

Imprimis

OVER 2,800,000 READERS MONTHLY

April 2014 · Volume 43, Number 4

Sagebrush Rebellion Redivivus

William Perry Pendley

President, Mountain States Legal Foundation



WILLIAM PERRY PENDLEY is president and chief operating officer of Mountain States Legal Foundation. He received his B.A. and M.A. degrees in economics and political science from George Washington University and his J.D. from the University of Wyoming College of Law. During the Reagan administration, he served as Deputy Assistant Secretary for Energy and Minerals at the Department of the Interior. He is the author of several books, including *War on the West: Government Tyranny on America's Great Frontier* and *Sagebrush Rebel: Reagan's Battle with Environmental Extremists and Why It Matters Today*.

The following is adapted from a speech delivered on April 23, 2014, at a Hillsdale College event in Colorado Springs, Colorado.

For many or maybe even most Americans, reports that a rancher in Clark County, Nevada, was at odds with federal land bureaucrats, that scores of federal lawyers were litigating against him, and that SWAT-garbed and heavily armed federal law-enforcement officers had surrounded his place might have come as a surprise. They might have been even more surprised, in the wake of this standoff—which ended short of deadly escalation thanks in part to negotiations by a local sheriff—to hear that over 50 elected officials from nine Western states had gathered in Utah to discuss a state takeover of a significant portion of federally owned land in the American West. But Westerners—especially rural Westerners who make a living on the federal lands that predominate beyond the hundredth meridian, by logging, mining, ranching, or developing energy resources—were not surprised at all.

What has been most lacking in the reporting on these stories is the background of the disputes. And it should be stated up front, in all fairness, that the Obama administration

is not unique in pursuing policies anathema to Westerners. On that score, it has simply followed the examples of the Carter and Clinton administrations.

In the late 1970s, President Carter’s “War on the West” spawned what came to be known as the Sagebrush Rebellion, which Ronald Reagan embraced during his campaign for president in 1980: “I happen to be one who cheers and supports the Sagebrush Rebellion,” candidate Reagan proclaimed in a speech in Salt Lake City. “Count me in as a rebel.” The uprising was spurred by the fact that, more than any other region, the American West had been victimized by the environmental policies implemented—utterly regardless of their destructive economic and human consequences—during the previous two decades. Reagan had seen firsthand the transformation of the environmental movement from one of conservation and stewardship, in which the part played by human beings and technology was vital, to a movement in which humans and technology were understood to be enemies of nature. As articulated by Reagan, opposition to extreme environmentalism represented a return to true environmentalism. America’s “environment[al] heritage” will not be jeopardized, he promised, while at the same time insisting that “we are going to reaffirm that the economic prosperity of our people is a fundamental part of our environment.”

In terms of the public land issue, Reagan blamed “a tiny minority opposed to economic growth” for locking

up federal lands that hold “probably 70 percent of the potential oil in the United States,” and he vowed to support the use of federal lands to meet America’s energy, economic, and foreign policy needs. As former governor of California, he knew all too well that the federal government owns a third of the land that makes up the United States, the vast majority of this being in the West. Federal holdings include nearly a third of Colorado, Montana, New Mexico, and Washington; roughly half of Arizona, California, Oregon, and Wyoming; and two-thirds or more of Alaska, Idaho, Nevada, and Utah. By comparison, the three non-Western states with the most federal land are New Hampshire at 14 percent, Florida at 13 percent, and Michigan at ten percent.

Some portion of this federally owned land, of course, consists of parks, which are preserved for public recreation.

Other parts are wilderness areas, where motorized activity is barred. But most

of the land controlled by the Bureau of Land Management and the U.S. Forest Service is open, by law, to “multiple use” activities, including cattle grazing, recreation, and energy and mineral development. This is the land where disputes arise over use—and it is in these disputes where the Obama administration has picked up where the Carter and Clinton administrations left off, adopting the no-use policies promoted by environmental groups who view all federal lands as off limits to productive human activity.

A typical way these policies get implemented is for

Imprimis (im-pri-mis),
[Latin]: in the first place

EDITOR

Douglas A. Jeffrey

DEPUTY EDITORS

Matthew D. Bell
Timothy W. Caspar

COPY EDITOR

Monica VanDerWeide

ART DIRECTOR

Angela E. Lashaway

MARKETING DIRECTOR

William Gray

PRODUCTION MANAGER

Lucinda Grimm

CIRCULATION MANAGER

Wanda Oxenger

STAFF ASSISTANTS

Robin Curtis
Kim Ellsworth
Kathy Smith
Mary Jo Von Ewegen

Copyright © 2014 Hillsdale College

The opinions expressed in **Imprimis** are not necessarily the views of Hillsdale College.

Permission to reprint in whole or in part is hereby granted, provided the following credit line is used: “Reprinted by permission from **Imprimis**, a publication of Hillsdale College.”

SUBSCRIPTION FREE UPON REQUEST.

ISSN 0277-8432

Imprimis trademark registered in U.S.
Patent and Trademark Office #1563325.



HILLSDALE COLLEGE

Online Learning

REGISTER NOW, NO CHARGE—online.hillsdale.edu

“Constitution 101: The Meaning and History of the Constitution”

A ten-week course

“Great Books 101: Ancient to Medieval”

An 11-week course



HILLSDALE COLLEGE offers free, not-for-credit, online courses taught by its faculty. In addition to weekly lectures, these courses feature readings, study guides, quizzes, and discussion groups. Those who complete them successfully receive certificates of completion.

For information on upcoming and archived courses, go to online.hillsdale.edu.

environmental interest groups to sue a government agency under either the National Environmental Policy Act (NEPA) or the Endangered Species Act (ESA), and for the agency then to settle the lawsuit in the interest group’s favor. Sometimes—as in a 2008 lawsuit filed against the U.S. Forest Service by three environmental groups to prevent oil, gas, and mineral extraction in Pennsylvania—the government not only settles the lawsuit but also pays the interest groups for their complaints (in that case paying out nearly \$20,000). Just last month, Oklahoma Attorney General Scott Pruitt filed a lawsuit against the Interior Department and the U.S. Fish and Wildlife Service over such “sue and settle” tactics following an ESA lawsuit by a group called Wild Earth Guardians that sought to restrict land use for agriculture, oil and gas drilling, wind farms, and other activities in a five-state area—Oklahoma, Texas, Colorado, New Mexico, and Kansas—inhabited by the lesser prairie

chicken. “These settlements,” Pruitt said in a statement, “impose tougher regulations and shorter timelines than those imposed by Congress,” and thus violate the rule of law. “Oklahoma has indicated its willingness to protect the lesser prairie chicken,” he added, “but it seems increasingly clear this issue isn’t about sound science or saving endangered species.”

Following a recent report by the Government Accountability Office on how NEPA is being used to delay projects on federal lands, Dan Kish of the Institute for Energy Research characterized NEPA’s effect as “paralysis by analysis,” pointing out that “environmental impact statements, which were expected to take no more than 12 months 30 years ago, now take an estimated 4.6 years to complete.” NEPA’s consequences are wide-ranging: Since its passage in 1969, not a single new oil refinery has been built. Following forest fires in the West, as reported by the National Forest Association, “[NEPA]

regulations . . . [delay] harvests of diseased or burned timber indefinitely. As such, usable salvage timber wastefully rots away, resulting in lost government income . . . and economic privation for local communities.” And after Hurricane Katrina devastated New Orleans, it was too little noted that twice—in 1977 and in 1996—plans to build a hurricane barrier and to raise and strengthen the levees were halted by environmentalist NEPA lawsuits.

Today the Keystone XL Pipeline—a decision about which has again been delayed, until late this year at the earliest—is only the most publicized of the promising projects, in terms of both economic prosperity and national defense, which are being delayed and/or prevented by NEPA requirements. For example, rare earth elements are critical to today’s high-tech and transportation industries, telecommunications, military uses, and clean energy technology, and China currently has 95 percent of the world’s supply of these elements—“The Middle East has oil, China has rare earths,” said former Chinese Premier Deng Xiaoping. Despite this, rare earth mines in both Wyoming and California seem to have been put on permanent hold. One company that submitted its operations plan in 2012 has been told that the NEPA process will not be completed, at best, until late 2015.

Executive agencies can also simply implement the extremist environmental agenda on their own. This is how the Obama administration’s “war on coal” is being waged following the failure to pass the president’s “cap and trade” legislation even in the Democrat-controlled Senate. This January, the Environmental Protection Agency (EPA) set limits on how much carbon dioxide new coal-fired power plants are allowed to produce—limits that will require expensive and unproven technology, severely limiting the likelihood of new plants being built. This follows past regulation that will force the retirement of more than 30,000

megawatts of power capacity by the end of 2016. Later this year, the EPA plans to establish limits for already existing power plants, with devastating implications for coal-rich Western states such as Wyoming, which generates more coal annually than the next six coal-producing states combined. Senator Lisa Murkowski of Alaska points out that “89 percent of the coal electricity capacity that is due to go offline [due to regulation] was utilized as backup” to meet demand for energy during the harsh winter that just ended. Not only she and Senator Joe Manchin of West Virginia, but also liberal Democratic Senator Al Franken of Minnesota, have worried that these EPA regulations will threaten the ability of America’s power grid to meet future demand.

According to the Congressional Research Service, from 2009 through 2013, oil and natural gas production on private land was up 61 percent and 33 percent, respectively; on federal lands, by contrast, oil production was down eleven percent and gas production was down 28 percent. This is no mere coincidence. The Monterey/Santos oil field in California is estimated to hold more than twice the oil of the Bakken oil field in North Dakota and the Eagle Ford oil field in west Texas combined, but its development is on hold because federal lands are involved.

Apparently wishing to slow production even further, former Secretary of the Interior Ken Salazar—ignoring that hydraulic fracturing has been regulated successfully by states for 60 years—proposed new fracking regulations that will add \$345 million in annual costs to Western energy development. Regulatory costs as a whole, it should be noted, are at a record high: Wayne Crews of the Competitive Enterprise Institute places the total costs of federal regulations in the U.S. in 2013 as greater than the GDPs of either Canada or Mexico.

Salazar’s successor, Sally Jewell, is not only pressing forward with redundant hydraulic fracturing rules, but is threatening the West with the use

of President Obama’s power, under the Antiquities Act of 1906, to prevent economic activity with massive national-monument designations. This was a tactic of the War on the West that President Clinton raised to an art form—most famously announcing, in a speech set against the backdrop of the Grand Canyon in Arizona, the closure of 1.8 million acres to economic activity, including what might have become the world’s largest high-quality, low-sulfur coal mine in economically hard-pressed southern Utah.

In her most egregious move yet, Jewell signed off on a decision by the EPA to put a million acres of Wyoming land—including the entire town of Riverton, Wyoming, with a population of over 10,000—into the Wind River Indian Reservation, despite the indisputable historical fact that this land was ceded to the U.S. in a 1904 agreement between the United States and the Tribes, and in opposition to a unanimous 1998 U.S. Supreme Court ruling regarding a comparable situation in South Dakota.

It is difficult to exaggerate the quasi-religious zeal with which the War on the West is waged. Two years ago, a video surfaced of a training lecture on regulatory enforcement by the head of the EPA’s Region Six office, which oversees Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. This senior administrator, who was appointed by President Obama in 2009, cited the Roman Empire as the inspiration for his mode of operation: “The Romans used to conquer little villages in the Mediterranean. They’d go into a little Turkish town somewhere, they’d find the first five guys they saw, and they’d crucify them. And then you know that town was really easy to manage for the next few years.” The same year he gave this talk, his office charged in an emergency order that a Fort Worth-based

drilling company had contaminated groundwater in Texas’s Parker County through hydraulic fracturing. A year-and-a-half later the emergency order was withdrawn and the case was dismissed in a federal court, but only after a judge criticized the agency for seeking penalties without first investigating the truth of the charges. A commissioner on the Texas Railroad Commission, which regulates oil and gas drilling in the state, accused EPA’s Region Six office of “fear mongering [and] gross negligence.”

Recently the EPA issued new regulations to redefine “wetlands,” the term of art by which the agency determines the reach of the Clean Water Act. Under these regulations, a Wyoming man named Andy Johnson—a welder who owns an eight-acre farm—has been targeted because he and his wife built a stock pond on their property and brought in brook and brown trout, ducks, and geese. The EPA is threatening civil and criminal penalties—including a \$75,000-a-day fine—because Johnson failed to receive permission for his pond from the Army Corps of Engineers. (His permit from the Wyoming State Engineer’s office is irrelevant, according to the EPA.) So far Johnson has defied an EPA order to hire a consultant to assess the environmental impact of his stock pond and to propose a restoration project to be completed within 60 days of EPA approval. “This goes a lot further than a pond,” he is quoted as saying. “It’s about a person’s rights. I have three little kids. I am not going to roll over and let [the EPA] tell me what I can do on my land.”

It is little wonder that there is talk of another Sagebrush Rebellion like that embraced by Ronald Reagan in the late 1970s. Westerners know they deserve better, and that they and their states can be better stewards of their land than federal bureaucrats. ■



HILLSDALE COLLEGE
PURSUING TRUTH • DEFENDING LIBERTY SINCE 1844

DID YOU KNOW?

Eric Metaxas, bestselling author of several books, including *Bonhoeffer: Pastor, Martyr, Prophet, Spy* and *Amazing Grace: William Wilberforce and the Heroic Campaign to End Slavery*, will be Hillsdale College’s 2014 Commencement speaker.