

Federalism and Natural Resources Policy

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Outline of Presentation

I. Distinctive Aspects of Natural Resources Federalism

- A. Land use connection
- B. Proprietary control

II. Distinctive Types of Natural Resources Federalism

- A. Place-based collaboration:
Tailoring to a region rather than imposing uniform approach
- B. State favoritism in federal process:
Direct avenue and enhanced weight for participating in federal decision-making
- C. Federal deference to state process:
Federal agency employs state preference adopted pursuant to federal standards

III. Policy Directions

Enlisting state and local interests has been official policy at least since the New Deal, especially in watersheds (basins).

U.S. agencies can pick and choose state/tribal partners who agree with federal preferences

Cooperative conservation in the Bush (II) years

IV. Legal Directions: The Meaning of Savings Clauses

(e.g. 16 U.S.C. 668dd(m), “Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.”)

- A. A taxonomy of savings clauses

B. The interpretation of savings clauses

1) Weak versions: *Riverside Irrig. Dist.*

General policy statement.

Statute does not mean to occupy entire field: preempt just what statute is specific about.

2) Strong versions:

Chevron-type interpretive rule: use savings clause to tilt toward state in interpreting ambiguous language.

Heightened scope of review of record (*Wyoming*).

V. Case Study: Elk Management in the National Elk Refuge

VI. The Future

A. Uniformitarianism vs. catastrophism: present is key to understanding the past, and the past is key to understanding the future vs. challenge of climate change demands entirely new approaches.

B. Beware of optimism about a golden era of good feelings approaching.

C. Money is central: as an inducement for cooperation, as an issue of equity.

D. Is federalism something more than politics?