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[SYMPOSIUM]

THE PUBLIC LAND LAW REVIEW COMMISSION: ORIGINS AND GOALS

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On September 19, 1964, the President of the United States signed into law Public Law 88-606[1] which established the Public Land Law Review Commission. The act charges the Commission with making a comprehensive review of the public land laws of the United States and of the rules, regulations, practices, and procedures under which those laws are administered, and recommending to the President and to the Congress any revisions that may be considered necessary.

The Commission, as provided by the act, consists of six members each from the Senate and from the House Committees on Interior and Insular Affairs, and six members appointed by the President of the United States. A nineteenth person, elected by the eighteen appointees, is chairman of the Commission. The writer was honored to be elected chairman of the Commission at its organizational meeting held on July 14, 1965. The chairmanship was a special honor because the writer had sponsored the original bill, H.R. 8070 (introduced in the House of Representatives in 1963), and knew the ideas and work that went into making the Commission a reality.

A thirty-three member advisory council composed of twenty-five members representing various citizen and interest groups, and eight liaison officers appointed by the head of each federal department or agency having an interest in public lands, will advise and counsel the Commission throughout the term of study. Also, the governor of each state has appointed a representative to work closely with the Commission, the advisory council, and the staff.

* Member, U.S. House of Representatives. Chairman, Interior and Insular Affairs Committee; Chairman, Public Land Law Review Commission.

1. 78 Stat. 982 (1964), 43 U.S.C. §§ 1391-1400 (1964).

The act requires the Commission to submit its final report to the President and the Congress not later than December 31, 1968. The Commission will employ a full-time staff of professional personnel to conduct, or to design and supervise studies by consultants or under contract, and to analyze material, including the contract studies, needed by the Commission to carry out the purposes of the law.

The inception of a formal, organized effort to reexamine public land policy is the culmination of more than fifteen years of active concern by both the Congress and the executive branch of the federal government over the adequacy of these laws for meeting current needs of our time. Each year during the decade of the 1950's and into the 1960's, the Congress faced scores of legislative proposals, originating both in the executive department and in the Congress, to clarify policies in one or another of the laws enacted a half-century or more ago, and to enact new policy which would have the effect of nullifying, reversing, or substantially changing the operation of earlier policy.

For example, preservation groups and recreationists claimed that some public land use patterns and economic activities established under long-standing law and administrative practice were in conflict with objectives put forth in response to the needs they saw resulting from growing national affluence and the urbanization of society. There is no doubt that there is a new public fascination with the open, unpeopled, undeveloped, and untraveled rural landscape which, on a shifting scale of social values, would subordinate the economic values to the aesthetic. Should further accommodation take place? If so, to what lengths should it extend?

The open-ended policies enacted into law a half-century and more ago to promote settlement and economic development of the vast and empty public domain lands may not be best suited to the requirements of an industrialized, highly populated society whose land use needs were unpredictable when these laws were first considered wise national policy. Who could foretell the events and circumstances that would take the Nation into the second half of the twentieth century with nearly forty per cent of the original public domain still in federal hands, but almost half of that amount lying in the eleven Western States—about forty-six per cent of the total land area of the Western States?

The law was deficient because it had no provision for adequate consideration of the land requirements of community expansion where the public domain abutted the fringes of cities and towns throughout the Nation, especially in the West.

Policies expressed in the mining laws[2] and in the Mineral Leasing Act[3] have controlled the conditions for developing the mineral resources of the public lands. Are these policies and rules such that they will set the best conditions for mineral discovery and development along with the consideration of other values and uses of the public domain in the future? For example, these laws, and their current administration, may not be sufficiently operable to allow appropriate development of the large oil shale deposits that underlie public domain lands in Colorado, Utah, and Wyoming.

There has been a growing tendency—in some quarters, even active advocacy of the proposition—for the public lands to be administered by federal agencies as though they were purely a business enterprise; maximization or optimization of the Government's income from the sale of land and natural resources products are the primary objectives of management. But the laws under which these lands are administered basically reflect other objectives, although, in some instances, they also reflect a concern for reasonable return to the Government.

Is it good policy—in the best interest of the people as a whole—that the withdrawal and reservation of public domain for a specific public purpose, once accomplished, should be looked upon with such finality that the land and its resources must be considered a perpetual federal holding for that purpose? Should this be the policy despite potential and real needs of possibly larger importance arising at some future date that would warrant a change in that status? These are a few of the considerations and issues which prompt the need for a thorough and comprehensive review, not only of the public land laws as they appear on the statute books, but of the practices and rules founded upon the authorities provided in the laws, and promulgated by the administrative agencies charged with their execution.

In many instances the Congress has, through legislative action, vested in administrative agencies broad discretion in policy-making. This is true not only about the public land laws, but in many areas of federal activity. It is a condition universally sought by the executive, without regard to party affiliation, and not infrequently denied by the Congress. Some theoreticians and practitioners of executive government hold not only for the *desirability* but for the *essentiality* of broad executive power to provide the administrator with suffi-

2. 14 Stat. 86 (1866), 30 U.S.C. § 21 (1964); 16 Stat. 217 (1870), 30 U.S.C. § 35 (1964); 17 Stat. 94 (1872), 30 U.S.C. § 35 (1964).

3. 41 Stat. 437 (1920), 30 U.S.C. §§ 181-263 (1964).

cient flexibility to meet all contingencies in program administration and to achieve efficiency in management.

Regarding public lands and the power to decide the objectives for which they are administered, the writer has contended that Congress gave up much of its control and prerogative by granting too much discretion and flexibility in policy-making and execution to the administrative departments and agencies of the executive branch. For lack of clear guidelines in the law, administrators have taken their own counsel, and the Congress has been forced to rely on the laws of the nineteenth and early twentieth centuries in exercising its oversight and in holding the executive to an accounting. In such circumstances, it is not surprising to have confusion and, at times, bitter disagreement on intent and result.

The problem is taking on crisis proportions. The Nation has reached a point in history where it can no longer postpone an examination of direction and objectives in public land policy. In a fast moving world already beginning the journey toward the infinite horizons of outer space the shrinking natural resources base, of which the public lands are a vital part, takes on new dimensions of import. Decisions and directions chosen today will affect the welfare of the Nation for generations to come.

It is not necessary to seek a totally new foundation for public land policy—a "new conservation" as it were, although the outcome of the Commission studies may well point to the need for a new concept. The basic precepts, developed at the turn of the century and reaffirmed a generation ago, are sound. However, there must be instituted substantial change in their application if the public lands are to contribute their greatest potential to the needs of today and tomorrow.

The Public Land Law Review Commission launches its complex task with a firm dedication to objectivity. Without it there can be achieved no lasting success. There are long, hard days and months of unraveling, digging, fact-gathering, research, analysis, evaluation, weighing, and deliberation ahead before the real purposes and full meaning of the Commission and its objectives can take shape and bear fruit. All who can contribute constructive, unimpassioned thought, and analysis to sharpening the definition of problems and issues, and to seeking an imaginative but reasonable course toward their resolution, are urged and invited to work with the Commission in this worthwhile endeavor.