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A History of the Public Lands Debate

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A HISTORY OF THE
PUBLIC LANDS DEBATE

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CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT:
PUBLIC LANDS AND PUBLIC BENEFITS

October 11-13, 1995

Natural Resources Law Center
University of Colorado
School of Law
Boulder, Colorado

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Public Benefits

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People who knowingly take risks are supposed to conduct themselves in a calm and matter-of-fact manner. If you are planning to go over Niagara Falls in a barrel, you are supposed to adopt a steady and even blase demeanor, as if this risk-taking were just a predictable part of a regular day's work. While I think I understand the theatrical demands here, there is still something about declaring that you are planning, in the space of half an hour, to give a summary history of a century of heated debate over the public lands, that makes a pretense of coolness and calmness a pretty hard set of stage directions to follow. You'll pardon me, then, if I break the first rule of public speaking and begin with a nervous apology, confessing that this is a very daunting assignment and alerting you to the probable fact that, should anyone choose to point out something important that I failed to mention in this presentation, I am planning to take the scoundrel's first line of defense, and explain that limits of time prevented me from paying proper attention to that important point, along with several hundred other points, as well. I guess there is something quite wonderfully unnerving about speaking immediately before a panel carrying the subject title, "Why We're Unhappy"--for fear that the panel's unexpectedly united response might prove to be: "Why are we

Unhappy? Because of that disappointing and irritating speech we just heard!"

Now the first thing, and the most obvious thing, that historians have to say to participants in fights over public lands issues today, is this: this fight began before you were on the planet. For many people, the long duration of these disagreements provides some comfort. Somehow, there is less injury available to take personally, when you realize that what you are participating in is virtually a cross-generational relay race of insult and accusation. One generation carries the burden of squabbling for its time, and then the torch is passed on, and the next generation takes on the obligation to squabble.

Let me, then, offer a quick chronology of this well-pedigreed, infinitely sustainable boxing match, and sketch the timing of its principal rounds.

Round One, roughly 1890 to 1910. The triggering change was the creation of the Forest Reserves and the exertion of supervisory power over them by Theodore Roosevelt and Chief Forester Gifford Pinchot. In response, some Westerners did a great deal of objecting to their loss of independence and free access to resources. The objecting aside, the concept of permanent federal possession of some public lands became established in both theory and practice.

Round Two, the 1920s. In this episode, President Herbert Hoover and his Secretary of the Interior Ray Lyman Wilbur tried to seize the opportunity of ongoing discontent with federal

management by initiating a proposal to cede the federal lands to the states. "The federal government," President Hoover said, in words that one is suprised not to hear quoted more often these days, "is incapable of the adequate administration of matters which require so large a measure of local understanding. We must seek every opportunity to retard the expansion of federal bureaucracy and to place our communities in control of their own destinies. . . . Western states have long since passed from their swaddling clothes and are today more competent to manage much of their affairs than is the federal government." Hoover's Garfield Commission concurred with this judgment at the end of the decade. Oddly, Westerners were not particularly energized by this opportunity, in large part because of the circumstances of the onset of the Depression. Thus, once upon a time, an official federal commission offered to reverse the disclaimer clause, by which entering Western states had disclaimed their rights to the public lands, and nothing much happened as a result.

Round Three, the 1930s. The principal event here was the passage of the Taylor Grazing Act, transferring much of the remaining public domain to federal management through a system of grazing leases and creating a wonderfully confusing new property right, the grazing right on public lands. Here, again, the conditions of the Depression blunted the region's usual reaction against federal interference, and this change came with substantial Western support. The usual polarizations of the public lands boxing match seemed reconfigured, and even

diminished, for this brief phase.

Round Four, the 1940s. Resource-users renewed the complaints against restrictions on use of public lands resources, and demanded an increased power of governance for themselves and a reduction in the funding and power of the Grazing Service, soon to become the Bureau of Land Management. Led by the spirited and outspoken writings of Bernard DeVoto, conservationists resisted what they called a resurgent land grab.

Round Five, the 1960s and 1970s. Here the signal events were the passage of the Wilderness Act in 1964, giving preservationist concerns real standing in statute and courtroom, and the mandating of multiple uses, including aesthetic and recreational concerns, in the program for the Bureau of Land Management through the Federal Land Policy and Management Act in 1976. Similarly important was the conclusion, reached by the Public Land Law Review Commission and recorded in the prelude to FLPMA, declaring that the public lands would remain in permanent retention under federal ownership and management.

Round Six, the late 1970s and the 1980s. This is the phase of the Sagebrush Rebellion, a movement in clear reaction against the changes of Round Five, followed by the Reagan administration effort to readjust the balance of public lands policy, away from preservation and back toward use. In the denunciation of federal meddling and intrusion, and in the plea to return BLM lands to the states, the Sagebrush Rebellion seemed to be a repeat of and return to Round One; certainly the language often seemed to verge

on direct quotation from the Westerners who had fought Theodore Roosevelt and Gifford Pinchot eighty years before. Battles that were supposed to have been settled, battles that historians had pretty much said were settled, were now reopened, and the premise of permanent federal ownership, seemingly so clear in Round Five, was now open for dispute. And yet many of its opponents took the approach of casting the Sagebrush Rebellion as an empty and futile last gasp, one last revitalization movement undertaken by people working in extractive industries that were clearly being swept away by an urban-based enthusiasm for tourism, recreation, and aesthetic appreciation of Western nature.

Round Seven, which is now. Round Seven, which proves that the Sagebrush Rebellion was not exactly what you'd call a last gasp. Round Seven, which, by virtue of the 1994 midterm elections, with conservative, anti-government sentiment now well represented in the House and Senate, might turn out to make the Sagebrush Rebellion look like the 1970s rhetorical prelude to the acts of substance of the 1990s, with the door seemingly wide open to revived discussions of privatization and/or cession of the public lands to the states.

Round Seven surprised a lot of people, and it certainly surprised me. It surprised me so much that I was forced to realize how much I myself had fallen for that very popular premise that many of these issues were supposed to be settled; many controversies were supposed to have been filed away in permanent storage; many disputes and disagreements were supposed

to have moved into that category in response to which the eyes of regular people glaze over as they say, "This topic is now of only historical interest." All these issues, controversies, disputes, and disagreements have broken out of the file cabinets and archives and monographs and casebooks in which they were supposed to have been permanently interred.

In moments of deep disorientation, historians go for time-depth, and this is clearly one of those moments. So let us reverse the logic of chronology, and briefly return to the era before Round One, before the onset of the conservation movement. In assessing the contentiousness of our own times, it is important to acknowledge the many fights and struggles that occurred before the 1880s and 1890s. While they generally agreed that the federal government should preside over a process of transferring the public domain to private ownership, white Americans disagreed with each other about the prices that people should pay to acquire title to the public lands. They disagreed about the size of the plots of land that should be made available to any individual owner. They disagreed about the process by which land should be surveyed, platted, claimed, and certified for ownership. Thus, while it is safe to say that white Americans shared, for most of the nation's first century, an agreement on the rightness of transferring land to private ownership, it would certainly be a mistake to imagine that they lived in a lost age of harmony and consensus. White Americans fought each other over the terms of disposal of the public

domain, and that, of course, was only one aspect of the fighting. While issues of culture, religion, and politics played important roles in the wars between whites and Indians, those wars were also battles over real estate, battles over the control and ownership of land. So anyone who thinks that the last century's debate has been distinctively contentious and disheartening, and anyone who imagines a preceding age of greater agreement, should be sent off to read the records of the white/Indian wars, as well as the records of often fierce Congressional debates over land.

But there was one element of harmony in this early history, and it may be the disappearance of this element that has led to the greatest bewilderment and frustration in our times. For much of the nation's first century, white Americans had the comfort of believing that individual self-advancement and profit followed the same path as national advancement and profit. In the cause of westward expansion, the individual (or the individual with his family) could pursue his own economic interests, seeking farmland or minerals or business opportunity in the West, and feel that he was at the same time engaged in national service. Expanding American settlements was patriotic duty; if the performance of patriotic duty rewarded the individual with profit and property, that was only further proof that the nation and the individual shared the same values and pursued the same good.

But now we come back around to Round One of the debate, the 1890s and the first decade of the twentieth century, over permanent federal ownership of public lands, in which that unity

of personal interest and national interest began to waver. One signal for the beginning of Round One was the emerging use, in the 1870s and 1880s, of the term "timber famine," the growing fear that the unrestrained exploitation that had eliminated the forests of the upper Midwest might be about to move on to the forests of the Trans-Mississippi West. If those forests took the same trouncing that the Midwestern forests had undergone, more and more Americans began to worry, wouldn't the nation be put at risk--at risk of having to figure out how to maintain a thriving economy without the crucial material for building and construction? Individual profit-seeking would then no longer be national service; on the contrary, individual profit-seeking would erode the base of the nation's security and prosperity.

If you have been reading these proclamations of concern over a prospective timber famine, then Congress's action, in 1891, creating the process that would allow the president to designate forest reserves, makes a great deal of sense. Contemplating the early origins of federal conservation can be a wonderfully disorienting experience--one has to think, for instance, of Grover Cleveland, not simply as the fellow who ran for office while stories of his having fathered an illegitimate child pursued him. (You remember the verse, a verse well worth keeping in mind when we decry the decline in the level of political discourse in our own times: "Ma, Ma, where's my Pa?/Gone to the White House, ha ha ha.") In this story, Grover Cleveland emerges as a man of courage and vision in his willingness to

designate Forest Reserves and to press Congress to come up with a system for their management. This reappraisal is certainly good news for Cleveland, even if it works to remove a little of the lustre and originality from Theodore Roosevelt and his trusted forester friend, Gifford Pinchot.

So in Round One, in response to the prospect of a dangerous timber famine, Congress invented the idea of forest reserves; Presidents began to respond to the opportunity presented by this invention; and some Westerners began to express outrage over this fundamental change in the rules. There is a very important things to note in this: namely, the outraged Westerners were right--they were not subject to paranoid delusions--this was a fundamental change in the rules, a change from disposal to retention, and a change dividing individual benefit from national benefit.

This idea is going to come up several times this morning, and probably more times in the course of this conference. Until I had to work on this presentation, I had never noticed how much all of the present participants in public lands debates--proponents of federal management, resource-users who oppose federal management, environmentalists who sometimes support and sometimes criticize federal management, historians, students in American history survey courses--I had never realized how every single one of us, for all our disagreements, agree on one, completely misguided assumption: that somewhere in this story of the public lands, the rules got firmed up, settled on, agreed on,

resolved, defined, figured out. We date this moment of resolution differently, but we all bank on the notion that on some occasion--whether it was the creation of Forest Reserves that were still supposed to accommodate the needs of legitimate timber-users; or the creation of advisory boards for the Grazing Service, boards that gave a great role for the resource-users to play; or the passage of the Wilderness Act in 1964; or the passage of FLPMA in 1976; wherever we date this moment, we think that was the moment when the real rules took shape, and whatever failures of rule-observance that happened after that moment are just wrong and literally against the rules. When the rules we like got established, that was the moment of resolution, of definition, of consolidated, settled progress; when those rules got violated, changed, or replaced, that was when unfairness set in.

So a number of Western resource users in the 1890s and the first decade of the twentieth century thought that the rules had been changed on them, and they were right. But the pattern of though persisted through the century, that sense of injury over the changeability of the rules, the urge to believe in that elusive moment of final victory or final defeat. My personal feeling is that we have all been ruined by hearing and telling stories, by reading novels, by watching movies and TV shows. Exposure to these narrative forms has ruined us, because they all come with endings, and they create in us the expectation that the stories of our lives and our society will also come with endings.

The implementation of the Taylor Grazing Act will conclude the story of the public lands by making it clear that henceforth resource-users must play a definitive role in the governance of the public lands; the passage of the Wilderness Act will conclude the story by making it clear that henceforth the aesthetic value assigned to untouched nature will have to be reckoned into land use questions; the report of the Public Land Law Review Commission and the passage of FLPMA will conclude the story by making it clear that the public lands will henceforth be retained in permanent federal ownership. Time will, of course, move on, but, in the future, we will play within the rules--the "henceforths"--established at these defining moments.

Well, surprise. For just about everybody, that "henceforth" has proven to be a trick. There is no conclusion to this story; there is no moment when the "permanent" rules got established and defined. Public land policy remains a process of maddening historical changeability and contingency, and I think that is one principal reason why everyone got so cranky in our times--because resource-users or environmentalists, everyone thought that the history of the public lands had reached some kind of defining moment, some kind of future-policy-determining conclusion, some occasion when the real rules got written, affirmed, ratified, and implemented.

So things were unsettled a hundred years ago, and things are unsettled now, and it is quite common to hear people say that this unsettlement is only another repetition of a repeated cycle.

I want to take a moment to record samples of the denunciations of the Forest Reserves denunciations made at the turn of the century. As you listen, you might ask yourself, Does history repeat itself? Am I listening to a broken record, then and now? Or are the people who are saying the things that sound like this today, in fact, intentionally and knowingly echoing their predecessors, but imitating that older language in what are actually very changed circumstances?

Here are appraisals of the Forest Reserves, in the judgment of some Westerners a hundred years ago: the Reserves were "a program designed to harass and annoy"; they were "crackpot schemes of politicians in Washington"; "as nefarious a scheme as ever disgraced the nation"; "the dude design for an outdoor museum and menagerie"; "the destruction of the people who have gone and built up homes"; "a reckless exercise of power"; "rank imbecility"; "obnoxious measures of Eastern visionaries"; "intolerable usurpations of power"; "a system paralyzing all progress"; "an un-American carpetbag system of government."

And here are characterizations, from the enemies of conservation at the turn of the century, of the people behind the Forest Reserves: "the aesthetic Eastern people who are not interested in the country and who will plaster the West with reservations that will retard and cripple the hardy pioneers"; "sentimentalists and dudes"; "theorists, enthusiasts, cranks"; "ill-informed bureaucrats in Washington offices"; "a few theorists who learned their forestry by reading about European

forests"; "distant dictators with only a theoretical knowledge of the West"; "people who do not know a ranch from a pink tea party"; "goggle-eyed, bandy-legged dudes from the East and sad-eyed, absent-minded professors and bugologists."

So we hear characterizations in a similar spirit today. Is this a repetition of history, a recurring cycle that bears some resemblance to the way night follows day and day follows night? Summer follows spring, spring follows winter, winter follows autumn, autumn follows summer, and phases of Western crankiness and ill-temper follow phases of Western affability and collaborativeness?

I do not, myself, really believe history really runs through cycles--not in wars, presidents, cultural enthusiasms, economic events, or public lands debates. I do think, however, that people often make conscious appeals to history. I think they consciously and knowingly adopt the fashions, language, and behavior of historical figures. People sometimes imitate and echo the people of the past in a way that can make it seem that historical cycles are rolling over and over, rather in the manner of a Ferris wheel. Americans who are defying centralized authority have a perfectly understandably habit of citing the inspiration of the American Revolution, or sometimes even the defiance of the Confederacy. This does not mean that either George Washington or Robert E. Lee is about to ride again; it only means that their example is being borrowed, adopted, and appropriated to serve some purpose and in some cause, in what are

actually very different conditions.

The word "cycles" does appear in the description of this talk, and that, in itself, demonstrates how recently I have myself come to reject this idea. What finally caught up with me may well have been the problems involved in being a big Roy Orbison fan. I have always admired Roy Orbison a great deal, but necessity still requires one to admit that some of his songs are deeply silly. In the album released just at the time of his death, there is an extremely goofy song, in which Roy is playing his usual role of the abandoned lover. But this time the setting is both distinctive and ridiculous: he has gotten on a Ferris wheel, and his girlfriend and her new boyfriend have stopped the Ferris wheel while Roy's little chair is at the top, and then the girlfriend and the new boyfriend have left the amusement park, and left Roy to sit in his lonely perch, until someone in the morning can come to his rescue and start the wheel rotating again.

This absurd song, posing as it does a terrible test of loyalty and affection for all of Roy's fans, may be what brought me to my senses, causing me to realize that this "cycles of history" phrase is a terribly deadening metaphor and figure of speech. A cycle of history finally has all the flexibility and contingency and variation of a Ferris wheel ride; you go up, you come down, you go up again, and (barring the misfortune that befell Roy) you come down again. Your best hope for excitement is a great view from the top, or a treacherous girlfriend with

close, personal ties to the fellow running the wheel.

The cycles of a Ferris wheel, just like the cycles of history, lack narrative drama. They also give the rider absolutely nothing to exercise in the way of human will and choice. You can ride your cycle of history with terror or you can ride it with pleasure, but the cycles follow exactly the same path either way.

I do not think the phases of debate over the federal government's retention of the public lands constitute a repeated set of cycles, because of two things. First, I believe that a comparatively widespread discomfort with the idea and practice of permanent federal ownership of public lands never disappeared. The reason for that is twofold, and obvious: because federal ownership of public lands has constricted some people's free choice and economic opportunity, and because federal ownership of public lands is at odds with a widespread definition of the appropriate and limited role of the federal government; in contrast to a theoretically much purer, if also potentially much more destructive, kind of democratic access, federal management of public lands is autocratic and even elitist. Thus, the discontent never went away, but it did get louder and quieter; it got more and less visible; or, maybe most to the point, it got more publicized and less publicized--but I don't think it ever went away. Cycles of publicity are, after all, quite different from cycles of history, though if one is keeping one's eye on the most available records, it is easy enough to confuse the two.

My second reason for rejecting the "cycles" notion is that the circumstances surrounding each phase of the public lands debate are simply too different, even though the attacks on federal management, then and now, certainly sound the same in temper and spirit. At the turn of the century, the federal government really changed the rules. No wonder some Westerners were angry; Theodore Roosevelt and Gifford Pinchot really were setting up a new game, very different from the days of open access. But that game and its rules are hardly "new" in the 1990s. And, just as important, the usual "Easterners against Westerners" polarity is nowhere near as clear as it might have seemed a century ago. By this point in time, many federal land management officials are not Eastern outsiders or invaders, but Westerners themselves, while many, probably most, of the men who had been shaping federal land policy in Congress have been from the West themselves. To pit the West against the East may have been fine and often effective rhetoric, but it was poor history, and poor sociology, of the public lands debate.

One of the principal problems of the West/East formulation has been this: the West never had one voice or one point of view, at any point in history. If you want a down-to-earth, concrete reminder of this, look at the Official Proceedings of the Colorado Conservation Commission from 1909 and 1910. First, one has to be struck by the fact that Western states had their own conservation commissions; conservation was not simply a federal mandate descending from outside. Before they had

conservation commissions, Western territories and states had established Fish and Game commissions; in other words, the active role of the states in conservation is a much under-studied story, but we know enough to say that support for governmentally-managed conservation had roots in many places besides Washington, D.C.

Second, one has to be struck by the diversity of opinion that appears in the records of the Colorado Conservation Commission. Here is the testimony of Ellsworth Bethel, Professor of Botany in East Side High School in Denver in 1909: "The spirit of carelessness and vandalism which manifests itself in the destruction of forests, birds, wild flowers and scenery must be repressed either through laws or by propagating a sentiment of protection and kindness towards every living thing." Well, so much for that urbanite and botanist, Professor Bethel, one could say; hardly a typical voice of the West with that profile. But then here is Mr. J. B. Killian, President of the Delta County Stock Growers' Association, speaking to the Commission in 1909. If you have yielded to the notion of a united Western voice and point of view, you may think you know what the president of the Delta County Stock Growers' Association was going to say about Forest Reserves, but prepare for surprise: "With the excessive misuse and waste of the God-given resources of our public domain there has followed [an] awful depletion of timber, forage and moisture," Mr Killian told the Commission. Working with their neighboring Forest Reserve, he and his stockraising neighbors now enjoyed "peace, protection and prosperity, instead of suffering

the pangs of friction, bloodshed, and criminality." The Forest Reserve had brought stability. "We know today what we may expect tomorrow." "It seems folly," Mr. Killian said, "for men to assert that this whole commonwealth is up in arms against what they term 'Pinchot's Bureaucracy.' We endorse the administration as we find it."

The voice of the West then and the voice of the West now were and are full of variation. We lose a great deal of clarity and accuracy when we say things like, "The West opposed Gifford Pinchot and the Forest Reserves," or "The West today is in revolt against federal land management." Some Westerners asked for Forest Reserves to be created in their locales; some Westerners, once Reserves became their neighbors, thought that this had been a pretty good development. No partisan today can claim to have inherited the mantle from those earlier times; no one can claim to be the true and authentic spokesperson for the Westerners of the past, because Western opinion has never fallen into clear and easy patterns.

But now we reach the aspect of the present circumstances that shows the greatest difference from the situation at the turn of the century: now, it seems to me, it is really not sufficient to look at the public lands debate in a regional context. There is a great necessity to look beyond the West to understand the public lands debate today. I refer to the post-Watergate and post-Iran/Contra cynicism about government; I refer to the widespread disillusionment with federal handling of matters like

health care and urban decline and racial equity and deficit management; I refer to the widely dispersed, sometimes quite scary anti-government feeling abroad in the land; and I refer, as well, to the post-Cold War loss of national orientation, the loss of a reliable sense of who our enemies are and what, in turn, our common enterprise against those enemies might require of us. Think, if you will, of what an ill-advised move it would be for one of the presidential candidates in 1996 to borrow the rhetoric of 1960 and to campaign with the refrain, "Ask not what your country can do for you, but what you can do for your country." Ask what you can do for your country, indeed; ask, instead, how to keep your country off your back and out of your way. In this sense, then, the public lands debate is now situated in a much broader and much more troubling set of questions about national coherence and shared purpose.

An even more puzzling and troubling part of our times has to do with the widespread pattern of people casting themselves as victims. After a phase of white people listening to people of color talk about victimization, white people seem, in the 1990s, to have adopted the position, "We'd like to use some of that rhetoric for ourselves, too." And so many white Americans--and here the Wise Use sorts are part of a much bigger trend--have now cast themselves as the real victims, the ones whose victimization is made all the more unjust because this was supposed to be their country, with a government that was supposed to work in their interests. Indeed, when it comes to absorbing the blame and

responsibility that no one wants to claim for themselves, the handiest target around is the federal government.

So these are quite different times, in political culture, quite a world apart from the world of the early twentieth century. And yet no one can discount the continued resonance of the words of H. H. Eddy, of Denver, speaking to the Colorado Commission on Conservation in 1909, on the subject of the "Ethics of the National Forests." How can we get the best administration of the Forest Reserve system? Mr. Eddy asked his audience.

How can this best be done? [Can we get it] by treating the administration of the forests from a personal standpoint; by ridicule; by vituperation; by exaggerated . . . criticism; by overlooking the good that is being done and exhausting our energies in seeking and publishing to the world every instance of friction or hardship that may have resulted from misconstrued or misapplied law or overzealous service, thus embittering . . . the general public against not [only] those who administer the forests, but as well against the idea [of the reserves] itself? Or would it be better to pursue the other alternative, and work with the administration rather than against it, encourage it for the great good that it is undoubtedly doing, and criticise only with a desire and in the spirit of progress and improvement?

We can say that Mr. Eddy lived, and asked his question, in much more innocent times, without a full understanding of the rat's nest of issues the Forest Reserves would inspire, and certainly without an understanding of the sense of helplessness, impotence, and frustration that individuals can feel when they face off against a large federal bureaucracy. For all that, Mr. Eddy's question still seems to me one of those moments when a long-dead person suddenly seems alive, and suddenly addresses his posterity--addresses us, in the present, with a question we still

have to answer even if its asker has left the planet. What do we say to Mr. Eddy, eighty-six years later? If we want the best resolution to the questions of the public lands, do we reach that resolution by ridicule and vituperation, by reciprocal name-calling and condemnation? Can we criticize, as he said, in the spirit of the greater good, or do we have to report to Mr. Eddy that we no longer have a clue, individually or collectively, what that concept of the "greater good" means in practice? Mr. Eddy awaits our answer, as do several million others whose interests, emotions, and history are invested in the public lands. Has our long history of squabbling on this topic just made us all the more enthusiastic and skilled as fighters. Or, in ways that this conference might demonstrate, can an awareness of our inheritance of conflict and contention make us at least a little more sensible and careful about how we fight?