and why, in August 1991, the presidents of all 50 state Farm Bureaus sent a letter to President Bush opposing Bush’s wetlands policy.

Secretary of the Interior Manuel Lujan refused to issue patents or title to oil shale mining claims in Colorado because oil shale is controversial among some on Capitol Hill. Despite the fact that these mining claims are constitutionally protected property rights, and despite the fact that the statute under which the claims were filed and patents sought is still the law of the land, Secretary Lujan refused. He refused until ordered to comply with federal law by the Tenth Circuit Court of Appeals.

**National Parks.** Secretary Lujan attacked the free enterprise system in our national parks seeking to abandon, by regulation, the well thought out statutory scheme of a cooperative effort between the National Park Service and the free enterprise system, a scheme under which park goes benefit. Instead of private businesses, Secretary Lujan’s new policy will lead to govern-

ment-owned and -operated concessions. If you like the service you get from the IRS, you'll love "McLujans."

**Desert Tortoise v. Ravens.** In the deserts of California, Nevada, Utah, and Arizona, there are three million Desert Tortoises, 100,000 of them in captivity. Yet the U.S. government, after careful study, decided that the Desert Tortoise is threatened as a result of raven predation. As the government expressed it in its report, raven predation will lead to the extirpation of the tortoise population. I didn't know what extirpation meant. I had to look it up. It means to pull up, as if by the roots. So I think of extinction as going out with a whimper. Extirpation is going out with a bang.

The government, recognizing the threat to the tortoise population posed by the raven, decided to kill 1,500 ravens. I'm for shooting birds, so I supported that program. However, the Humane Society of the United States did not like that program. It filed a lawsuit saying that the program would be inhumane to the raven. In response, the U.S. government, "to save the cost of litigation," quickly settled the lawsuit after the Humane Society generously allowed the government to kill, not 1,500 ravens, but 56.

The government did not take that deal quickly enough because the Humane Society added another condition. The Humane Society said the government could only kill ravens "it could positively identify as habitually preying on tortoises." That deal the government took.

**Nevada Wilderness Act.** While President Reagan vetoed wilderness legislation for Montana, President Bush signed into law the Nevada Wilderness Act over the objections of Congresswoman Barbara Vucanovich, who represents every county in Nevada except Clark County. There are no wilderness areas in Clark County, unless you count the Las Vegas Strip.

**Rio Summit.** President Bush bowed to the pressure of environmentalists, within and without his Administration, and journeyed to what former Washington State governor Dixy Lee Ray called the "Flat Earth Summit" in Rio de Janeiro. Although Bush was there, no reputable scientists were there given the total absence of scientific data to support the summit's proposals.

Like its predecessor, the Law of the Sea Treaty (LOST), and every other U.S. bashing exercise, the confab in Rio boiled down to the fact that other countries want two things from the U.S.: its technology and its money. To paraphrase a Woody Allen joke, LOST gave the U.S. none of what it wanted at an outrageously high price.

The Earth Summit is a perfect marriage of convenience, between the covetous international bureaucrats who tried to blackmail the U.S. at LOST and the "sky-is-falling" environmental groups. Unsuccessful at extorting money from the U.S. for LOST, international bureaucrats have gone "green," covering their demands for U.S. dollars with a veneer of "Chicken Little" rhetoric from their new allies in the environmental movement.

President Bush obviously forgot Ambassador Jeane Kirkpatrick's testimony that the greatest accomplishment of President Reagan at the United Nations was that the United States finally took off the "Kick Me" sign. Thus President Bush put the "Kick Me" sign back on and went to Rio to be lectured on the evils of capitalism and democracy by that great humanitarian, Fidel Castro.

**Killing Birds to Save Them.** Finally, we have perhaps the most outrageous action by the government on the environmental front. Before the lawsuit over the Exxon *Valdez* was settled, lawyers for the government decided they did not have the evidence to support the damage award which the government wanted to recover from Exxon—in what *The Wall Street Journal* called the "blood sport trashing of Exxon." So the government, in order to prove the total number of birds killed—not just those which washed up on shore—hired a contractor to go to Alaska, kill

several hundred birds on two Alaska wildlife refuges, dip them in oil and throw them into Prince William Sound.

I know this is true. I read it in the *Los Angeles Times*. It is true. Recently, John Turner, Director of the U.S. Fish and Wildlife Service, confessed that his agency did just that. In fact, the General Accounting Office (GAO) was called in to investigate the government's bird killing activities. Remember, these are the same agencies of the U.S. government which fined a mining company \$500,000 for accidentally killing 25 birds in Nevada.

So much for the legacy, thus far, of the Environmental President.

## **This Land is Their Land**

One-third of the nation's land is in the hands of the U.S. government. An overwhelming majority of that land is in the West where the federal government is the dominant landowner. Nearly half the land in Wyoming, Oregon, and California is federally owned. In Nevada and Alaska, more than 85 percent of the land is in federal hands.

These lands, sometimes called public lands, have always been controversial. You read the debates in the U.S. Senate and House of Representatives of 100 years ago and the battles were the same then as they are today—between use and nonuse, development and conservation, progress and preservation.

However, there is a new specter in this country, for, after spending the last 20 years using the West as a laboratory for controlling and limiting growth, environmentalists are attempting to extend these controls and limits to any land. Today in America, any use of any land, public or private, fee or federal, is controversial, is challengeable.

Because of the scope and the reach and the depth and the breadth of "wetlands" policy, any use of any land, anywhere in America can be challenged and stopped, at least temporarily. Because of the scope and the reach and the depth and the breadth of the Endangered Species Act, any use of any land can be challenged and stopped—perhaps permanently.

A few months ago, my home state of Wyoming sponsored a conference in Laramie at the University of Wyoming. A couple of professors, named Popper—a husband and wife team—from Rutgers in New Jersey, came to discuss a program they call the "Buffalo Commons." Their thesis is that mankind was never meant to live on the Great Plains. I was in Pierre, South Dakota, a few weeks ago and this came as a great surprise to all the people there.

The professors believe that, sooner or later, all of the people now living on the Great Plains will be gone and it ought to be sooner. So the professors have proposed that the U.S. government embark upon a program to "deprivatize" 110 counties in nine states in which 400,000 people live. They want to move those people out so that the buffalo can once more roam upon the land. I don't know if Kevin Costner would be there on opening day.

Of course, this is laughable. It is ridiculous. It is ludicrous. It is not going to happen. However, I submit to you that in large parts of America this is happening today, as the cattleman, the rancher, the woolgrower, the miner, the timberman, the water developer, the ski resort operator, the oil and gas explorationist, and all of the little towns and communities that depend upon such activities are being pushed off of the land.

We are locked in a battle for economic survival, for the survival of our most precious rights—the right to own and use property, individual liberty and freedom. Yet we have a consensus, compromise, conciliatory, go along, get along, will-o'-the-wisp, wet-finger-in-the-wind Administration that does not understand the nature of the battle. It does not understand the nature of the beast with which we are engaged and have been engaged for more than 20 years.

