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PROBLEMS IN FEDERAL MANAGEMENT OF NATURAL RESOURCES FOR RECREATION*

PHILLIP O. FOSS†

I

FEDERAL INVOLVEMENT IN OUTDOOR RECREATION¹

In 1962, there were some 450 million recreation visits to Government managed, financed, or licensed facilities,² but no agency of the federal government was established to provide outdoor recreation for the American people. The Corps of Engineers of the United States Army was originally concerned with aids to navigation and flood control, but it entertained 127 million visitors in 1962. The Forest Service was established to conserve the forests, but in 1962 it played host to 113 million recreation visitors. The Bureau of Reclamation understood that its primary responsibility was the reclamation of arid lands, but 27 million recreationists floated, fished, and swam in its 191 reservoirs in 1962.³ The Soil Conservation Service and the Agricultural Stabilization and Conservation Service of the Department of Agriculture were created to improve and conserve farm lands and to regulate crop production, but in the process they have helped farmers and ranchers construct 1.7 million storage dams which provide outdoor recreation for uncounted millions each year.

One out of every four men "go fishing." One out of every five is a

* This article draws heavily on my report to the Outdoor Recreation Resources Review Commission (ORRRC Study Report No. 13, *Federal Agencies and Outdoor Recreation*, U.S.G.P.O., 1962).

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1. Outdoor recreation, as the term is used in this paper, is resource-based in that it requires natural resources of significant quantity and quality for the successful accomplishment of the recreation objective. It does *not* include playground activities, organized games, or spectator sports.

2. The figure of 450 million represents the author's estimate of recreational visits to federally-owned, managed, or licensed properties in 1962, plus visits to farm ponds and small watershed reservoirs partially financed with federal funds. This estimate does not include recreational driving on federally-financed highways.

3. Figures quoted for the Corps of Engineers and Forest Service represent the total number of visits. The Bureau of Reclamation figure is for visitor days.

hunter.⁴ Over eight million people own pleasure boats.⁵ A very considerable portion of this hunting, fishing, and boating takes place on federal properties or is directly aided by federal activities.

Recreation visits to federal properties are enormous, but the rate of increase in such visits may be even more significant. Recreation visits to Corps of Engineers reservoirs vaulted from 16 million in 1950 to 106 million in 1960. Visits to national forests jumped from 27 to 93 million during the same period. Other resource-managing agencies experienced similar rapid growth.

Not only is recreational use of federal properties large and rapidly growing, but the rapid rate of growth is expected to continue, and possibly accelerate, in the foreseeable future. This expectation is based on the following general assumptions:

1. If sufficient opportunities are available, present tastes and preferences for outdoor recreation can be expected to continue.
2. Population can be expected to increase.
3. Life expectancy can be expected to increase (with consequent longer periods in a retired status).
4. Leisure time can be expected to increase.
5. Real income can be expected to increase.
6. Urbanization can be expected to increase.
7. Mobility can be expected to increase.
8. The private sector of the economy is not now providing sufficient facilities to satisfy the demand for outdoor recreation; it seems most unlikely that it will be able to do so when the demand doubles and triples as it is expected to do before the end of this century.

None of the agencies mentioned above nor any other federal agency were created to provide public outdoor recreation. Even the National Park Service was not formed to provide recreation in the usual sense, but to preserve unique "natural wonders." Nevertheless, some eighteen federal agencies have become involved in outdoor recreation—some of them on a massive scale. This involvement has come about mainly through our traditional use of public lands and waters for recreation without charge. These traditions reach back to colonial times and have resulted in expectations of continued use and the development of the concept of a public *right* to utilize public lands and waters for recreation. In some instances, these tradition-based

4. Senate Select Comm. on National Water Resources, *Water Resources Activities in the United States*, 86th Cong., 2d Sess. 2 (1960).

5. From remarks of Rep. Chamberlain of Michigan, 86th Cong., 2d Sess., 106 Cong. Rec. 14115 (1960).

rights and expectations have been recognized in law. Thus, recreational use of public domain lands is recognized and guaranteed by the Taylor Grazing Act;⁶ public recreation in National Forests is provided for in the Multiple Use Act;⁷ military reservations are open to hunting and fishing (with exceptions) under the provisions of Public Law 85-337;⁸ the Flood Control Act of 1944⁹ authorized the Corps of Engineers to construct and maintain public recreation facilities in connection with reservoirs; and recreational interests are protected on water impoundments licensed by the Federal Power Commission under an amendment to the Federal Power Act¹⁰ and by provisions of the Fish and Wildlife Coordination Act.¹¹

Other examples of federal involvement in outdoor recreation include: use of National Wildlife Refuges for recreation; commercialized recreation on Indian reservations; operation of the National Parks and National Recreation areas; use of Bureau of Reclamation and Tennessee Valley Authority reservoirs for recreation purposes; financial and other assistance in the construction of 1.7 million farm ponds of varying recreation value; standardization and enforcement of boating regulations by the Coast Guard; construction of navigational improvements, including small boat harbors, under authority of the Fletcher Act;¹² shoreline erosion control activities to restore or maintain beaches; management of migratory birds under provisions of the Migratory Bird Treaty Act;¹³ aid to State governments for hunting and fishing through administration of the Pittman-Robertson Act¹⁴ and the Dingell-Johnson Act;¹⁵ aid to local communities for the acquisition of open space land under provisions of the Housing Act of 1961;¹⁶ conveyance of surplus real property to state and local governments for park and recreation purposes at no cost or at a fraction of market value;¹⁷ aid to the states for highway

6. 48 Stat. 1269 (1934), 43 U.S.C. § 315 (1958).

7. 74 Stat. 215 (1960), 16 U.S.C. §§ 528-31 (Supp. V, 1964).

8. 10 U.S.C. § 2671 (1958).

9. 68 Stat. 1266 (1954), as amended, 16 U.S.C. § 460d (1958).

10. 49 Stat. 842, 845 (1935), as amended, 16 U.S.C. §§ 803, 811 (1958).

11. 48 Stat. 401 (1934), as amended, 16 U.S.C. §§ 661-66 (1958).

12. 47 Stat. 42 (1932), 33 U.S.C. § 541 (1958).

13. 40 Stat. 755 (1918), 16 U.S.C. §§ 703-11 (1958).

14. 50 Stat. 917 (1937), as amended, 16 U.S.C. §§ 669a-i (1958, Supp. V, 1964).

15. 64 Stat. 430 (1950), as amended, 16 U.S.C. §§ 777a-k (1958, Supp. V, 1964).

16. 75 Stat. 149 (1961), 42 U.S.C. § 1460 (Supp. V, 1964).

17. See § 13(h) of the Surplus Property Act of 1944 (58 Stat. 765) which was exempted from repeal by § 602 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), the Act of July 20, 1961 (75 Stat. 211), and the Act of May 19, 1948 (62 Stat. 240).

construction including the Interstate Highway System; and aid to states and local governments in controlling water pollution.¹⁸

II

A NEW FEDERAL BUREAU

In its report of January 31, 1962 the Outdoor Recreation Resources Review Commission recommended the creation of a new federal agency to coordinate and facilitate outdoor recreation activities. President Kennedy expressed his approval of this recommendation in his conservation message to Congress on March 1, 1962. On April 2 of that year, Secretary Udall signed an order establishing a new Bureau of Outdoor Recreation in the Department of Interior.

According to a Department of Interior news release:

Besides administering the current State cooperative services under 1936 legislation and the proposed State assistance program on which legislation will soon be submitted, the new bureau will assist the Secretary in carrying out his Federal outdoor recreation coordinating responsibilities, sponsor and conduct recreation research, conduct recreation resource surveys, develop a nationwide recreation plan, and disseminate outdoor recreation information.¹⁹

Congress recognized and sanctioned the creation of the new Bureau by passing S. 20 which the President signed on May 28, 1963.²⁰

III

RECREATION AS RESIDUAL USE

Recreation traditionally has the last claim on resources. The vacant lot may be used as a playground. Lands unsuitable for farming may be left to provide habitat for wildlife. Recreation is customarily permitted on water projects as long as it does not interfere with the "primary" purposes of the project. This traditional relegation of recreation to residual use of resources is at variance with the facts of recreation demand. By their purchases of millions of hunting and

18. Federal Water Pollution Control Act Amendments of 1961, 75 Stat. 204, 33 U.S.C. § 466 (Supp. V, 1964).

19. U.S. Dep't of the Interior, Office of the Secretary, News Release of April 2, 1962.

20. 77 Stat. 49 (1963), 16 U.S.C. §§ 4601 (Supp. V, 1964).

fishing licenses and the expenditure of additional millions of dollars for sporting goods, plus the tremendous number of visits to recreation areas, Americans have indicated that outdoor recreation is high on the list of both time and expendable income priorities. This ambivalent attitude may be explained, in part, by a recognition that Americans expect recreational use of resources to be "free" plus the fact that some other expenditures for outdoor recreation become personal property. The gun or boat becomes a personal possession. Even a hunting or fishing license tends to be considered as a possession. A big game hunter sees nothing inconsistent in the expenditure of several hundred dollars for equipment and transportation and the expectation of using the resource "for free."

If it is almost universally assumed that natural resources can, or should, be used for recreation without charge, then recreational use of resources has little or no market value. If recreation has little market value it will obviously have a low priority in the allocation of the uses of a resource—even though demand may be high.

In addition to these factors, productive work (in the Puritan tradition) has high status, while recreation is still looked upon by many people as frivolous and possibly sinful. It seems likely that many of the recreationists themselves have guilt feelings about engaging in their particular sport. The common use of the phrase "sneaked off to go fishing" is not accidental.

The presence of these conflicting attitudes is at the root of many problems in outdoor recreation. Among other effects, the expectation of free use of resources for recreation prevents the operation of the market system and throws much of the recreational demand on to government-owned resources. This same factor, however, tends to limit government expenditures for recreation especially when coupled with the feeling that recreation is really not quite a legitimate activity for adults.

IV

SEGMENTAL DECISION-MAKING²¹

Until the creation of the Bureau of Outdoor Recreation in 1962, there was no single agency of the federal government that had a primary interest in recreation. Each of the agencies mentioned ear-

21. Subtopic title from Caldwell, *Environment: A New Focus for Public Policy*, 23 *Pub. Admin. Rev.* 132, 136 (1963).

lier, plus some others, made decisions on recreational matters with little attention to the activities of the other agencies and sometimes in direct opposition to the work of other agencies. Thus, efforts to aid agriculture through increased use of chemical pesticides had adverse effects on recreation because of injuries to fish and wildlife. Furthermore, decisions on recreation were ordinarily incident to, or the consequence of, other decisions in the agency's primary field of interest.

Congress has not provided policy leadership in recreation (except in a few crisis situations) and probably cannot do so because of the congressional committee structure. Each of the agencies previously mentioned tends to have a counterpart congressional committee which generally has similar views and interests. Ordinarily the committee constitutes "the congress" in its policy area except for highly publicized issues of national interest. Furthermore, congressmen, legislators, and politicians generally prefer to abstain from "settling" issues in which there are conflicting interests. According to Mills and Davis:

Politicians are happiest when they have worked out a situation that 'leaves them all laughing.' The quest is for a position to which all can repair without loss of face or impairment of vital interest. Only when it is absolutely unavoidable will the practitioner calculate gains and losses and make a clear choice between the contestants.²²

The structurally-created myopia of Congress is duplicated (although probably to a lesser degree) in state legislatures, which tend to make decisions on outdoor recreation in the same segmented fashion. Add to this the common lack of attention to the recreation policies of other states (or competition with them), and some of the reasons for past incoherence and confusion in recreation policy become evident. In the words of Lynton K. Caldwell:

Whatever content is ascribed to the adjective 'good,' it becomes daily more evident that public administration of the environment will not be 'good' if it fails to deal with environmental problems in comprehensive terms.

* * * *

For it does not follow that if the lesser jobs are pursued with diligence, the greater ones will take care of themselves.²³

22. W.E. Mills & H.R. Davis, *Small City Government* 16-17 (Random House 1962).

23. Caldwell, *supra* note 21, at 138-39.

V

"THIS THING IS ROLLING OVER US."

The chance remark of a harassed official, "this thing is rolling over us," epitomizes the feelings of many agency personnel who are faced with the problems created by the millions of recreationists who surge over federal lands and waters each year. Not only are the numbers large, but the rapid rate of increase puts the resource managing agencies on a treadmill where they must run increasingly faster to stay in the same place. All responsible predictions to date indicate a continuation of the growth experienced since World War II. According to Joseph L. Fisher, President of Resources for the Future, "it seems perfectly clear that the demand for outdoor recreation forty years hence may increase as much as five or ten times over what it is now."²⁴

At the same time that recreation demands are increasing at a spectacular rate, the resource base available is decreasing. The needs of an expanding population coupled with advances in technology have accelerated the exploitation of lands for suburban developments, highways, parking lots, industrial sites, and other purposes. Drainage, navigation improvements, and pollution may be reducing recreation water resources at an even more rapid rate.

In the words of Secretary of Agriculture Freeman:

As the income, leisure time, and mobility of the average American increases, we can expect the recreational needs of these people to increase at a substantially faster rate. We must be prepared to meet this need for outdoor enjoyment or pay the price of neglect in terms of outdoor slums and the long-range social consequences where leisure outlets are frustrated.²⁵

VI

LACK OF ACCESS TO RESOURCES WITH
RECREATION POTENTIAL

It is not considered necessary to defend the concept that the public has right of access to resources created with public funds or to

24. Fisher, *Resource Policies and Administration for the Future*, 21 Pub. Admin. Rev. 76 (1961).

25. Remarks of Orville L. Freeman to the National Association of Television and Radio Farm Directors, July 10, 1961.

the property which it owns. Neither is it thought necessary to defend the idea that the public is entitled to capture the incremental values created by public expenditure on adjacent properties. There can be little argument on these basic principles.

Public access does not automatically come about, however, by the removal of prohibitions against public use. Public access can be assured only when positive measures are taken to facilitate access. In reality, the public does not have access to public recreation resources unless sufficient access roads, parking spaces, camping areas, water, and sanitary facilities are provided. Using this criterion, some federal agencies do not now provide adequate public access to recreation resources owned or created by the public.

Water projects completed by the Corps of Engineers and the Bureau of Reclamation before the outdoor recreation boom ordinarily did not contemplate the present demand for recreation and consequently did not provide for access roads, parking, and the other facilities which would be considered necessary today. The construction of such facilities now would ordinarily require a specific appropriation.

Unlike the Corps of Engineers, the Bureau of Reclamation does not have authority to consider recreation values as either a primary or secondary purpose of water development projects unless specifically authorized in particular reclamation acts. Aside from these specific authorizations, any recreation resources created by Bureau water impoundments are therefore coincidental. Unless some other governmental unit assumes the responsibility for recreational development and improved access, the resource remains undeveloped and access remains limited.

From 1953 to 1962, both the Corps of Engineers and the Bureau of Reclamation acquired lands adjacent to reservoirs in accordance with the joint Army-Interior land acquisition agreement of October 12, 1953. This joint policy agreement restricted acquisition of lands to a 300-foot strip (or five-year flood frequency line) around reservoirs. Lands which had already been acquired were to be sold down to the 300-foot line. This restrictive policy not only complicated the process of land acquisition and increased the cost of lands acquired, but it failed to provide sufficient area for recreational development, unless such development was undertaken by private developers, who might thereby gain windfall profits as a consequence of the expenditure of public funds for the water project.

Selling off irregular patches of land down to the 300-foot strip

around reservoirs constituted almost as much of a problem as buying land within these rigid limits.

The Army-Interior land acquisition policy of 1953 was studied by the House Committee on Government Operations in the 85th Congress. In its report the Committee concluded that :

5. . . . The joint policy has a detrimental effect upon conservation and public recreation, and so markedly reduces the ability of the Corps of Engineers to make fully available to the public the conservation and recreation values of the project areas. . . .

6. . . . the net effect of the joint policy is to reduce total revenues to the States and local governments and to make it more expensive, if not impossible, for States and local agencies to provide recreation and wildlife facilities because of lack of reasonably priced reservoirs lands.²⁶

A new joint policy on reservoir land acquisition was adopted by the Interior and Army Departments on February 23, 1962. The new policy provided that both departments would henceforth seek to acquire land in fee title for public access; to meet present and future requirements for fish and wildlife; and to meet present and future requirements for outdoor recreation generally.²⁷

While the new policy provides for more adequate access and recreational use of reservoirs constructed after the agreement, it does not correct the mistakes made in land acquisition during the period 1953-1962. Furthermore, the Bureau of Reclamation still does not have general authority to consider recreation as a project purpose so implementation of the new policy must be on a project-by-project basis.

Water impoundments constructed by investor-owned utility companies are not public waters in the usual sense but under the terms of the Federal Power Act²⁸ recreation interests must be considered by the Federal Power Commission in the licensing process. However, FPC Regulations²⁹ stipulate that the area of hydroelectric projects shall not extend more than 200 horizontal feet beyond the high water line of reservoirs. Obviously, a 200-foot strip around

26. House Comm. on Government Operations, *Army-Interior Reservoir Land Acquisition Policy*, H.R. Rep. No. 1185, 85th Cong., 1st Sess. 3-4 (1957).

27. U.S. Dep't of the Interior, Office of the Secretary, News Release of February 23, 1962.

28. 49 Stat. 842, 845 (1935), as amended, 16 U.S.C. §§ 803, 811 (1958).

29. FPC Regs. § 4.41.

the reservoir's edge does not allow full realization of the recreation potential created by the reservoir. Section 4.41 of the Regulations was amended June 1, 1963, to require the licensee to submit a recreational plan for each project to "include provisions for sanitary facilities, boat-launching ramps and access roads and trails,"³⁰ but the 200-foot acquisition limit still remains in effect.

In many cases, access to public waters (lakes, rivers, and ocean beaches) is made difficult or almost impossible by private ownership of abutting properties. This problem will become increasingly serious as demands for recreation surge upward. If public access is enforced through eminent domain proceedings or similar action, a second problem may be created in that all abutting property owners, rather than just the owners of the condemned property, may suffer losses.

As previously noted, actual access is dependent in large part on the existence of roads and parking spaces. If the anticipated future demand for outdoor recreation is to be satisfied, it will be necessary to construct additional, or improved, roads and parking lots around most of the existing federal water projects and also in the national forests, public domain, and possibly in some national parks.

Many properties owned, managed, or licensed by the federal government are legally open to the public. However, it must be recognized that "right of access," without adequate facilities and means of access, is a meaningless term.

VII

HIGHWAYS AND FREIGHTWAYS

Most outdoor recreation requires travel, and most of this travel is presently by private automobile. Over ninety-five per cent of the visitors of Yellowstone, Glacier, Grand Canyon, and Great Smoky Mountains National Parks come by private automobile. The tremendous rise in the use of federally-owned recreation resources during the past few years has been made possible because of their accessibility via the public road system. Conversely, there remain many areas of great recreation potential which are used very little because of lack of adequate roads. The relationship is so close that

30. FPC, Docket No. R-233, Order No. 260-A, amending, § 4.41 of Regs. under the Federal Power Act.

by widening and improving roads we have, in some instances, exchanged congested roads for congested recreation sites.

In considering the relationship of roads to recreation, we ordinarily think of roads as being only a means to an end. We tend to assume that recreation benefits do not begin until the site is reached and that time in transit is lost time or an unpleasant interlude to be endured in reaching the recreation area. All too often this may be true but, for many people, the "trip" may provide as much enjoyment as the visit to the recreation site. Furthermore, much highway travel is of the pleasure variety with no particular destination. The highways themselves thus do, or could, provide a most valuable recreation resource. This last becomes especially significant when we consider that streets and highways occupy 22 million acres of land—more than the entire area of the State of Maine. If multiple use is a valid concept for other lands, could it not also apply to road-lands?

Some other uses of highways (besides providing a roadbed for vehicles) might include changes in routing and design to maximize the scenic values of the route; the consideration of wildlife values in planning route and construction; the establishment of more attractive roadside rest areas; the establishment of camp grounds at points easily accessible to main highways; and better control of outdoor advertising to improve both safety and scenic values.

As presently constructed, highways are designed to move freight—not people. There would be little change in route, design, or amenities if only truckers used the highways. This is not to suggest that highway planners have been unduly influenced by the trucking industry but simply to point out that highway engineers tend to think in terms of vehicles rather than people. Considering the increasing number of long passenger trips and the large amount of passenger traffic (including the high percentage of recreation travel), it is time for a reorientation in highway design and planning in recognition of the fact that the principal function of highways is to move people—not freight.

VIII WILDERNESS

Few questions on resource use have raised as much controversy as has the issue of preservation of wilderness areas. "Wilderness type" lands within the National Parks are already withdrawn and re-

served so they are ordinarily not included in proposals to preserve wilderness. Some areas of the public domain, especially in Alaska, fit the wilderness category and there has been some considerable dispute over proposals to withdraw portions of these lands for various purposes which would have the effect of preserving them in their "natural" state. Some 19 million acres have been withdrawn in Alaska for wildlife ranges and refuges. However, most of the controversy in recent years has centered around wilderness areas in the National Forests.

National Forest wilderness areas were formerly designated by the Secretary of Agriculture or (for smaller units) by the Chief of the Forest Service.

Hunting and fishing (subject to state laws) was permitted in wilderness areas as was prospecting and mining. Lumbering and roads were prohibited except that owners of private property, including miners, were allowed roads for ingress and egress. Residences and commercial enterprises were prohibited. Grazing was permitted but was being gradually reduced.

As of 1961, the National Forests contained 14,661,416 acres of wilderness-type areas.³¹

The wilderness concept has great emotional appeal and both its proponents and opponents appear to have been well organized and well financed. Numerous "Wilderness Bills" have been introduced in recent sessions of Congress. Most of these bills have had as their primary objective the protection of the status quo to prevent any encroachment on lands currently designated as wilderness.

One such bill was the widely-supported S. 174 introduced by Senator Clinton P. Anderson in the 87th Congress. Restrictions on use of wilderness areas in S. 174 were generally the same as those imposed by the Forest Service, except that prospecting and mining were prohibited except when authorized by the President.

The bill was supported by the President,³² the Secretary of Agriculture, the Secretary of Interior, and by most conservation, wildlife, and wilderness organizations. It was generally opposed by the American Farm Bureau Federation, the National Association of Manufacturers, the Chamber of Commerce of the United States,

31. *Hearings on S. 174 (The Wilderness Act) Before the Senate Committee on Interior and Insular Affairs*, 87th Cong., 1st Sess. 14 (1961).

32. "I urge the Congress to enact a wilderness protection bill along the general line of S. 174." Message from the President, H.R. Doc. No. 94, 87th Cong., 1st Sess., 107 Cong. Rec. 2586 (1961).

the American National Cattlemen's Association, the National Woolgrower's Association, the Industrial Forestry Association, the American Pulpwood Association, the National Lumber Manufacturers Association, the Northwest Mining Association, the Idaho Mining Association, the Independent Petroleum Association of America, the Utah Mining Association, and the American Mining Congress.³³ The State legislatures of Idaho and Wyoming memorialized the Congress in opposition to the bill.

S. 174 passed the Senate by a substantial majority but failed in the House. A similar bill, S. 4, was introduced in the 88th Congress and passed the Senate by a vote of 73 to 12 on April 9, 1963.³⁴ It was then referred to the House Committee on Interior and Insular Affairs. The House Committee held extensive field hearings and finally reported out an amended version which passed on September 3, 1964.³⁵ The Act placed 9.1 million acres of federally-owned land into a permanent wilderness system and authorized eventual inclusion of an additional 51.9 million acres. The Act differed from the original Senate bill mainly in that such additions to a wilderness system require affirmative action by Congress; mining and mineral leasing laws in wilderness areas are extended through 1983. In brief, the Act officially recognized the Wilderness concept, set aside some lands as wilderness, provided for the inclusion of other lands in that category by affirmative action of Congress, but allowed grazing and mining to continue in Wilderness areas.

IX

SILENT SPRING

Rachel Carson's controversial book *Silent Spring* alerted Americans to the dangers of indiscriminate use of chemical insecticides. However, scientists in the Bureau of Sport Fisheries and Wildlife (BSFW) and in state conservation agencies have long been aware of the damage to wildlife by some insecticides. The documentary bibliography of such damage goes back to 1950 and beyond.

No evaluation of the claims and counter-claims of the insecticide

33. *Hearings on S. 174 (The Wilderness Act) Before the Senate Committee on Interior and Insular Affairs*, 87th Cong., 1st Sess. (1961). The index to the *Hearings* locates the remarks by reference to the name of the organization.

34. Similar bills have also been introduced in the house: H.R. 295, 930, 991, 1023, 1114, 2001, 2530, 2880, 2894, 3878, 5246, 5808, 7877, 9070, 9163, 9164, 9165, 9520, 9558, 10630, 88th Cong. (1963-64).

35. 78 Stat. 890 (1964), 16 U.S.C.A. §§ 1131-36 (Supp. 1964).

controversy will be attempted here except to note that most of the attacks on *Silent Spring* have maintained that the chemicals are not dangerous if they are correctly used. This approach evades the issue; it was Miss Carson's contention that chemical insecticides are commonly used incorrectly.

The BSFW contends that insecticides have been marketed and used in large quantities before they have been adequately tested to determine their effects on humans, domestic animals, and wildlife. It has also insisted that insecticides with known harmful effects on fish and wildlife have been used in excessive quantities and have been broadcast indiscriminately over areas with varying degrees of insect concentration. In its concern over these matters it sometimes finds itself opposing the work of the Plant Pest Control Division of the Agricultural Research Service. A recent example of this conflict involved a dispute over the use of heptachlor and dieldrin to eradicate fire-ants.

The use of these two chemicals has been opposed by the Wilderness Society, the National Wildlife Federation, the Wildlife Management Institute, the Sport Fishing Institute, the Izaak Walton League of America, and the National Audubon Society.

The obvious answer to this problem is for the BSFW and Plant Pest Control Division to get together and work out a mutually satisfactory agreement. However, the problem is not that simple. Even if it were possible to get agreement on the exact effects of questionable insecticides on fish and wildlife and the actual need for the use of the insecticide in the first place, the problem would still be a long way from solution. The job of the Plant Pest Control Division is to eradicate insects injurious to plants. The job of the BSFW is to conserve fish and wildlife. Each is trying to do its job. Each is supported by an influential clientele with friends in Congress. Congress as a whole is not likely to resolve the problem. The tendency is for neutral or uninterested Congressmen to support both parties to such a controversy rather than risk incurring the animosity of either.

However, some progress has been made. Congress has passed S. 1605 (February 17, 1964) to amend the Federal Insecticide, Fungicide and Rodenticide Act³⁶ to prohibit "protest registration." Heretofore a manufacturer could market a poison which did not comply with the above act until the Department of Agriculture could develop evidence to prove it unsafe and take legal action to remove it from the market.

36. 61 Stat. 167 (1947), as amended, 7 U.S.C.A. § 135b (Supp. 1964).

Recently too, the Department of the Interior established a national wildlife-pesticide laboratory at the Patuxent Wildlife Research Center in Maryland. In dedicating this laboratory, Secretary Udall said:

We are living continuously in a world of science and technology, but only intermittently in a world of reason and responsibility.

* * * *

This laboratory is dedicated to Man—to his search for knowledge about the natural world around him—to his wise use of the tools for controlling that world. The work done here may prevent or halt the threat of the 'silent springs' that stalk the earth—for this laboratory marks the beginnings of a new national awareness of the present and potential danger we have almost thoughtlessly brought to the world in which we live.³⁷

X

WETLAND DRAINAGE

The term "wetlands" refers to lowlands covered with shallow and sometimes temporary waters. They are generally considered to be the most productive wildlife habitat—especially for waterfowl. It is estimated that there were 127 million acres of these marshes and swamps when white men first appeared on this continent. Through drainage, flood control, and other measures, this area has been reduced to about 74.5 million acres of which only 22.5 million is considered good wildlife habitat. Of this total, the Bureau of Sport Fisheries and Wildlife (BSFW) has about 3.3 million acres in refuges and the States have an additional 1.5 million acres.

The rapid decrease in wetlands

. . . is particularly acute . . . in a 56,000-square-mile area of the northern prairies in Minnesota, North Dakota, and South Dakota. In that section there exists . . . the most valuable area for waterfowl production in the coterminous United States. . . . Since 1943, an estimated 1,027,000 acres of this . . . area has been destroyed by the expenditure by the Federal Government of an estimated \$25 million . . . for farm drainage.³⁸

37. Udall, *A Laboratory Dedicated to Man*, in *Our Public Lands*, July 1963, p. 18.

38. Senate Select Comm. on National Water Resources, *Water Resource Activities in the United States*, 86 Cong., 2d Sess. 52 (1960).

President Kennedy was referring to this particular situation in his special message on natural resources when he said:

I am also hopeful that consistent and coordinated Federal leadership can expand our fish and wildlife opportunities without the present conflicts of agencies and interests: One department paying to have wetlands drained for agricultural purposes while another is purchasing such lands for wildlife or water fowl refuges.³⁹

The controversy over drainage of wetlands has been going on for many years. It is another example of different units of the same government (each supported by an influential clientele) attempting to move in opposite directions.

Obviously the problem cannot be solved through purchase of all these lands by the BSWF. However, a Bureau-sponsored bill⁴⁰ was passed by the 87th Congress which allowed the BSWF to borrow \$105 million for the purchase of wetlands with future sales of duck stamps to be used to retire the loan. The acquisition of such lands must be approved by the governor of the applicable State or the appropriate State agency.

An act of greater significance was the passage of H.R. 8520⁴¹ on October 22, 1962 which barred the Secretary of Agriculture from providing technical or financial assistance for wetland drainage on any farm if the Secretary of Interior (BSWF) found that such drainage would "materially" harm wildlife preservation. As of April 1, 1963, some 1,115 properties had been proposed for drainage; 476 were found to have high wildlife value and were denied federal assistance.⁴² Landowners may, of course, continue to drain wetlands with private funds.

XI

CONCESSIONS AND CONCESSIONAIRES

The most common complaints of visitors to the National Parks concern adequacy of facilities, quality of purchases, level of service, and cost of goods and services. Most of the complaints, then are directed at concessions and concessionaires.

39. John F. Kennedy, Special Message on Natural Resources, Feb. 23, 1961.

40. 75 Stat. 813 (1961), 16 U.S.C. §§ 715k-3 to -5 (Supp. V, 1964).

41. 49 Stat. 1151 (1936), 16 U.S.C. §§ 590 1-q (1958).

42. National Wildlife, June-July 1963, p. 17.

Congress also complains because income from concessionaires seems inadequate. Some of the problems involved in the operations of concessions in the National Parks are pointed up in the following interchange before the House Subcommittee on Interior Appropriations:

Mr. KIRWAN [Congressman from Ohio and Chairman of the Subcommittee]. How much does the Federal Government realize from these concession contracts?

Mr. WIRTH [Director, National Park Service]. I have looked at the concessions in this way: We certainly get more from the concessioners than we spend in these two appropriations. This is for sure.

Mr. KIRWAN. That is not the answer. What do they get?

Mr. WIRTH. They get a contract from us.

Mr. KIRWAN. I know, and they must eat, but what we are all interested in, is a fair share of that money. If it were not worth their while they would not be expanding and building.

Mr. WIRTH. They are expanding on borrowed money and we try to keep it a healthy business, sir. The concessionaire in the park—

Mr. KIRWAN. Let me ask you this: Is this a good percentage, where concessionaires had a gross income of \$47,133,166 in 1959 and we got only \$629,000? We buy the land, fix up the parks, build roads, parking areas, and so forth, and then we let them come in and put in a building. We give them a contract and yet you see what they turn back.

Mr. WIRTH. Let me put it this way: It has always been a controversial thing as to just how much we should charge under our contracts, but this is the way it has worked out. The people have to put in all of their original investment. They build the buildings and pay all of the regular business taxes. The fact that they are in there does not relieve them of paying Federal, State, and county taxes that any business pays. They are isolated and they are usually allowed 3 months or 4 months for operation but we hope to extend the season in some cases. . . .

They have that big investment and are closed down for 7 to 8 months out of the year completely. They have 2 or 3 big months and pay their taxes just like anybody else. They also have trouble in bor-

rowing on the basis that Uncle Sam owns the land and what they have is a possessory interest in the building. They do not have fee simple title to the land.

Mr. KIRWAN. Does not anybody else in the United States have the same trouble in borrowing? They are no different.

Let us take these figures: They took in \$47 million and the Government got \$600,000.

* * * *

Mr. KIRWAN. They take in \$5 million at Yellowstone and we get \$15,000. Show me any business in the United States with those figures.⁴³

These problems are, of course, compounded by the rapid increase in number of Park visits. According to Regional Director Ronald F. Lee: "By 1955, there were 50 million visits to a national park system equipped to handle less than half that many."⁴⁴ Much progress has been made since 1955 but in the meantime Park visits have jumped from 50 million to 93 million in 1963.

As other areas administered by the federal government receive increasingly heavy recreational use, some of the same concession problems will be encountered.

XII

PRIVATE HOLDINGS ON FEDERAL RESERVATIONS

There are some forty-one million acres of privately owned lands within the borders of the national forests and additional millions with the grazing districts administered by the Bureau of Land Management (BLM). The Forest Service also issues special use permits for recreational residences within the national forests. BLM allows the sale or lease of small tracts (usually five acres) for business, residential, or recreation sites under the Small Tract Act of 1938.⁴⁵

43. *Hearings Before the Subcommittee on Appropriations for the Department of the Interior of the House Committee on Appropriations*, 87th Cong., 1st Sess. 285-86 (1961).

44. Remarks of Ronald F. Lee, Regional Director, National Park Service, at a Joint Meeting of the National Park and Conservation Committee of the Garden Club of America, Jan. 10, 1961.

45. 52 Stat. 609 (1938), 16 U.S.C. § 159a (1958).

These private enclaves obviously complicate management of the resource. Part of the difficulty stems from the fact that intelligent planning requires a knowledge of the plans of the private owners. The procurement of such information is often difficult or impossible so in many cases what actually happens is that agency personnel and private owners try to "outguess" each other.

Both BLM and the Forest Service have tried to alleviate these problems through land exchanges with the objective of "blocking up" government properties. But land exchange transactions are slow and somewhat expensive.

One of the most vexing problems in public land administration arises from the filing of spurious mining claims. Under the old general mining law of 1872,⁴⁶ claims may be located with little expense and maintained with only a token amount of work. Consequently hundreds of thousands of mining claims covering millions of acres have been filed. Only a fraction of these claims were legitimate mining enterprises. The rest were filed to obtain timber, water, or recreation sites.

In 1960, Edward P. Cliff, then Assistant Chief of the Forest Service, estimated that at least twenty million acres of national forest land was included within the boundaries of unpatented mining claims.⁴⁷ Earlier, Richard E. McArdle, Chief of the Forest Service, testified that: "the problem of preventing misuse of mining claims . . . and providing equitably for multiple development of both minerals and national forest surface resources on such claims is probably the most important single problem facing the Forest Service at the present time. . . ."⁴⁸

The same problem existed on lands administered by the BLM. In some areas of Southern California thousands of bogus mining claims have been filed. In some cases streets were laid out between claims. In other situations, unscrupulous land promoters obtained control of mining claims, subdivided them into lots and gave buyers quit-claim deeds to the property.⁴⁹

In June, 1962, the General Accounting Office reported that "miners" had operated a house of prostitution and that other "miners"

46. 17 Stat. 91 (1872).

47. Remarks of Edward P. Cliff, Assistant Chief of the Forest Service, delivered at the Annual Meeting of the American Mining Congress, Oct. 11, 1960.

48. Remarks of Richard E. McArdle, Chief, Forest Service, before the House Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. (1955).

49. *Our Public Lands*, Jan. 1962, p. 12; *Denver Post*, Nov. 7, 1963, p. 60, cols. 3-4.

had run a nudist colony on mining claims in Tonto National Forest, Arizona.⁵⁰

It should be emphasized that bogus mining claims were not an exceptional or occasional occurrence. In recent years, at least, most such claims were filed without evidence or reason to expect the discovery of minerals. The practice became so common that undoubtedly many persons were unaware that they were actually in trespass.

Congress made some effort to correct the problems caused by the filing of spurious mining claims in the Act of July 23, 1955.⁵¹ In brief, this Act gave the appropriate government agency authority to administer the surface resources of mining claims. But the Act did not really solve the problem and the flood of bogus mining claims continued.

In many cases the "squatters" have invested considerable sums in residential or other structures on their claims so their eviction would constitute a real hardship. In 1962, to accommodate these people, Congress passed an act⁵² which gave such persons the right to purchase title to their unpatented claim if they had been residing on it since July 23, 1955. In effect, by this act Congress legalized an illegal practice. In opposing the bill,⁵³ Representative John P. Saylor called it "almost a national scandal."⁵⁴

On January 9, 1963, Congressman Kyl introduced H.R. 61 (similar to H.R. 12677 of the 87th Cong.) to provide for an inventory of unpatented mining claims on lands under the jurisdiction of the Secretary of Agriculture and the removal of unauthorized occupants. The bill was referred to the House Committee on Interior and Insular Affairs. The Committee took no action on it so it consequently died when Congress adjourned.

XIII

THE EFFLUENT SOCIETY: MAINTENANCE OF WATER QUALITY

We are becoming, in the words of Joseph L. Fisher, an "effluent

50. San Francisco New Call-Bulletin, Aug. 11, 1962, p. 3, cols. 6-8.

51. 69 Stat. 367 (1955), as amended, 30 U.S.C. § 601 (Supp. V, 1964).

52. 76 Stat. 1127 (1962), 30 U.S.C. §§ 701-09 (Supp. V, 1964).

53. H.R. 12761, 87th Cong., 1st Sess. (1962).

54. Congressional Quarterly Almanac 476 (1962).

society."⁵⁵ While these words were spoken in jest, they do suggest the alarming increase in water pollution in the United States.

Polluted waters not only create a health hazard, but they also have a direct effect on the kind and amount of outdoor recreation available to the public—forty-five million fish were killed by pollution in 1962, according to the Public Health Service.⁵⁶ Most outdoor recreation takes place in water or adjacent thereto. We have already noted the dramatic increase in demand for water-based recreation. At the same time the amount of water available for recreation has been drastically reduced through pollution. In the words of President Kennedy:

Pollution of our country's rivers and streams has—as a result of our rapid population and industrial growth and change—reached alarming proportions. To meet all needs—domestic, agricultural, industrial, recreational—we shall have to use and reuse the same water, maintaining quality as well as quantity. In many areas of the country we need new sources of supply—but in all areas we must protect the supplies we have.

Current corrective efforts are not adequate. This year a national total of \$350 million will be spent from all sources on municipal waste treatment works. But \$600 million of construction is required annually to keep pace with the growing rate of pollution. Industry is lagging far behind in its treatment of wastes.⁵⁷

The President then went on to make several recommendations for the control of water pollution. Most of these recommendations were included in H.R. 6441 which was passed by the 87th Congress.⁵⁸ The new law provided funds for research and for State pollution control programs and authorized an aggregate of \$570 million for construction grants through June 30, 1967. The act also strengthened federal authority in pollution abatement by extending federal jurisdiction from "interstate" waters to "interstate or navigable" waters, including coastal waters.

Supporters of the act included the National Association of County Officials, the United States Conference of Mayors, the AFL-CIO, the Izaak Walton League, the Wildlife Management Insti-

55. Remarks of Joseph L. Fisher, President, Resources for the Future, Inc., to the Western Resources Conference, Fort Collins, Colorado, Aug. 7, 1963.

56. Denver Post, May 27, 1963, p. 19, cols. 7-8.

57. John F. Kennedy, Special Message on Natural Resources, Feb. 23, 1961.

58. 62 Stat. 1155 (1948), as amended, 33 U.S.C. §§ 466-466k (1958, Supp. V, 1964).

tute, the National Wildlife Federation, and the Sport Fishing Institute. The major provisions of the bill were generally objected to by the Farm Bureau Federation, the Chamber of Commerce of the United States, the National Association of Manufacturers, and the American Paper and Pulp Association.⁵⁹

On October 16, 1963, the Senate passed S. 649 which would have amended the Federal Water Pollution Control Act⁶⁰ by increasing the authorization of funds from \$100 million to \$120 million for fiscal years 1964-1967. It also would have generally tightened up controls over the discharge of effluents and would have transferred administration of the law from the Public Health Service to a new Water Pollution Control Administration within the Department of Health, Education and Welfare. S. 649 was generally opposed by the National Association of Manufacturers, the Manufacturing Chemists Association, the Soap and Detergents Association and by the Kimberly-Clark Corporation, Proctor and Gamble Company and Lever Brothers Company. On June 23, 1964, President Johnson listed S. 649 as one of 30 top priority bills, but his encouragement was not enough—the bill died in the House.

Until recent years there was, in most areas of the country, sufficient "original water" so that the discharge of pollutants into rivers, lakes, and harbors did not create either a serious health hazard or a serious threat to recreational and other uses of water. As a consequence, the science of waste treatment and disposal is still in its infancy. It has a long way to go to catch up with industrial technology. There are, therefore, serious technical problems in waste disposal which need to be solved. The effects of many new "exotic" industrial wastes on human and animal life are as yet unknown. Some pathogenes and so-called "nutrient" wastes are not removed by the usual sewage disposal processes.

It is difficult to prosecute violators of water pollution laws because oftentimes the most serious violators are also the most powerful both economically and politically.

Lack of uniformity in state anti-pollution laws will continue to create problems, since weak pollution control laws may constitute a competitive industrial advantage. Nevertheless, a high degree of

59. See the testimony of these organizations in *Hearings on H.R. 4036 Before the House Committee on Public Works*, 87th Cong., 1st Sess. (1961); *Hearings on S. 45, 120, 325, 571, 861, 1475 and H.R. 6441 Before the Senate Committee on Public Works*, 87th Cong., 1st Sess. (1961).

60. 62 Stat. 1155 (1948), as amended, 33 U.S.C. §§ 466-466k (1958, Supp. V, 1964).

uniformity is essential, because water pollution is not a local problem. The movement of surface and ground waters does not respect local or state boundaries. Furthermore, the increased mobility of people and the increasingly wide and rapid distribution of goods disperse the hazards of local polluted waters throughout the Nation. Those who maintain that water pollution is a local problem are living in a day that has long since passed.

As the demand for water increases, it will become increasingly necessary that more water be used more than once. Already, according to former Secretary of Health, Education and Welfare Ribicoff, the total flow of the Ohio River is used 3.7 times before it enters the Mississippi.⁶¹ As more water is used more times, more hazards to health and recreation will be created, and more funds will need to be expended in treating wastes or in purification plants or both. Within limits, the problem can be attacked at either end. That is, the emphasis may be concentrated on the treatment of wastes before they enter a body of water, or the emphasis may be placed on the purification of water before it is used. Neither category can be altogether effective alone, but if the only consideration is potable water, these may be considered as alternative or interchangeable approaches to the problem.

As the costs of maintaining water quality increase, there will be increasingly intensive attempts to shift these costs to "someone else." Thus, those persons and firms who require pure water but who generate a minimum of pollutants can be expected to advocate greater emphasis on the treatment of wastes before they enter the water. On the other hand, those who are responsible for the discharge of high quantities of pollutants can be expected to emphasize purification before use. Furthermore, the latter group can be expected to place water quality into a medical frame of reference. In such a context, the only water in question becomes that which is to be consumed by humans, so the emphasis (and cost) automatically shifts from pollution abatement to water purification.

The controversy over treatment at entrance versus treatment at destination ignores recreational uses of the water between the two points. Recreationists and wildlife interests should recognize that America's vanishing water-based recreation resources can only be protected by minimizing pollution at its entrance to water.

61. Remarks of former Secretary Abraham Ribicoff, *Hearings on H.R. 4036 Before the House Committee on Public Works*, 87th Cong., 1st Sess. 323 (1961).

XIV

MULTIPLE USE AND CONFLICT AMONG USERS

There has been considerable discussion of the true meaning of the term "multiple use." Whatever definition is attached to the term, the objective is the maximization of the values of a given area. Such values, it is understood, need not be measurable in monetary units. In organizational theory, multiple use is simply organization by area, rather than by process, clientele, or some other basis.

The single owner of a piece of property will ordinarily attempt to find that combination of uses which will maximize the values he considers most important. Common sense, therefore, suggests that a government agency manage its resources in the same manner. However, the two situations are not analogous, as will be considered later.

Of all the federal agencies, the Forest Service has given the most emphasis, and the most publicity, to multiple use management. The Multiple-Use Act of 1960⁶² simply bestowed congressional approval on Forest Service policy of long standing. The Corps of Engineers maintains that it operates water projects under a multiple use concept and that it is authorized to do so by congressional acts. The Bureau of Reclamation has been attempting to secure broader authority for its water projects partially so that it may extend the number of uses of a project. The Bureau of Land Management was authorized to manage the public domain on a sustained yield basis under principles of multiple use in the recently passed Multiple Use Act of 1964.⁶³ Apparently the multiple use concept has many adherents.

When a government agency attempts to operate under the concept of multiple use it is *not* in the same position as the single owner because each of the several possible uses is represented by a politically influential clientele. The agency thus takes on the job of apportioning resource use among the competing user groups.

Most land and water areas can accommodate two or more uses, but in the process of such accommodation each using group may suffer some inconvenience, additional expense, or diminished satisfactions. While it is very likely true that, in most situations, the total produc-

62. 74 Stat. 215 (1960), 16 U.S.C. §§ 528-31 (Supp. V, 1964).

63. 78 Stat. 986 (1964), 43 U.S.C.A. §§ 1411-18 (Supp. 1964).

tivity of a given area can be increased through a multiplicity of uses, it does not necessarily follow that each of the users will realize increased benefits. In some situations, possibly in most, exclusive single use will provide greatest benefits for that particular using group. Consequently, each specialized using group tends to prefer exclusive use privileges as administered by a single-purpose agency. When resources are managed according to the multiple-use concept, each of the using groups will attempt to become the dominant or priority user of the resource.

Multiple use gives the administering agency needed flexibility from one point of view and constitutes a blank check from another standpoint. Single-purpose use provides greater assurance that a particular resource or activity will be protected, but it limits administrative flexibility, lowers the horizon of administrators, and may reduce the total productive yield of the area. Most importantly, multiple use provides an arena for the reconciliation of disputes among competing users, while single-purpose use theoretically transfers the arena of conflict to the Congress. Most frequently, however, Congress does not reconcile or settle the dispute. Because of weak political parties, strong interest groups, area representation in Congress, and the committee system, there is actually a whole series of "little congresses." Each of these little specialized congresses tends to represent a particular area or interest group and is closely allied with the administrative agency that ministers to that particular area or group. Except for details of operation, the interest group, the single-purpose administering agency, and the specialized little congress, will all have the same views. Disinterested or neutral Congressmen will ordinarily not risk antagonizing their colleagues on an issue of minor importance to them, so they tend to support all these separate and contending monopolitical groups. This situation explains, in part, the spectacle of contradictory and conflicting government programs and the apparent lack of coordination among federal agencies.

The multiple-use question has been confused by the mass of discussion about compatibility of uses rather than compatibility of users. There is no doubt that many uses, properly managed, may not be incompatible, but the same compatibility does not exist among users. It is entirely possible that recreation users may become the least compatible of all the user groups. Outdoor recreation is assumed to be in the public interest and some recreation activities rate

high on the scale of American values. Since they are "on the side of the angels" recreationists may be less tolerant than competing user groups and, in many situations, will become the dominant or priority using group.

XV

WHO SHOULD PAY THE BILL?

With the exception of the National Park Service, the federal land-managing agencies receive only token amounts for recreational use of government properties. Public domain lands are open to the public without charge except for lands that have been leased by states or local governments.

Military commanders have permissive authority under 74 Stat. 1052⁶⁴ to collect fees (in addition to state hunting and fishing licenses) with the proceeds of the fees to be used exclusively for rehabilitation of the hunting and fishing resources of the reservation.

In some instances, minimum fees are levied for the use of certain facilities in the National Forests. In such situations, the fee is ordinarily set high enough to cover the additional costs of policing and cleanup created by recreation visitors. There has been no intention that such fees cover all recreation costs. The general taxpayers subsidized recreation users of the National Forests to the tune of \$14,595,000 in 1961, plus an additional \$1,535,000 for wildlife habitat management. Not included in these totals were \$20 million for fire protection, \$7 million for disease and insect control, and \$30 million for roads—all of which benefited the recreationist directly or indirectly.⁶⁵ It was this consideration that prompted Congressman Denton to remark in a Committee Hearing:

The thought I have in mind is that you need more money for that [recreation] purpose. I think the public wants it, but the people who use it ought to be the ones paying the biggest share of the expense.⁶⁶

Entrance fees to the National Parks are supposedly levied for use of the roads—not use of the park. A conglomeration of auto-

64. 74 Stat. 1052 (1960), 6 U.S.C. §§ 670a-e (Supp. V, 1964).

65. *Hearings Before the Subcommittee on Appropriations for the Department of the Interior of the House Committee on Appropriations*, 87th Cong., 1st Sess. 1465 (1961).

66. *Hearings Before the Subcommittee on Appropriations for the Department of the Interior of the House Committee on Appropriations*, 87th Cong., 1st Sess. 1021-22 (1961).

mobile, admission, guide, and elevator fees produced \$4,816,703 from all National Park Service operations in 1960 but the total cost to the taxpayers of maintaining the park system was \$79.4 million.⁶⁷

The water-managing agencies exact no charges for recreational use of reservoirs, although lessees of portions of the reservoir shore may do so.

The Bureau of Reclamation is not authorized to consider recreation as a project purpose and, since the cost of Bureau projects is reimburseable, this means that the users of power and water pay for the recreation benefits of the project.

The Federal Power Commission requires that licensees make provision for recreation where practical and provide free access to water projects. As a consequence, the purchasers of electric power pay for both construction and maintenance costs incident to recreation.

The Corps of Engineers is prohibited from levying recreational fees by the Flood Control Act of 1944.⁶⁸ However, recreation may be included as a project purpose in Corps of Engineers projects but is non-reimburseable. In simplest terms, this means that the general taxpayer foots the bill.

From its inception, the Tennessee Valley Authority (TVA) acquired properties for recreation purposes and considered recreational use in the construction of water projects. However, TVA has taken the view that recreational use of its reservoirs is not a federal responsibility and it has been most successful in transferring responsibility for recreation administration to state and local governments. Nevertheless, the major portion of recreation costs on the TVA lakes is borne by the purchasers of TVA power and its other income-producing ventures.

In summary, most of the costs of recreation on federally-managed properties are paid for by the general taxpayers or by other users of the resource—not by the recreationists. Some of the reasons for the development of this situation are: the public expects to “get in free” (after all, it owns the property); an equitable fee system would be difficult to devise and administer so most agencies would prefer not to be involved in fee collections; the “primary” users of federal properties (stockmen, lumbermen, irrigation farmers, power pur-

67. *Hearings Before the Subcommittee on Appropriations for the Department of the Interior of the House Committee on Appropriations*, 87th Cong., 1st Sess. 232 (1961).

68. 68 Stat. 1266 (1944), as amended, 16 U.S.C. § 460d (1958, Supp. V, 1964).

chasers, and others) have not yet mounted any organized attack on this system because ordinarily their needs have been given priority; and those states and local communities with a heavy dependence on tourism have opposed the imposition, or the increase, in recreation fees because of their probable detrimental effect on business profits.

The general effects of this "no charge of recreation" policy have been: inadequate Congressional appropriations to develop the recreation potentials of the resource; lack of attention to recreation possibilities in planning; inadequate access; inadequate facilities; and, as previously mentioned, a "free ride" for recreationists at the expense of the general taxpayers and other using groups.

As long as recreationists were few in numbers, the "no charge" policy was probably practical and adequate. But it is no longer either practical, adequate, or equitable.

In recognition of these facts, Congress passed the Land and Water Conservation Fund Act in late 1964.⁶⁹ Revenue for the fund is to be derived mainly from admission fees (probably a windshield sticker valid on federal properties throughout the United States), from existing taxes on fuels used in motorboats, and from the sale of federal surplus real property. Ordinarily, sixty per cent of the appropriations from the Fund will go to the states for recreational planning, land acquisition and development. The balance will be available to the federal government for the same general purposes.

The Land and Water Conservation Fund Act is regarded as one of the major conservation acts in this decade and as the most important single action of Congress on outdoor recreation.

Opponents of the Act generally objected on the grounds that the public should not be required to pay a fee for entering upon its own property. But the use of federal properties for outdoor recreation has not been "free." The general taxpayer or some other using group has ordinarily paid for the costs of recreation. So the real issue was not *whether* the costs of outdoor recreation should be paid but *who* should pay them.

The Land and Water Conservation Fund Act very roughly allocates recreation costs to the principal users but more importantly it will provide substantial revenues over the years to increase outdoor recreation opportunities in what Secretary Udall has termed "The Race for Inner Space."

69. 78 Stat. 897 (1964), 16 U.S.C.A. §§ 4601-4 to -11 (Supp. 1964).

XVI

JURISDICTIONAL DISPUTES

We have already noted the conflicts between government agencies over wetland drainage and chemical insecticides. There has also been long-standing competition between the Corps of Engineers and the Bureau of Reclamation on water projects. The Forest Service and the National Park Service have frequently disagreed on recreation matters and more particularly on proposed transfers of lands from the Forest Service to the Park Service. Occasionally, there have been disagreements between the Bureau of Sport Fisheries and Wildlife and the Bureau of Public Roads. Many other instances could be cited.

It is ordinarily assumed that such rivalries and disagreements come about mainly because of the personal ambitions of administrators and that disagreements among agencies arise from a competition for funds and power which, in turn, are desired to provide greater scope for the range of personal ambitions. Thus, Julius Duscha writes:

[T]hree bureaucracies, the Forest Service, Park Service, and Corps of Engineers, are scrapping to build up their private empires—in defiance of the President, and in contempt of the public they are supposed to serve.

* * * *

[T]wo rival bureaus are battling savagely for control of our outdoor recreation facilities.

* * * *

[T]he Forest Service fights the Interior as if it were a forest fire.

* * * *

[T]he continuous bureaucratic struggle for power and money threatens any real national development plans.⁷⁰

Undoubtedly, there has been much interagency competition and some of it may have been detrimental to the public interest. But the problem is not as simple as Mr. Duscha and those with similar views would have us believe. Administrators ordinarily believe in the value

70. J. Duscha, *The Undercover Fight Over the Wilderness*, Harpers Magazine, April 1962, pp. 55-56.

of the mission of their agency or they would not have become administrators in the first place. Most of them have a deep commitment to that mission. If they believe fervently in the work of their agency, they are also likely to believe that more of such work ought to be done or that it ought to be done better. In probably every case, such administrators equate the best interests of the agency with the public interest. Mr. Duscha to the contrary, it seems most unlikely that responsible resource administrators have knowingly promoted the interests of their agencies to the detriment of the public.

When agency objectives conflict, there must inevitably be competition and occasionally such competition may become quite violent. However, competition or disagreement between agencies is not necessarily a case of the "bad guys against the good guys." Frequently the most laudable objectives may conflict with each other. Thus, the objectives of controlling injurious insects and of conserving fish and wildlife are both highly desirable objectives but, as we have seen, attempts to accomplish them have produced heated controversy.

Finally, we should recognize that interagency competition is mainly a manifestation of individual and group competition for the scarce resources of the nation.

Secretary of Agriculture Orville Freeman has stated: "The old bureaucratic feud between Agriculture and Interior—between forestry and park services—is now a dead issue. There is too much to be done to remedy the recreational deficit of America to waste energy on anything but progress."⁷¹

Secretary of Interior Stewart Udall has said: "Orville Freeman and I are very good friends. Neither of us sees any reason for any bull-headed arguments over the preservation of our wilderness. I'm sure we will break the unhappy impasse that has existed between the Forest Service and the Park Service."⁷²

Laudable as are the sentiments of the two Secretaries, it must be recognized that the long-standing dispute between the two agencies is not based on the personal relationships of the Secretaries—although some past Secretaries have added fuel to the fire. Nor is it basically, in the words of Secretary Freeman, a "bureaucratic

71. Remarks of Secretary Orville L. Freeman to the National Association of Television and Radio Farm Directors, July 10, 1961.

72. Remarks of Secretary Stewart Udall in a press conference on April 7, 1961, at San Francisco, as reported by the San Francisco News Call-Bulletin, April 8, 1961, p. 3, cols. 4-8.

feud."⁷³ The "feud" between the two agencies is a manifestation of a basic conflict between competing clientele groups. So no matter how "friendly" the Secretaries and the two agencies may become, the conflict will remain unresolved. Departmental and agency cooperation may effect compromises and may find or develop ways to partially satisfy each clientele group without causing substantial injury to the rest. An example of such cooperation was the agreement of January 28, 1963, between the Department of Agriculture and the Department of the Interior on Jurisdictional Responsibilities in Managing Public Recreational Areas. But regardless of such cooperative attempts, the basic competition for the Nation's resources will continue and will inevitably be reflected in the attitudes of government agencies that serve a particular clientele.

XVII

THE ROLE OF THE STATES

Except for those properties that are considered to have values of national significance or on which it would be impractical to allow state or local management, outdoor recreation is ordinarily assumed to be the primary responsibility of state and local governments. Some states and localities have accepted this responsibility and have acted accordingly. However, most states and local governments have been most reluctant to accept responsibility for providing outdoor recreation for their citizens.

Because of this unwillingness or inability to act, the federal government has offered a series of inducements to encourage state and local governments to "pick up the ball." An analysis of these various devices is outside the scope of this paper, but some of the more obvious methods of encouragement follow. State and local governments may obtain leases and, in some cases, title to lands administered by the Bureau of Land Management, Tennessee Valley Authority, Corps of Engineers, and Bureau of Reclamation, without cost or at token prices. Furthermore, these agencies ordinarily will have already provided access roads and some other basic facilities. Surplus real properties with substantial recreational, historical, or wildlife values may be acquired by states at a fraction of market value or without monetary consideration. Financial and other as-

73. Remarks of Secretary Orville L. Freeman to the National Association of Television and Radio Farm Directors, July 10, 1961.

sistance is provided to State and local organizations for the development of small watershed projects under 68 Stat. 666.⁷⁴ The Pittman-Robertson⁷⁵ and Dingell-Johnson Acts⁷⁶ provide grant-in-aid funds to State governments for wildlife and fish conservation respectively. The Open Space Land Grant Program,⁷⁷ administered by the Housing and Home Finance Agency, provides funds to local governments for the acquisition of open space land for park, recreation and conservation purposes. Federal funds in tremendous amounts are granted to states for road construction. Efforts to control water pollution have resulted in the allocation of funds to state governments for both research and construction. A portion of the Land and Water Conservation Fund is to be granted to the states.

There has been much heated theoretical discussion of the proper role of the states *vis-a-vis* the national government in outdoor recreation. Such discussions imply that there has been a real choice between federal and state assumption of responsibility. However, in many cases the only choice has been between getting the job done by the federal government or not getting it done at all. The following interchange in the Hearings on the Land and Water Conservation Fund aptly illustrates this point:

Mr. CHENOWETH. [Congressman from Colorado]. What would you say is the No. 1 primary need for this legislation?

Mr. LAGASSE. [Executive Director, American Institute of Park Executives]. I would say it is the acquisition of open spaces that we can use for outdoor recreation in a broad sense.

Mr. CHENOWETH. Could not the States do that without any legislation?

Mr. LAGASSE. Well, they have not done it; let us put it that way.⁷⁸

In outdoor recreation, one of the basic problems has been that of finding ways to encourage the states to assume the responsibilities they are presumed to already possess.

74. 68 Stat. 666 (1954), 16 U.S.C. §§ 1001-06 (1958).

75. 50 Stat. 917 (1937), 16 U.S.C. §§ 669-669j (1958).

76. 64 Stat. 430 (1950), 16 U.S.C. §§ 777-777k (1958).

77. 75 Stat. 149 (1961), 12 U.S.C. § 1715l (Supp. V, 1964).

78. *Hearings Before the Subcommittee on National Parks of the House Committee on Interior and Insular Affairs*, 88th Cong., 1st Sess (1963).

PROBLEMS AND PROSPECTS

Many of the difficulties outlined above stem from a lack of official recognition of outdoor recreation as a function or purpose of federal agencies. Recreation has consequently been relegated to a subordinate status and has utilized those resources that have been left over after the "primary purposes" of the project or agency have been accomplished. The concept of residual use of resources for recreation has tended to carry over into personnel assignments in that recreation duties have commonly been additional duties or have been assigned to personnel on a "fill in" or temporary basis. With the passage of several recent Acts which officially recognize outdoor recreation as a function of federal Agencies, and with the establishment of the new Bureau of Outdoor Recreation and the passage of the Land and Water Conservation Fund Act, some of the problems summarized above will move toward solution. However, if the demand for outdoor recreation continues to accelerate, new problems will arise and old problems will be compounded in difficulty.

Outdoor recreation activities are generally assumed to be in the public interest and are commonly accepted by the nonparticipating public as being good, wholesome, healthy, and generally desirable. Hunting and fishing, especially, rank high on the scale of American values. Sportsmen's organizations and other outdoor recreation groups frequently complain that they fare poorly in the competition for attention and funds as compared with those groups that have a primary economic interest. This is a questionable, if not totally erroneous, belief. The fact that recreation organizations do not have a direct or perceivable monetary interest automatically puts them "on the side of the angels" in comparison with other "selfish, money-grubbing" interest groups. These factors combine to give recreationists substantial political advantages. As their numbers increase and as they become more self-conscious and better organized, they will become increasingly effective in influencing governmental policy.

If these last observations are generally correct, the future is optimistic for outdoor recreation. A danger does exist, however, that these same factors may produce opportunities for a gigantic pork barrel.