Summer 1964

Major Conservation and Resources Legislation

Robert Emmet Clark

Recommended Citation
Available at: http://digitalrepository.unm.edu/nrj/vol4/iss3/2

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
LEGISLATIVE NOTES

MAJOR CONSERVATION AND RESOURCES LEGISLATION—The last Congress, we have read too often for citation, had conservation on its agenda—and its conscience too. Action was overdue and welcome despite differing views over the meaning of the term “conservation.” Similar difficulties arise over a precise definition of “natural resources.” And we have been cautioned against joining “conservation” and “natural resources” in the same discussion lest there be a blurring of concepts and thinking.

In this note the term “conservation” refers generally and broadly to the kind of management, enjoyment and development of physical resources—not excluding human beings for purposes of their education, profit, labor and pleasure, including mountain hiking and spelunking—over which the executive and legislative branches of government will continue to express concern and offer leadership during this century.

Government is presently giving more attention to this area of public responsibility than ever before in our history. Even state governments, many of which have been slow to move in the direction of conservation, may be included. However, Congress has cleared a statutory path, particularly during the last session of the 88th Congress which adjourned on October 3, 1964.

The legislation noted here does not in every case represent a belated crash program. Nature and basic research have their own time systems. Presumably we shall continue crash planning our castles in space—or at least design and float the shiny vehicles that will take somebody there. We have also begun to put some better earthwork foundations under these carefully engineered dreams. Perhaps with the exploration of monotonous space we shall take more interest in our variegated homeland. We may soon be able to leave, temporarily, this belt of climate; this old blanket of dust, rock and greenery.

1. See Cline & Barrett, Concepts and Planning in the Use and Conservation of Natural Resources, N.M. Bus., Dec. 1964, p. 1. This article contains many excellent references including the one to Perspectives on Conservation and Henry Jarrett’s Editor’s Introduction where the following appears: “William Howard Taft once [jokingly] remarked that conservation was such an abstruse subject that many people were for it no matter what it meant.”

2. Id. at 2. “It is popular today to identify natural resources with conservation. The two terms, however, are not interchangeable.”
which is our hearth, our granary, and our graveyard. Yet we know that we cannot continue to fray and despoil it.

The first session of the 88th Congress passed Public Law 88-29 which "declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources" and encourages federal-state programs of development. This legislation followed the filing of the Outdoor Recreation Resources Review Commission's Report in January, 1962. The Commission was authorized by the 85th Congress.

The second session of the 88th Congress passed several pieces of major conservation-resources legislation:

\textbf{Water Resources Research Centers}

Public Law 88-379, July 17, 1964, originally Senator Anderson's S. 2, with modifications made in the House, aids basic and applied research in water resources across the whole spectrum of academic disciplines. The Act provides funds to establish one institute, or center, in each state at the Land Grant school, or, in the alternative, at another college or university designated by the state legislature. Under Title II of the Act one million dollars annually for the next nine years are to be provided from which the Secretary of the Interior "may make grants, contracts, matching or other arrangements with educational institutions (other than those establishing institutes under Title I of this act) . . . ."

\textbf{Wilderness Act}

Public Law 88-577, Sept. 3, 1964, provides that specific areas "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness," and also allows compatible land uses in some areas. Within ten years the Secretary of Agriculture must review national forest classifications, and the Secretary of the Interior is required to review portions of the national park and wildlife preservation systems to determine if additional areas can be

\begin{itemize}
\item \textsuperscript{3} 77 Stat. 49 (1963).
\item \textsuperscript{4} Outdoor Recreation Resources Rev. Comm'n, Outdoor Recreation for America: A Report to the President and Congress (1962).
\item \textsuperscript{5} 72 Stat. 238 (1958).
\item \textsuperscript{6} 78 Stat. 329 (1964).
\item \textsuperscript{7} 78 Stat. 890 (1964).
\end{itemize}
designated as wilderness. New mining and mineral leasing activity will be discontinued in these areas after twenty-five years.

**Land and Water Conservation Fund Act of 1965**

This law, Public Law 88-578, Sept. 3, 1964, assists states and federal agencies in meeting present and future outdoor recreation needs. The law had strong bipartisan support in Congress and almost unanimous approval by state governments. The need for such legislation was made clear by the work of the Outdoor Recreation Resources Review Commission. The Act has greater significance than its title would indicate. A new basic policy was established requiring users of federal recreational facilities to contribute part of the cost of such facilities. Primary responsibility for development is lodged in local and state governments with assistance furnished by the federal government in planning and in land acquisition. This policy follows recommendations of the Outdoor Resources Recreation Review Commission.

**Public Land Law Review Commission and Two Related Acts**

This legislation, Public Laws 88-606, 88-607, 88-608, Sep-tember 19, 1964, contemplates a study of public land law, administration, and policy. A non-partisan Commission will be formed composed of eighteen members, six from each body of Congress, and six appointed by the President. These members will elect a chairman as the nineteenth member. An advisory council, liaison personnel from federal agencies, and additional technical personnel and specialists, including representatives of the State Governors, will assist the Commission. Recommendations and a report will be due not later than Dec. 31, 1968. While the work of the Commission is in progress and before its recommendations can be acted upon, policies with respect to interim management, disposal, and sale of public lands are expressed in the two related Acts. This legislation covers some of the same subject matter, essentially, covered in the Wilderness Act, and will require an examination of administrative practices in classifying public lands.

Miscellaneous Acts

Other Acts also involve resources within the scope of the definition given here. The Fire Island Seashore Act, Public Law 88-587, Sept. 11, 1964,\(^{12}\) preserves beaches and dunes as "examples of unspoiled areas of great natural beauty" near metropolitan areas and authorizes the Secretary of Interior to enlarge the area by purchase and exchange. Another example is the Ozark National Scenic Rivers law, Public Law 88-492, August 27, 1964.\(^{13}\) This legislation conserves "unique scenic and other natural values of objects of historic interest" including "free-flowing streams . . . springs and caves." Other legislation which may properly be called conservation-resources legislation covers particular national parks and specific areas, such as Indian lands, or limited resources problems.

These new laws indicate that Congress will probably continue to view "conservation" and "natural resources" proposals through "wise use"\(^{14}\) reading glasses, whether the uses involve mountain grandeur or urban amenities. Wise use now prohibits mechanized transport in some scenic areas although "Nothing in this Act shall prevent within . . . wilderness areas any activity, including prospecting for the purpose of gathering information about mineral or other resources if such activity is . . . compatible . . . ."\(^{15}\) After all, there is a tradition in American life of holding high ideals and looking for high-grade ore too. These "wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation and historical use."\(^{16}\) Wise uses? Of course. The phrase "wise use" is as broad and loose as a circus tent but it has been solidly respectable in government at least since Theodore

\(^{13}\) 78 Stat. 608 (1964).
\(^{14}\) Congressman Wayne N. Aspinall, Chairman of the House Committee on Interior and Insular Affairs referring to his comments in May 1962 at the White House Conference on Conservation: "In summary what I am saying is that Congress will continue to equate conservation with wise use . . . ." 1964 Proceedings, Section of Mineral and Natural Resources Law, American Bar Association, p. 2. President Kennedy defined conservation as "the wise use of our natural environment; . . . the highest form of national thrift—the prevention of waste and despoilment while preserving, improving, and renewing the quality and usefulness of all our resources." Message from the President Relative to our Conservation Program to the House of Representatives, 87th Cong., 2d Sess., H.R. Doc. No. 348, 1 (1962).
\(^{15}\) Wilderness Act, §§ 4(c), (d) (2), 78 Stat. 894 (1964).
\(^{16}\) Wilderness Act, § 4(b), 78 Stat. 893 (1964). (Emphasis added.)
Roosevelt’s White House Conference in 1908. Assuming there is agreement on the noun “use,” the adjective “wise” still may raise questions, because, like so many handy qualifiers in and out of the law, the term is not without color, size and dimension. Wise use for whom? Claims made for wise use, or “maximum wise use” in the “public interest” often sound like transcendental opportunities, but so do “opportunities for solitude” in an area where the earth and its community of life is untrammeled by man, and yet United States legislators have provided these.

Congress obviously intends wise use to be given an empirical, operational and also esthetic meaning that includes the sharing and enjoyment of the renewable and non-renewable bounty and beauty of the earth by all the various “publics,” and in all of their diverse and changing interrelationships. What is clearly not meant is wisdom according to the power-enforced wishes of one group over another as was the case throughout much of the 19th century, when one side could demonstrate its wisdom, and its prudence and spiritual election also, by reference to immutable economic, and other, “laws.” In much of the old and the new conservation and resources legislation, “wise use” means “multiple use.” The continuing function of legislators, other policy makers and technical managers will be to aid in the choices among competing uses all of which may be wise in one sense or another. Congress has now made several basic and far-sighted choices. More are needed and hopefully they will be made soon.

17. President Roosevelt in his opening statement to the Conference divided resources into those that were renewable and those that were not. In referring to the former category he said: “. . . those which cannot only be used in such manner as to leave them undiminished for our children, but can actually be improved by wise use.” Proceedings of a Conference of Governors in the White House, Washington, D.C., May 13-15, 1908, at 8 (1909), quoted in Cline & Barrett, supra note 1, at 2.

18. Congressman Aspinall, op. cit. supra note 14, at 6. His discussion was over reconciling the differences between the Senate and House versions of the Wilderness Act: “I am confident that this will be accomplished before adjournment and that the basic principles of maximum wise use of our natural resources will prevail regardless of any modification in the details . . . .” (Emphasis added.) The bill as modified became P.L. 88-577 on Sept. 3, 1964. See note 7 supra.


nation, continue to plunder hillsides, befoul streams and contami-
nate the air\textsuperscript{22}—even where international action\textsuperscript{23} is required.

ROBERT EMMET CLARK*