

# **Celebrating the 800<sup>th</sup> Anniversary of the Charter of the Forest – Why it matters to environmental, energy and resources lawyers.**

**Steven Miano<sup>1</sup>**

2017 marks the 800<sup>th</sup> anniversary of the Charter of the Forest. Celebrations will take place in several cities around the world, most notably at the Lincoln Cathedral north of London, where one of the few surviving original copies of the Charter makes its home, alongside the Magna Carta. Celebrations are also being planned in Washington, D.C. at the Library of Congress. Other celebrations are being planned around the world. Why?

Chances are, many of you don't know much about the Charter of the Forest, its significance, and its historical and enduring relevance to environmental, energy and resources law. The Charter of the Forest (also known as the Carta de Foresta: [http://www.constitution.org/eng/charter\\_forest.html](http://www.constitution.org/eng/charter_forest.html)) is widely considered one of the first laws in the world to regulate the use of natural resources. It did that by extending, for the first time, tangible rights, privileges, and protections regarding the use of the forests in England to the common man. In so doing, the Charter established a basic right to use of public lands and resources, and it established the concept of the commons (here, the forest and its resources). Viewed in the context of current controversies over use of public lands, one might argue that the Charter of the Forest is perhaps more relevant today than it has been in hundreds of years.

## **History of the Charter of the Forest**

From the time of William the Conqueror in the 11<sup>th</sup> century, English Kings reserved increasingly large areas for use as royal forests. They were considered the King's private domain, and there were draconian decrees restricting the use of both the animal and plant life found there. The "royal forests" contained open forested areas as well as grasslands, and even parts of towns. The King relied on the forests for a major part of his income, as food and fuel for his court and military while traveling, and for other purposes, both financial and political. Sovereign control of the forests deeply affected the lives of commoners, who themselves relied on access to woodlands and grasslands for water, food, fuel, grazing, building material, and other things. Violation of the use restrictions was punishable, in some cases, by loss of limbs and even death.

The Charter of the Forest was sealed by Henry III in 1217. Unlike the Magna Carta, which dealt with the rights of barons, the Charter of the Forest addressed the rights of the common man. For the first time, it restricted the amount of land that the King could claim for private use. It set up a council to determine which lands should belong to the King and which, having been arbitrarily taken, would be removed from the King's domain. It also significantly reduced the penalty for unlawful use of any forest still rightfully claimed by the King. It was

---

<sup>1</sup> Steven Miano is a Shareholder at Hanglely Aronchick Segal Pudlin & Schiller in Philadelphia where he heads the firm's environmental practice. He is a former Chair of the ABA Section of Environment, Energy, and Resources.

intended to restore the right of common access to natural resources and curtailed the King's right to arbitrarily determine land use and hence his day-to-day power over commoners.

The Charter of the Forest was originally only intended to reform English law back in the 13<sup>th</sup> century. However, it remained law in England until 1971, making it one of the longest lasting laws in England. It was repealed by the Wild Creatures and Forest Laws Act 1971, which further reduced the royal domain over "wild creatures".

### **Enduring significance of the Charter of the Forest**

Despite its age — 800 years — the Charter of the Forest continues to be a significant and relevant document. It firmly established forest lands and forest resources as commons — allowing their use by all inhabitants. The concept of the commons has played an important role in the United States, particularly during its westward expansion. During westward expansion, the United States government gave portions of the commons (federal lands) to private individuals and entities, including through homesteading and land grants. In addition, and more significantly, it set aside huge swaths of government lands through the creation of national parks assuring long-term use by all citizens. Other federal lands continue to be used by private individuals and entities through grazing rights as well as through timber, mineral, and oil and gas rights. It is these types of uses of the commons that have created considerable political and other tensions in the last several years. These tensions revolve around the proper use and stewardship of the commons and the appropriate role of government in allowing access to public land for private gain.

To be sure, reasonable access to, use of, and sustainable management of, the commons are critically important. Just as important however, is the fact that forests and other commons are essential to solving almost every looming environmental crisis, including desertification, climate disruption, water pollution, loss of biological diversity, erosion, and the availability and purity of freshwater. It is this latter role that makes forests critical for achieving sustainable development goals — both nationally and internationally. Unfortunately, forests and other parts of the commons are under threat from over-exploitation, encroachment by urban areas, unwise land use policies, climate change, and pollution. There is a great tension in the proper protection and sustainable management of them.

The Charter of the Forest was revolutionary in its impact in protecting the lives and livelihoods of English commoners from ever increasing encroachment by the sovereign. As explained, it is widely viewed as one of the first environmental laws and had a deep impact on the development of both the commons and environmental/resource laws in the United States. Given its enduring significance, the 800th anniversary of the Charter of the Forest is indeed an occasion for celebration.