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# Executive Orders and Presidential Commands: Presidents Riding to the Rescue of the Environment

William H. Rodgers, Jr.\*

## I. INTRODUCTION

No writer is better able to set the mood for a discussion of presidential executive orders on the environment than the talented Wallace Stegner. His writings capture the striking symbolism, tempting opportunism, and momentum-building that mark the higher possibilities of the executive order template.

Presidential executive orders are legal and political documents. They are also uniquely personal utterances of the president and the administration. The right words at the appropriate time can motivate and move the human spirit, and they can link this president and this moment to the strongest of ideas. For, as Stegner reminds us:

The tracing of ideas is a guessing game. We can't tell who first had an idea; we can only tell who first had it influentially, who formulated it in a striking way and left it in some form, poem or equation or picture, that others could stumble upon with a shock of recognition.<sup>1</sup>

Because it is personal to the president, the executive order is capable of rising to the level of the heroic. It is the president who is doing these things and doing them alone. It is the president, to use more of Stegner's words, who is assuming the "mythic figure" of the cowboy, riding off on his own where others fear to tread.<sup>2</sup> Speaking of this fearless cowboy, Stegner once said, "I would obviously like to bury him. But I know I can't. He is a faster gun than I am. He is too attractive to the daydreaming imagination."<sup>3</sup> This mythic figure combines "residual qualities of the heroic," Stegner reminds us, through his "energetic individualism, great physical competence, stoicism, determination, recklessness, endurance, toughness, rebelliousness, [and] resistance to control."<sup>4</sup>

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\* Stimson-Bullitt Professor of Environmental Law, University of Washington. L.L.B., Columbia University, 1965; B.A., Harvard University, 1961. This article is based on a presentation given by the author at the Fifth Annual Stegner Center Symposium, *The Presidency & the Environment: The Twentieth Century and Beyond*, in Salt Lake City, Utah, March 31–April 1, 2000.

<sup>1</sup> Wallace Stegner, *A Capsule History of Conservation*, in *Where the Bluebird Sings to the Lemonade Springs: Living and Writing in the West* 117, 124–25 (Random H. 1992).

<sup>2</sup> Wallace Stegner, *Variations on a Theme by Crèvecoeur*, in *Where the Bluebird Sings to the Lemonade Springs: Living and Writing in the West* 99, 111 (Random H. 1992).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 113.

Being personal and tending to the heroic, the executive order can thus be perceived as accomplishing a great public good. Stegner helps us on this point by describing an evolutionary model of modern environmentalism that is highly sensitive to an inspirational first step:

Nearly every aspect of environmentalism since the founding of the [American Forestry Association in 1875] has demonstrated the same pattern: a charismatic and influential individual who discerns a problem and formulates a public concern; a group that forms itself around him or his ideas and exerts educational pressure on the public and political pressure on Congress; legislation that creates some new kind of reserve . . . national monument, national wildlife sanctuary, or wilderness area; and finally, an increasingly specific body of regulatory law for the protection of what has been set aside.<sup>5</sup>

Presidents do many things, of course, besides issuing executive orders. Dennis Soden identifies "Chief Executive" as only one of five roles any president must play.<sup>6</sup> The other four are "Commander-in-Chief," "Chief Diplomat," "Legislative Leader," and "Opinion/Party Leader."<sup>7</sup> The choice of role the president assumes and the choice of tool always will be situation sensitive.<sup>8</sup> In the waning days of the administration of President Bill Clinton, opportunities for environmental activism were drastically shrunk. The courts were withdrawn and Congress was controlled by the other party. Diplomatic initiatives were out of reach, wars were over. The chief executive was lonely, isolated and on the way out—as options dwindled, the executive order was used on the environmental front with great frequency and spirited creativity.<sup>9</sup>

While resort to the executive order depends upon a variety of political circumstances, students of the presidency have found that chief executives with sympathy for nature will find a way to achieve their desires.<sup>10</sup> As Mark J.W. Bamberger writes, "the Presidents who came to office with deep-seated environmental and conservationist tendencies were able to find ways to express their will, even when faced with seemingly more important economic and military

<sup>5</sup> Stegner, *A Capsule History of Conservation*, *supra* n. 1, at 125.

<sup>6</sup> Dennis L. Soden, *Presidential Roles and Environmental Policy*, in *The Environmental Presidency* 1, 3 (Dennis L. Soden ed., St. U. of N.Y. Press 1999).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

<sup>9</sup> Steve Yozwiak, *2 New Arizona Monuments? Million Acres at Canyon in Babbitt's Plan*, *Ariz. Republic*, A1 (Dec. 13, 1999).

<sup>10</sup> Mark J.W. Bamberger, *The Emerald Thread: An Examination of the Environmental Impact of the American Presidents, Their Administrations, and Their Times, 1901–1945*, at 20 (unpublished Ph.D. dissertation, U. of Mich. 1996) (copy on file with UMI Dissertation Services).

concerns.”<sup>11</sup> At the head of every list of presidents with environmental achievements is Theodore Roosevelt, “who accomplished more in the way of protection for the nation’s wildlife than all the other [presidents] combined.”<sup>12</sup>

This article will explore the pros and cons of the executive order tool. I will then evaluate a number of executive orders that have impacted contemporary environmental policy. I will conclude by offering my nominees for the Ten Most Influential Executive Orders in the annals of environmental law.

## II. ATTRACTIONS AND DISTRACTIONS OF THE EXECUTIVE ORDER

Wallace Stegner has identified several of the advantages of the executive order. They afford the president opportunity for personal expression and decisive response. They reinforce the president’s other responsibilities as opinion leader. They give the president full authority over timing, content, staging, and characterization of the event. They allow him to depict the crisis and to solve it in a single utterance. They enable a president, in an afternoon, to set aside millions of acres of land and thus ascend in the twinkling of an eye to the esteemed heights of a Theodore Roosevelt.<sup>13</sup>

The executive order offers a president a precious reserve of initiation. Across the spectrum of human experience the first move is a distinct advantage. It is the aggressor who can set the tone, and frame the field of conflict.<sup>14</sup> Economists recognize that a strong move by a president can send reverberations through the economy.<sup>15</sup> Game theorists appreciate that the first move can echo throughout a long and elaborate interaction described by the model of Prisoners’ Dilemma.<sup>16</sup>

Public policies typically have their own path dependence, sensitive as they are to starting points, crisis ignitions, and fleeting moments of opportunity. John W. Kingdon describes “the agenda” as “the list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention [to] at any given time.”<sup>17</sup> John B. Bader adds, “Agendas provide the framework for all subsequent

<sup>11</sup> *Id.* at 20.

<sup>12</sup> Paul Russell Cutright, *Theodore Roosevelt: The Making of a Conservationist* 224 (U. of Ill. Press 1985).

<sup>13</sup> Stegner, *A Capsule History of Conservation*, *supra* n. 1, at 124.

<sup>14</sup> Konrad Lorenz, *On Aggression* 285–86 (Marjorie Kerr Wilson trans., Harcourt, Brace & World 1966).

<sup>15</sup> William C. Mitchell & Randy T. Simmons, *Beyond Politics: Markets, Welfare and the Failure of Bureaucracy* xiii (Westview Press 1994).

<sup>16</sup> Robert Axelrod, *The Evolution of Cooperation* 7–8 (Basic Books 1984).

<sup>17</sup> John W. Kingdon, *Agendas, Alternatives, and Public Policies* 3 (Little Brown & Co. 1994).

policy-making discussions. They limit what issues will get the time and energy of policy makers and which concerns will receive financial and legal resources . . . if an issue is not on the agenda, it is simply ignored."<sup>18</sup> These "agendas" emerge from the circumstances of politics, the maneuvers of key participants, and the appearance of triggering events.<sup>19</sup> However, the presidential executive order influences the course of events by introducing an agenda, sharpening it, and advancing it.

Despite its advantages, the executive order also has a well-advertised downside. It is a fragile source of legal power, vulnerable to being swept aside by the next resident of the Oval Office. The half-life of President Jimmy Carter's executive order on the export of hazardous substances was measured in days with the arrival in the White House of Ronald Reagan.<sup>20</sup>

The presidential executive order is forever constrained by legal doubts since presidents cannot make "law" in a traditional sense. This guarantees that any executive order that hits hard at a particular constituency will not only meet resistance, but assures that objections will be framed as an offense to constitutional boundaries. In 1981, Ronald Reagan moved aggressively to implement a policy of regulatory review in Executive Order 12291.<sup>21</sup> He thus unhesitatingly entered the land of constitutional ghosts and shadows that haunt presidential executive orders. He would be reminded of this by a well-known dictum on this topic uttered by the court in *Environmental Defense Fund v. Thomas*:

[T]he use of E.O. 12291 to create delays and to impose substantive changes [in the Environmental Protection Agency (EPA) rules] raises some constitutional concerns. . . . Under E.O. 12291, if used improperly, [the Office of Management & Budget] could withhold approval until the acceptance of certain content in the promulgation of any new EPA regulation, thereby encroaching upon the independence and expertise of EPA. Further, unsuccessful executive lobbying on Capital Hill can still be pursued administratively by delaying the

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<sup>18</sup> John B. Bader, *Taking the Initiative: Leadership Agendas in Congress and the "Contract with America"* 8 (Georgetown U. Press 1996); see Roger W. Cobb & Marc Howard Ross, *Introduction, Cultural Strategies of Agenda Denial: Avoidance, Attack and Redefinition* xi (Roger W. Cobb & Marc Howard Ross eds., U. Press of Kan. 1997).

<sup>19</sup> John B. Bader, *Taking the Initiative* at 23, 110.

<sup>20</sup> Ann M. Burford & John Greenya, *Are You Tough Enough?* 71-72 (McGraw-Hill 1986).

<sup>21</sup> 46 Fed. Reg. 13193 (Feb. 17, 1981); see J. Lon Carlson, John B. Braden & David W. Martin, *Implications of Executive Order 12291 For Discretion in Environmental Regulation*, 12 B.C. Envtl. Aff. L. Rev. 313, 314 (1985); Erik D. Olson, *The Quiet Shift of Power: Office of Management & Budget Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12291*, 4 Va. J. Nat. Res. L. 1 (1984); Mark Seidenfeld, *A Big Picture Approach to Presidential Influence on Agenda Policy-Making*, 80 Iowa L. Rev. 1 (1994).

enactment of regulations beyond the date of the statutory deadline. This is incompatible with the will of Congress and cannot be sustained as a valid exercise of the President's Article 11 powers.<sup>22</sup>

The executive order walks another treacherous path in a search for consensus among executive agencies. President Jimmy Carter experienced the full spectrum of success and failure in this area. His executive order, "Environmental Effects Abroad of Major Federal Actions,"<sup>23</sup> is roundly denounced as a pathetic and unworthy compromise among those within the executive branch;<sup>24</sup> however, his executive order on the National Environmental Policy Act (NEPA) rules for the Council on Environmental Quality (CEQ) is applauded as a creative and durable synthesis of agency opinion.<sup>25</sup>

Another risk of the executive order is that it invites pretense and deception. Often confined to administrative tinkering, its success must be measured by small margins. Barred from the option of enforceable law, it must proclaim the advantage of unenforceable utterance. Saddled with the prospect of a short life, it must project an unwarranted optimism. Suffering from its reputation as a cheapened law, it must gain stature from the most enthusiastic self-deceptions of supporters.<sup>26</sup>

Several of President Clinton's executive order initiatives have been stalked by skepticism that necessarily attends all tentative and unenforceable legal endeavors. Critics of the president's 1996 executive proclamation establishing the Grand Staircase-Escalante National Monument<sup>27</sup> called it a power grab of the most offensive sort. The contrarian view is that it represented a "dumbing down" of the national monument designation.<sup>28</sup> It vested management authority not in the protective hands of the National Park Service but in the accommodating hands of the Bureau of Land Management. It deferred all serious choice to the preparation of a management plan that would appear three years

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<sup>22</sup> *Environmental Defense Fund v. Thomas*, 627 F. Supp. 566, 570 (D.D.C. 1986).

<sup>23</sup> Exec. Or. 12114, 3 C.F.R. 356 (1979).

<sup>24</sup> Francis M. Allegra, *Executive Order 12,114—Environmental Effects Abroad: Does it Really Further the Purpose of NEPA?*, 29 Clev. St. L. Rev. 109, 111 (1981); Therese M. Welsh, Student Author, *Agency Responses to Executive Order 12,114: A Comparison and Implications*, 14 Cornell Intl. L.J. 481, 503 (1981) (identifying "defects in the Order that hinder the furtherance of NEPA's purposes"); Glenn Pincus, Student Author, *The "NEPA Abroad" Controversy: Unresolved by an Executive Order*, 30 Buff. L. Rev. 611, 656 (1981); Sue D. Sheridan, Student Author, *The Extraterritorial Application of NEPA Under Executive Order 12,114*, 13 Vand. J. Transnatl. L. 173, 215 (1980).

<sup>25</sup> William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: The Who's*, 39 Washburn L.J. 1, 24 (1999).

<sup>26</sup> William H. Rodgers, Jr., *The Myth of the Win-Win: Misdiagnosis in the Business of Reassembling Nature*, 42 Ariz. L. Rev. 297 (2000).

<sup>27</sup> Exec. Procl. 6920, 3 C.F.R. 64 (1996).

<sup>28</sup> Interview with Joseph Feller, Prof. of L., Ariz. St. U. College of L. (Feb. 2000).

hence. It honored the regulation of fishing and hunting by the state of Utah. It reserved no water and restricted no grazing. It conceded the supremacy of "valid existing rights," as it must, and thus left to another day the question of the coal mining that was in the minds of many.<sup>29</sup>

A similar and sudden skepticism befell the 1999 Clinton executive order on the protection of roadless areas in the national forests. One account began the deconstruction this way:

It's been billed as the greatest act of land preservation since Teddy Roosevelt created national forests. On October 13 President Clinton made his way, by helicopter and SUV, to the George Washington Forest in the Shenandoah Mountains, where he disclosed his plan to protect 40 million acres of roadless land in national forests across the country. Amid the ecstatic cheers of environmentalists bussed to the site by the National Audubon Society Clinton declared that 'in the end we're going to protect all this,' gesturing as he spoke to the surrounding trees.<sup>30</sup>

Expecting law, the critics saw only this disappointment in the bare bones of an executive order:

Logging won't be banned it seems. Nor will livestock grazing, mining or dirt bikes. Even on its face the plan falls short of protecting all roadless areas. Steve Kelly, a feisty green organizer in Montana, had it right when he said of the plan, 'The president tried to redefine sex, now he's trying to redefine wilderness.' There are around 60 million acres of unexploited forest under federal supervision and Clinton's plan applies to only 40 million of them. More than half the area covered by the Clinton plan is composed of 'rocks and ice,' with no trees.<sup>31</sup>

The downside of the executive order's capacity for decisive declaration is that it offers a clear target for policy critics and a baseline for measuring policy failure. President Franklin Roosevelt's wartime executive order on internment of the Japanese-American population<sup>32</sup> was one of the most sweeping and decisive decrees in the history of the American presidency, affecting thousands of lives in profound ways. It was also one of the most denounced and regretted official acts in U.S. history. When this executive order officially died, in the administration

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<sup>29</sup> Exec. Procl. 6920, 3 C.F.R. at 67.

<sup>30</sup> *Clinton's Sham Plan for Roadless Areas: Saving Forests or Saving Al Gore?*, CounterPunch 5 (Oct. 15-30, 1999).

<sup>31</sup> *Id.*

<sup>32</sup> Exec. Or. 9066, 3 C.F.R. 1092 (1941).

of Gerald Ford, it was banished with a pledge that the United States would never again see an executive order like this one.<sup>33</sup>

There is risk also in the heroic potential and personal stamp inherent in the executive order. Turned in a bad light, heroism looks like cronyism and flamboyance becomes tawdry personal advantage. The cowboy rides close to the outlaw. Richard Nixon would learn this bitter lesson in 1970 with his Executive Order 11523,<sup>34</sup> creating the National Industrial Pollution Control Council in Maurice Stans' Department of Commerce.<sup>35</sup> This was an important introductory move in a series of policy misfortunes that became known as Watergate. This bad lesson was apparently forgotten by June 15, 1990, when President George Bush repeated the pattern with his Council of Competitiveness,<sup>36</sup> chaired by Vice President Dan Quayle, to pursue the same sort of regulatory relief that was the motivation for President Nixon's National Industrial Pollution Control Council.<sup>37</sup>

### III. EXECUTIVE ORDERS AND ENVIRONMENTAL POLICY: THE EXPERIENCE

The frequency with which presidents resort to the environmental executive order confirms the tactical attractiveness of the tool. The editors of the *Environmental Law Reporter*, which began publication in 1970, have reproduced fifty-four of these documents.<sup>38</sup> In the administrations of Franklin Roosevelt, executive orders were issued on environmental topics on no less than 1,147 occasions. The percentages of executive orders dealing with environmental matters in the four Roosevelt administrations were respectively: 31 %, 38%, 22%, and 14%. A total of 1541 executive orders on environmental subjects were issued during the presidential terms spanning from Franklin Roosevelt to William Clinton. Over twenty percent of all executive orders address environmental issues.<sup>39</sup>

The content of these environmental executive orders is too varied to permit a useful summary. However, many of them contain a twist in substantive duty, a useful variation in procedure, or a structural or institutional innovation.

<sup>33</sup> Exec. Procl. 4417, 3 C.F.R. 8, 9 (1976).

<sup>34</sup> Exec. Or. 11523, 35 Fed. Reg. 5993 (Apr. 11, 1970).

<sup>35</sup> W.H. Rodgers, Jr., *The National Industrial Pollution Control Council: Advise or Collude?*, 13 B.C. Indus. & Com. L. Rev. 719 (March 1972).

<sup>36</sup> George Bush, 1990 Pub. Papers II, 1094.

<sup>37</sup> See Frank B. Freidman & Ernie Rosenberg, *Presidential Involvement in Clean Air Act Implementation*, 7 Nat. Res. & Env. 2 28, 30 (Fall 1992); Robert A. Shanley, *Presidential Influence and Environmental Policy* (Greenwood Press 1992).

<sup>38</sup> A personal count.

<sup>39</sup> Jonathan P. West & Glen Sussman, *Implementation of Environmental Policy: The Chief Executive*, in *The Environmental Presidency* 77, 80 (Dennis L. Soden ed., St. U. of N.Y. Press 1999).

Thus, the 1972 Nixon executive order on "Offroad Vehicles" used terms such as "zones of use," "minimize damage to soil," "minimize harassment of wildlife," "shall not be located in officially designated Wilderness Areas or Primitive Areas," and "shall monitor the effects of the use."<sup>40</sup> The 1973 Nixon executive order on "Federal Contracts, Grants or Loans" called for the blacklisting of facility owners convicted of environmental offenses and a consequential withholding of federal financial assistance.<sup>41</sup> The same order encouraged employees to "report promptly" instances of noncompliance.<sup>42</sup> The 1975 Ford executive order on "Animal Damage Control" allowed emergency use of a chemical toxicant with "a secondary poisoning effect" only upon a written finding following consultation with the EPA.<sup>43</sup> The 1977 Carter executive order on "Protection of Wetlands" directed the federal agencies "to minimize the destruction, loss or degradation of wetlands."<sup>44</sup> It required that any grants or leases of federal wetlands contain "appropriate restrictions to the uses of properties by the grantee or purchaser and any other successor."<sup>45</sup> The 1977 Carter executive order on "Floodplain Management" decreed that "the [agencies] shall consider alternatives to avoid adverse effects and incompatible development in the floodplains."<sup>46</sup>

The full-flowering of the executive order as an instrument of environmental policy occurred in contemporary time in the waning days of the Clinton Administration.<sup>47</sup> We witnessed the establishment of a U.S. Coral Reef Task Force<sup>48</sup> and an Invasive Species Council.<sup>49</sup> Another 1999 executive order takes up "Greening the Government Through Efficient Energy Management."<sup>50</sup> It directs the Department of Energy each year to conduct energy and water audits for approximately ten percent of its facilities.<sup>51</sup> It requires annual energy conservation implementation plans from the agencies.<sup>52</sup> It contains several imperatives, including: "shall strive to use electricity from clean, efficient, and

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<sup>40</sup> Exec. Or. 11644, 3 C.F.R. 332, 333-334 (1972).

<sup>41</sup> Exec. Or. 11738, 3 C.F.R. 373, 374-375 (1973).

<sup>42</sup> *Id.*

<sup>43</sup> Exec. Or. 11870, 40 Fed. Reg. 30611, 30611 (July 22, 1975).

<sup>44</sup> Exec. Or. 11990, 3 C.F.R. 121, 121 (1977); see Michael C. Blumm, *The Clinton Wetlands Plan: No Net Gain in Wetlands Protection* 9 J. Land Use & Envtl. L. 203 (1994).

<sup>45</sup> Exec. Or. 11990, 3 C.F.R. at 122.

<sup>46</sup> Exec. Or. 11988, 3 C.F.R. 117, 118 (1977).

<sup>47</sup> Yozwiak, *Ariz. Republic* at A1.

<sup>48</sup> Exec. Or. 13089, 3 C.F.R. 193 (1998).

<sup>49</sup> Exec. Or. 13112, 3 C.F.R. 159 (1999).

<sup>50</sup> Exec. Or. 13123, 3 C.F.R. 180 (1999).

<sup>51</sup> *Id.* at 184.

<sup>52</sup> *Id.* at 182.

renewable energy sources;”<sup>53</sup> and “shall use life cycle cost analysis.”<sup>54</sup> President Clinton even issued an executive order, “Environmental Review of the Trade Agreements,” in November of 1999<sup>55</sup> which coincided with the late, lamented, and much protested meeting of the World Trade Organization in Seattle, Washington. This particular Clinton Executive Order (No. 13141) states that the trade representative, through the Trade Policy Staff Committee, “shall determine whether an environmental review of an agreement or category of agreements is warranted based on such factors as the significance of reasonably foreseeable environmental impacts.”<sup>56</sup> NEPA enthusiasts will recognize this mild advice as being a poor replica of normal NEPA practice. This illustrates that the celebration of any particular executive order on environmental policy should await a closer scrutiny of text and context.

Measuring presidential achievement on a front as ragged and hotly contested as environmental policy is no small matter. Mark J. W. Bamberger, for example, estimates factors such as “environmental disposition” upon entering office and “political stance” while in office.<sup>57</sup> Based on these factors, his ranking of the presidents, in the period spanning the administrations between Theodore Roosevelt and Franklin Roosevelt, places Teddy Roosevelt at the top and Coolidge and Harding at the bottom.<sup>58</sup> Richard Nixon earns his ranking as one of the top environmental presidents primarily by being associated with an important surge in federal environmental legislation.<sup>59</sup>

Lawyers often use frequency of citation as a rough measure of legal influence. The half dozen most frequently cited environmental executive orders looks like this:

MOST FREQUENTLY CITED EXECUTIVE ORDERS<sup>60</sup>

Order	Citations
Executive Order 12291, Reagan, Feb. 17, 1981 (Regulatory Impact Analysis)	65

<sup>53</sup> *Id.* at 186.

<sup>54</sup> *Id.* at 184.

<sup>55</sup> Exec. Or. 13141, 3 C.F.R. 235 (1999).

<sup>56</sup> *Id.* at 235.

<sup>57</sup> Bamberger, *supra* n. 10, at 192–93.

<sup>58</sup> *Id.*

<sup>59</sup> Dennis L. Soden & Brent S. Steel, *Evaluating the Environmental Presidency*, in *The Environmental Presidency* 313, 331 (Dennis L. Soden ed., St. U. of N.Y. Press 1999) (“[T]his was a president who oversaw the development and implementation of most of the environmental policy mechanisms we employ today”).

<sup>60</sup> Search by Peggy Jarrett, Univ. of Wash. (Mar. 15, 2000).

Executive Order 11514, Nixon, Jan. 1, 1970 (NEPA Implementation)	51
Executive Order 11990, Carter, May 24, 1977 (Protection of Wetlands)	41
Executive Order 11644, Nixon, Feb. 8, 1972 (Off-Road Vehicles on Public Lands)	14
Executive Order 12630, Reagan, March 18, 1988, (Constitutionally Protected Property Rights)	10
Executive Order 12898, Clinton, Feb. 11, 1994 (Environmental Justice)	7

What does this ranking scheme tell an experienced observer? It invites the hypothesis that the Reagan executive order on regulatory impact and the Nixon executive order on NEPA had important legal ramifications. It invites attention to the possibility that the Carter executive order on wetlands had influence beyond expectations. It allows a guess that the Clinton executive order on environmental justice might yet have a significant legal trajectory. It certainly does not allow us to say that Reagan was a more effective environmental president than Bush.

Other ranking schemes of presidential "fitness" regarding environmental fitness have measured variables such as laws enacted, initiatives completed, speeches finalized, time devoted, appointments consummated, or goals secured. Environmental achievement is most commonly measured directly by environments saved or indirectly by institutional initiatives enabling improved environmental policies.

#### IV. THE TOP TEN ENVIRONMENTAL EXECUTIVE ORDERS

Using these standards of protected environments and stronger laws, I will propose some nominees for the Environmental Executive Order Hall of Fame:

- March 13, 1903, Theodore Roosevelt launches what will become The National Wildlife Refuge System by setting aside Pelican Island off the Florida Coast in Executive Order 1014,<sup>61</sup>

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<sup>61</sup> Cutright, *supra* n. 12, at 223.

- 1907, Theodore Roosevelt, “with the help of his chief forester, Gifford Pinchot, named twenty-one new national forests totaling sixteen million acres,” before signing the bill that would withdraw his power;<sup>62</sup>
- Jan. 11, 1908, Theodore Roosevelt sets aside as a national monument, The Grand Canyon, Arizona; he would establish eighteen more monuments (under the Antiquities Act of 1906) in the three years remaining in his administration;<sup>63</sup>
- March 21, 1933, Franklin Roosevelt proposes the Civilian Conservation Corps (to employ 250,000 men) who could secure “moral and spiritual value” by working on matters of forestry, prevention of soil erosion, flood control and similar projects;<sup>64</sup>
- July 11, 1934, Franklin Roosevelt issues the Shelterbelt Executive Order<sup>65</sup> to combat soil erosion, prompted by a giant dust storm sweeping eastward from the Great Plains to the Atlantic Ocean;<sup>66</sup>
- March 5, 1970, Richard Nixon issues Executive Order 11514 on the implementation of NEPA and the expansion of the authority of the Council on Environmental Quality;<sup>67</sup>
- 1970, Richard Nixon establishes the Environmental Protection Agency with Reorganization Plan No. 3;<sup>68</sup>
- May 24, 1977, Jimmy Carter issues Executive Order 11991, empowering the CEQ to issue NEPA regulations; these would become a powerful synthesis and extension of NEPA law;<sup>69</sup>
- December 1, 1978, President Carter sets aside approximately 56 million acres of Alaskan land as national monuments and affirms Secretary Andrus’ temporary withdrawal (made two weeks earlier) of

<sup>62</sup> Stegner, *supra* n. 1, at 124.

<sup>63</sup> Cutright, *supra* n. 12, at 225–26.

<sup>64</sup> A.L. Riesch Owen, *Conservation under F.D.R.* 13–14 (Praeger 1983).

<sup>65</sup> *Id.* at 15–16.

<sup>66</sup> *Id.* at 110.

<sup>67</sup> Exec. Or. 11514, 3 C.F.R. 531 (1970).

<sup>68</sup> 1970 U.S.C.C.A.N. 6322.

<sup>69</sup> Exec. Or. 11991, 3 C.F.R. 123, 124 (1977).

approximately 105 million acres from state selection and resource exploitation;<sup>70</sup>

- February 11, 1994, President William Clinton issues Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations;”<sup>71</sup> this is considered an innovative move in a new phase of the environmental movement—the expression of an idea in a striking and influential way.

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<sup>70</sup> Exec. Procl. 4611–4627, 3 C.F.R. 69 (1978).

<sup>71</sup> Exec. Or. 12898, 3 C.F.R. 859 (1994).