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**PUBLIC LAND COMMISSIONS:
HISTORICAL LESSONS AND FUTURE CONSIDERATIONS**

by

Mark B. Lambert

B.S. Brigham Young University, 2001

presented in partial fulfillment of the requirements

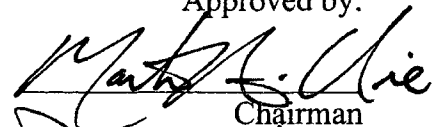
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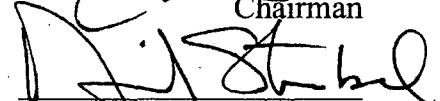
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Public Land Commissions: Historical Lessons and Future Considerations

Chair: Martin Nie 

Congress, presidential administrations, federal agencies, and a host of public land stakeholders have recently directed much attention toward the laws that govern federal public land management. Citing an array of problems that include conflicting agency mandates and regulations, increased legislative and management gridlock, outdated laws, and the declining health of public lands, many of these interests now claim that the current legal framework that governs our federal lands is in need of comprehensive review and reform. They have suggested that a public land law review commission be created to examine current federal land law and policy and recommend revisions.

This paper examines several factors that should be carefully considered to determine whether a public land law review commission is now an appropriate tool to use to address and provide solutions to current problems with federal public land law. Two principal methods were used. First, the histories of the past four public land commissions were compiled through consultation of primary and secondary sources. Second, fourteen confidential interviews were conducted with policy experts or individuals who have participated in public land commissions in the past.

The paper presents the histories of the four past public land commissions, convened in 1879, 1903, 1930, and 1964, and then draws particular attention to additional details from the histories of the commissions through a historical analysis that examines issues from past commissions that are relevant today. Comments and ideas taken from the interviews are then incorporated to elucidate arguments both for and against convening a commission under the current political context and climate. Finally, comments and ideas from the interviews are used to suggest future action regarding a possible public land commission and to propose alternative options that might be used to instigate public land policy change.

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I. Introduction

In his book *Crossing the Next Meridian*, Charles Wilkinson argued in 1992 that many of the most prominent laws guiding natural resource management in the West had become so archaic that they no longer reflected the values of those who care about the West's resources.¹ Many of these laws, he maintained, were passed at a time when public lands were valued exclusively for their ability to produce commodities or perhaps a subsistence living for a homesteading family. Now, a host of new values, including but not limited to aesthetics, biodiversity preservation, recreation, and sustainability have emerged. Times have changed, argued Wilkinson, but the laws have not. Toward the end of that insightful and seminal study of federal public land and water law, Wilkinson acknowledged that while he hoped his ideas would "be of use in suggesting the magnitude of the problem and some of the paths toward resolution," he did not attempt to "catalogue all the specific ways in which those ideas might be instilled" into current policy. Wilkinson insisted that such an effort "will require another journey."²

Now, more than ten years after Wilkinson made his convincing case for comprehensive change to public land law, various public land observers are giving serious consideration to embarking on that journey. They contend, however, that the scope of the journey must be broadened considerably, as the archaic nature of a few natural resource laws is not the only factor now fueling the fire of comprehensive reform of public land law. A new breed of problems, most often described and referred to as

¹ Charles Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, D.C.: Island Press, 1992)

² *Ibid.*, 305.

“gridlock,” now plagues the public lands. Ronald Brunner recently defined gridlock in a broad sense as the “government’s inability to act on major national issues,” and noted that it is often a problem “in a changing society that undermines old policy solutions and generates new policy problems.”³ This definition fits well with the current circumstances surrounding public land law and policy.

The current state of gridlock in public land management and policy making has triggered an immense amount of criticism of the public land governance system and directed widespread attention toward the mechanisms that hold that system in place. The question now facing public land interests is how to address these problems in an effective and comprehensive manner. As Congress, the administration, and other public land officers and observers continue to grapple with this question, several public land policy observers and stakeholders have proposed embarking on Wilkinson’s “journey” of examining possible methods of reform by way of an impartial review of public land laws and policies, undertaken in the form of a new public land law review commission.

Many factors must be carefully examined to determine whether a public land law review commission is the appropriate tool to use in confronting and attempting to resolve current problems with federal public land law and the institutional framework of public land governance. One of the first directions to look for guidance should be the history of similar processes of the past.

Congress or the President has on four occasions found it necessary to use a government study commission to conduct a formal review of the laws governing public

³ Ronald D. Brunner, “Problems of Governance,” in *Finding Common Ground: Governance and Natural Resources in the American West*, ed. Ronald D. Brunner et al. (New Haven: Yale University Press, 2002), 25.

lands. Congress created the Public Land Commission in 1879 in the wake of widespread abuse of public land laws and in response to the confusion caused by inconsistent implementation of those laws across different regions of the West.⁴ Again in 1903, extensive abuse of public land laws, primarily the Timber and Stone Act, Desert Land Act, and the commutation clause of the Homestead Act, prompted President Theodore Roosevelt to ask Congress to create a commission to investigate the problems associated with those and other laws and make recommendations for changes.⁵ The third commission, called the Committee on the Conservation and Administration of the Public Domain, was established by Congress at the behest of President Herbert Hoover in 1930 and charged to “study and make recommendations relative to the future care, policy, and conservation of the public domain of the country.”⁶ The last commission, known as the Public Land Law Review Commission, was created in 1964 to examine public land laws and to determine “whether and to what extent revisions thereof are necessary.”⁷ That commission completed its work in 1970.

The stories of each of these commissions undoubtedly hold valuable lessons for those interested in pursuing a similar course to address current public land problems. In an attempt to inform these efforts, I take a two-pronged approach in this paper to determine: 1) what we can learn from past commissions that will inform our decisions today about convening a new public land law review commission; and 2) what current

⁴ Paul W. Gates, *History of Public Land Law Development* (Washington, D.C.: GPO, 1968), 422.

⁵ *Ibid.*, 488.

⁶ *Congressional Record*, House, 71st Cong., 2d sess., 1930, 72, pt. 2: 2242.

⁷ *Public Land Law Review Commission Act, Statutes at Large* 78, sec. 982 (1964).

factors should be considered in convening a new public land law review commission. I applied two principal methods to accomplish these tasks. First, I compiled the histories of the past four public land commissions by consulting primary and secondary sources. Second, I conducted fourteen confidential interviews with individuals who have been or are actively involved in evaluating, implementing, or otherwise working with public land law and policy, or who have participated in public land and natural resource commissions in the past. With this methodology, I recount the stories of the four past public land commissions and then draw particular attention to additional details from the histories of the commissions through a historical analysis that examines issues from past commissions that are relevant today. I then incorporate comments and ideas taken from the interviews to elucidate arguments both for and against convening a commission under the current political context and climate. Finally, I use comments and ideas from the interviews to suggest future action regarding a possible public land commission and to suggest alternative options for public land policy change.

This paper is divided into three major parts. In the first part (section two) I will lay the groundwork for this study by reviewing statements made by various public land policy observers who have expressed interest in convening a new public land commission to address public land problems and by briefly examining some of the problems they describe.

In part two (sections three and four), I will examine the history of past commissions that were convened for purposes similar to those for which a current commission might be created, with particular emphasis on the last commission of 1964. In exploring these histories, I will attempt to identify the strengths and weaknesses of

each and draw lessons that can be learned from their respective experiences through a historical analysis.

In the third part (sections five and six), I will describe the cases for and against using a public land commission to effectuate policy change within the current political context as it relates to public land governance, as gleaned from the interviews conducted for this project. I will then use the interviews to offer suggestions for a successful commission and possible alternatives to a commission.

II. Background and Rationale

An increasing number of diverse voices are calling for a comprehensive examination and revision of public land law by way of a public land law review commission. Jack Ward Thomas, Forest Service Chief under President Bill Clinton from 1993 to 1996, has been an outspoken advocate for a new public land law review commission for several years. During his tenure as Chief, Thomas made several references to the 1964 Public Land Law Review Commission, noting the need for something similar to help deal with the problems he saw his agency regularly encounter.⁸ More recently, Thomas intensified his call for a commission during a hearing before the House Subcommittee on Forests and Forest Health on Dec 4, 2001, arguing, “now that federal land management is dramatically and even more seriously convoluted and

⁸ U.S. General Accounting Office, *Federal Land Management: Streamlining and Reorganization Issues*, (Washington, D.C., 1996), 8-9; U.S. General Accounting Office, *Forest Service Decision-Making: A Framework for Improving Performance* (Washington, D.C., 1997), 101-102.

becoming increasingly dysfunctional, it may be time to try [a commission] again.”⁹

During the same hearing, after outlining the need for simplification of laws and regulations governing the Forest Service’s activities, James Perry, who served in the Department of Agriculture’s Office of the General Counsel for 32 years, insisted that “some mechanism must be found to integrate the many environmental statutes . . . Without a unified approach, the agency will forever be unable to meet its statutory duties.” He placed the onus on both the Forest Service and Congress, calling on them to “act to radically simplify management direction. With little progress having been made recently on the legislative front,” Perry concluded, “perhaps it is time to consider an approach similar to the Public Land Law Review Commission to build a base of public understanding and compromise on future legislation.”¹⁰

Other insiders, including Jerome Muys, who served as general counsel for the 1964 PLLRC, and John Leshy, Department of Interior Solicitor from 1992 to 2000 during the Clinton administration, contend that “the time is ripe for another review of the appropriate legislative and administrative policies for the future of the public lands” and go so far as to make detailed and specific recommendations for mandates to guide a new commission in its work.¹¹ William Banzhaf, then executive vice-president of the Society of American Foresters, wrote in September 2002, “Congress and the administration ought to address the problems by reforming existing laws” and suggested “holistic treatment

⁹ Congress, House, Committee on Resources, Subcommittee on Forests and Forest Health, *Conflicting Laws and Regulations: Gridlock on the National Forests: Oversight Hearing before the Subcommittee on Forests and Forest Health*, 107th Cong., 1st sess., 4 December 2001, 16.

¹⁰ Congress, *Conflicting Laws and Regulations*, 50.

¹¹ Jerome C. Muys and John D. Leshy, “Whither the Public Lands?” in *41st Rocky Mountain Mineral Law Institute Proceedings* (Denver: 1995), 3.2, 3.44-3.45

that calls for comprehensive reform.”¹² Writing from the environmental perspective, former Lewis and Clark Law School professor Gary D. Meyers insists that we must “restructure the federal framework for resource management by reevaluating . . . environmental laws. One means of accomplishing this goal,” he argues, “is to create a new public land law review commission, made up of federal and state officials, scientists and resource economists from agencies and academia, industry representatives, and public interest environmental organization representatives.”¹³ Most recently, several western policy centers have observed that “the current system of governing and managing public lands is in need of thoughtful, carefully researched, and impartial review and analysis.”¹⁴ These policy centers have expressed interest in investigating the feasibility of creating some type of system-wide analysis of public land law and policy, perhaps via a public land law review commission. They joined other researchers at the Montana Summit in August 2003 to address this and other issues relating to public land governance.¹⁵

¹² William H. Banzhaf, “Forest management must be long-term effort, not quick fix,” *Missoulian* (Montana), 10 September 2002, B4.

¹³ Greg Meyers, “Old Growth Forests, the Owl, and the Yew: Environmental Ethics versus Traditional Dispute Resolution under the Endangered Species Act and other Public Lands and Resources Laws,” *Boston College Environmental Affairs Law Review* (Summer 1991): 661. Meyers continues with a description of his version of a commission: “The charge to the review commission would be to propose a package of amendments to federal resource management laws that reflect an ecosystemic management approach and harmonize conflicting management and funding provisions.”

¹⁴ Text is taken from a draft letter dated 32 May 2003, composed by several policy centers convened by the Western Consensus Council.

¹⁵ The University of Montana’s *Montana Summit*, held August 5-7, 2003 in Bigfork, Montana, convened experts to discuss issues related to the governance of public lands.

These varied interests, in calling for a comprehensive review of public land law and policy, are suggesting that a government study commission might be one tool to help fix a public land management system that has been described as “badly — perhaps irretrievably — broken.”¹⁶ While not everyone agrees with this assessment, most public land observers do recognize deeply engrained problems with the system and acknowledge a need for some type of restructuring and simplification. Many factors have led to this state of affairs in public land law.

Those who work with or are otherwise acquainted with public land law know of its confounding breadth and complexity. Public land law encompasses several types of laws: those dealing with the public lands as a whole, such as the Federal Land Policy and Management Act of 1976; laws addressing particular types of land or resources, such as the Wilderness Act of 1964; general environmental statutes, such as the National Environmental Policy Act of 1970; and procedural laws such as the Federal Advisory Committee Act of 1972 and the Administrative Procedure Act of 1946, to name just a few.¹⁷ Literally thousands of pages of statutes guide the management of the public lands, and piled on top of those statutes are thousands of additional pages of administrative rules and regulations.¹⁸ The complexity of public land law is exacerbated by what many believe are conflicting mandates in the statutes and regulations that guide agency actions and management principles. This complexity and contradiction is most commonly and

¹⁶ Daniel Kemmis, “Can We Restart the Missing Dialogue on Public Lands?” *Denver Post*, 3 March 2002, 1E.

¹⁷ Marla E. Mansfield, “A Primer of Public Land Law,” *Washington Law Review* 68 (October 1993): 801.

¹⁸ George Cameron Coggins, Charles F. Wilkinson, and John D. Leshy, *Federal Public Land and Resources Law*, 4th ed. (New York: Foundation Press, 2001), 3.

clearly demonstrated in situations where a multiplicity of laws and regulations are simultaneously triggered in response to an agency-proposed action on public land.

Two recent incidents in Montana are illustrative. The Ecology Center, Inc. (TECI), a Montana-based environmental advocacy group, brought suit against the Forest Service in 2002 to stop five salvage-logging sales proposed by northwest Montana's Kootenai National Forest. TECI claimed the sales would damage the forest's remaining old-growth stands, in violation of Kootenai National Forest's own rule that ten percent of stands be retained in old-growth. To ameliorate mounting hardship on a nearby timber-dependent community, TECI was on the verge of dropping the lawsuit when a different Montana-based environmental group announced its plans to bring a lawsuit against the Forest Service to stop a timber sale in the same forest because, the group claimed, it would "damage grizzly bear habitat and a corridor used by the bears."¹⁹ Forest Service personnel essentially see these suits as challenging their legal mandate to provide a sustained yield of timber as dictated by the Multiple-Use, Sustained-Yield Act of 1960 and the National Forest Management Act of 1976.²⁰

A similar lawsuit, brought by Montanans for Multiple Use, was filed against northwest Montana's Flathead National Forest in June 2003. The group alleged that the Flathead National Forest, among other grievances, had "failed to provide a sustainable

¹⁹ Sherry Devlin, "Alliance Moves to Protect Grizzlies," *Missoulian* (Montana), 11 February 2003.

²⁰ *Multiple-Use, Sustained-Yield Act, Statutes at Large* 74, sec. 215 (1960); *National Forest Management Act, Statutes at Large* 90, sec. 2949 (1976). The Multiple-Use, Sustained-Yield Act defines "sustained yield" as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forest without impairment of the productivity of the land."

flow of timber for local and national economic and social sustainability” due to that forest’s tendency to use less intense management practices.²¹

Conflicting laws often result in litigation by a party that accuses an agency of neglecting the laws that might otherwise fulfill that particular party’s interests. That laws exist to ensure a sustainable flow of timber, to protect old-growth stands, or to protect wildlife is not the problem; but that land managers are instructed by law to manage land for competing purposes is a problem, and as these stories illustrate, that is a task clearly difficult, if not at times impossible, to achieve.

Not surprisingly, observations that public land law is laden with contradictory statutes and responsible for extremely complex procedural requirements often come from people with first-hand experience. Cecil Andrus, Secretary of the Interior during the Carter administration, has described current public land law as “the tangled web of overlapping and often contradictory laws and regulations under which our federal public lands are managed.”²² Former Forest Service Chief Jack Ward Thomas noted during his tenure that the “complex processes that have evolved to deal with too much uncoordinated law and uncoordinated regulation...should be simplified.”²³ Dan Glickman said he was “struck by the number of conflicting Forest Service regulations” as

²¹ Jim Mann, “Lawsuit Filed to Stop Shutdown of Forests” *Daily Inter Lake* (Kalispell, Montana), 11 June 2003.

²² Cecil D. Andrus and John C. Freemuth, “How should the next administration approach public land management in the western states?,” in *Policy after Politics: Proceedings of the Conference in Boise, Idaho, June 1, 2000*, by the Andrus Center for Public Policy, (Boise: Andrus Center for Public Policy, 2000), 2.

²³ Jack Ward Thomas, “The Instability of Stability,” in *Landscapes and Communities on the Pacific Rim: Cultural Perspectives from Asia to the Pacific Northwest*, ed. Karen K. Gaul and Jackie Hiltz (Armonk, New York: M.E. Sharpe, 2000), 28.

he became familiar with his new duties as Secretary of Agriculture, a post he held from 1995 to 2000.²⁴ One of Glickman's first moves as Secretary was to establish a task force "to consider how the agency's underlying statutes and regulations relate to each other, and where they conflict."²⁵ Current Forest Service Chief Dale Bosworth has made his highest priority resolving what he has coined as "analysis paralysis."²⁶ He attributes this phenomenon to "overlapping and sometimes conflicting requirements, procedural redundancies, and multiple layers of interaction" between the many laws and regulations that guide Forest Service actions.²⁷

Nevertheless, not all public land interests see gridlock or "analysis paralysis" as a negative product of current policy. In the Kootenai National Forest, for example, the state of gridlock caused by conflicting laws was partially responsible for at least temporarily halting two agency actions that were unacceptable to environmental organizations. From the perspective of these groups, ongoing gridlock prevents agencies from implementing controversial projects on public lands. One individual who was interviewed for this paper insisted that Bosworth's complaints of "analysis paralysis" are unfounded, and that the Forest Service suffers from procedural gridlock simply because of its failure to adhere to applicable laws. From his perspective, continued litigation is needed to impede the actions of agencies that are operating under outdated missions —

²⁴ U.S. Department of Agriculture, Press Release No. 0312.95, [<http://www.usda.gov/news/releases/1995/04/0312>], 12 April 1995 (accessed 8 July 2003).

²⁵ Ibid.

²⁶ Congress, *Conflicting Laws and Regulations*, 4. See also U.S. Forest Service, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management* (Washington, D.C.: GPO, 2002).

²⁷ Congress, *Conflicting Laws and Regulations*, 4.

missions that conflict with the ecological mandates of the Endangered Species Act, for example.²⁸ In the meantime, until these missions are amended, the procedural gridlock caused by litigation and conflicting mandates is a positive result in the eyes of these public land interests.

Meanwhile, members of Congress, influenced by opposing viewpoints of procedural gridlock, have been unable to agree on solutions to the problem. Congress's efforts to address agency procedural gridlock have in turn led to legislative gridlock in Congress. In order to bypass the gridlock, policy-makers have resorted to unconventional fixes through use of what political scientists Christopher Klyza and David Sousa call "new policy pathways."²⁹ These pathways include appropriations politics, executive politics, the courts, and negotiation and consensus, and lead to policies that "lack stability, rationality, legitimacy, and accountability."³⁰ In the absence of any explicit mandate, which Congress has failed to generate, lawmakers resort to implementing changes through a series of *ad hoc*, disconnected efforts, and each public land interest attempts to bypass laws in order to get what it wants.³¹ The result is a proliferation of complexity, confusion, and instability in public land policy and law.

²⁸ *Endangered Species Act, Statutes at Large* 87, sec. 884 (1973).

²⁹ Christopher M. Klyza and David J. Sousa, "Environmental Policy Beyond Gridlock" (paper presented at the 2003 Annual Meeting of the Western Political Science Association, Denver, Colorado, 27-29 March, 2003), [<http://www.ups.edu/faculty/sousa/wpsa2003.htm>], 15 (accessed 15 July 2003). The many policy events surrounding public land fire policy from 2000-2003 serve as good examples of these new policy pathways.

³⁰ *Ibid.*, 30.

³¹ Bob Love, "A Dose of Straightforward Management Would Greatly Improve Forest Health," [<http://www.headwatersnews.org/p.092502.printer.html>], September 2002 (accessed 8 July 2003).

Increasing numbers of public land policy observers are recognizing the need for some type of comprehensive analysis of public land law and policy to examine and respond to these problems. Some have looked to the past and identified public land commissions as potential tools to address current problems. Any attempt to convene a commission at this time should be well informed of similar efforts of the past.

III. History of the Public Land Commissions

Federal public lands make up roughly one-third of the nation's land base. Throughout its history of managing such a vast holding of public lands, the United States government has employed on four occasions a government study commission to conduct a formal review of the laws governing public lands. Each commission convened experts and policy-makers from various fields related to public land law and management who then studied the general operation of the public land system and drafted reports recommending changes, which were submitted to the President and Congress. Though similar in function and form, many differences exist between each of these commissions, and each deserves consideration here. For the purposes of this paper, however, special emphasis is placed on the last commission, which was created in 1964, because of its greater relevance to the current era of public land management and values. This section recounts the origins, structures, functions, processes, politics, activities and outcomes of these commissions and draws what will hopefully be valuable lessons for those considering a new public land law review commission.

Public Land Commission, 1879 – 1881

With the passage of the Sundry Civil Appropriations Bill on March 3, 1879, Congress established the first commission created with the distinct purpose of investigating the public land laws.³² Paul Gates, in his historically comprehensive account of public land law, writes that Congress was prompted to create the Public Land Commission in response to the widespread abuse of public land laws and to deal with the confusion caused by inconsistent implementation of those laws throughout different regions of the West.³³ This was certainly the case in 1879, a time when abuse of the Preemption, Timber Culture, and Desert Land Acts was well documented.³⁴ Abuse would occur in many forms, but it generally had to do with exploiting settlement laws in order to amass large tracts of land and gain access to valuable natural resources. Most common were instances when owners of large timber mills would provide money to their employees who would then enter the lands surrounding the mills and establish a homestead, thereby gaining title to that land, only to transfer it to the owner of the mill.³⁵ Various renditions of this type of abuse occurred across the public lands, the only difference among them being the natural resource that was exploited. In addition to this abuse, the Public Land Commission noted in its report that “innumerable statutes, local in their application and temporary in their intended form” had inadvertently been

³²*Sundry Civil Appropriations Act of 1879, Statutes at Large* 20, sec. 377 (1879).

³³ Gates, *History of Public Land Law Development*, 422.

³⁴ Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1970*, 2d ed., rev. (Lincoln: University of Nebraska Press, 1976), 288-90; Gates, *History of Public Land Law Development*, 422, 434.

³⁵ Robbins, *Our Landed Heritage*, 288.

established as permanent rights across the public lands.³⁶ This morass of provisional statutes eventually became unmanageable. Managers at the Land Office, in response to the ambiguities of public land laws passed by Congress and inconsistencies arising from the accumulated statutes, interpreted public land and settlement laws at their own convenience.

This abuse and confusion certainly warranted that something be done to regain control over public land law. A brief account of the circumstances leading to the development of the idea of a commission and the events leading up to its actual establishment, however, sheds additional light on how and why the commission came to be, the nature of the commission's composition, and on its activities, report and recommendations. It also helps us to better understand the make-up of public land commissions that would follow, and offers critical lessons for those who might consider convening such a commission now.

Congress instructed that the Public Land Commission be made up of the Commissioner of the General Land Office (then James A. Williamson), the Director of the Geological Survey (then Clarence King), and three civilians, to be appointed by the President.³⁷ President Rutherford B. Hayes, who Gates suggests was highly influenced in his decisions by his Secretary of Interior Carl Schurz,³⁸ appointed Alexander T. Britton, a former clerk in the Land Office; Thomas Donaldson, former register of the Idaho Territory Land Office; and John Wesley Powell, head of the Geographic and Geologic

³⁶ Congress, *Preliminary Report of the Public Land Commission*, 46th Cong., 2d sess., 1880, H. Ex. Doc. 46, Serial 1923.

³⁷ *Ibid.*

Survey of the Rocky Mountain Region. It was Powell who was the mastermind behind the convening of the Commission, its most influential contributor, and, in the end, responsible for its disappointing outcome.

The result of more than ten years of exploration, study and observation of the western land of the United States, Powell's famous "Report on the Lands of the Arid Region of the United States, with a More Detailed Account of the Lands of Utah" was published in April 1878.³⁹ Without going into the detail of its recommendations, it is enough to say that Powell's "Report" embodied "a complete revolution in the system of land surveys, land policy, land tenure, and farming methods in the West, and a denial of almost every cherished fantasy and myth associated with the [West]."⁴⁰ Upon publication, the report was rapidly distributed to several reform-oriented members of the administration. It soon found its way into the hands of Congress's scientific arm, the National Academy of Sciences, which "began to incorporate more and more of [Powell's] 'general plan' for land policy" and "came to sound more and more like his mouthpiece."⁴¹ When Congress officially requested that the Academy make recommendations regarding how Congress should handle the western land surveys, it was essentially deferring the question to Powell himself. If that were not enough to ensure Powell's unfettered influence, when the Academy's recommendations were finally

³⁸ Gates, *History of Public Land Law Development*, 423.

³⁹ Congress, *Report on the Lands of the Arid Region of the United States, with a More Detailed Account of the Lands of Utah by John Wesley Powell*, 45th Cong., 2d sess., 1878, H. Exec. Doc. 73.

⁴⁰ Wallace Stegner, *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West* (New York: Penguin, 1992), 212.

⁴¹ *Ibid.*, 233.

delivered to Congress, Powell was asked by Secretary Schurz to provide “the precise wording of the legislation . . . for embodying the Academy’s suggestions.”⁴² The Academy’s recommendations went far beyond the question of the land surveys and included, among many recommendations taken directly from Powell’s “Arid Lands” report, the suggestion that a commission be convened to study and codify the public land laws. Powell translated the Academy’s recommendations into legislation and delivered it to Congress. The least controversial item of the legislation was the authorization for the establishment of a Public Land Commission.⁴³ The more controversial items of his legislation, which were eventually defeated, were taken up by Powell and the Public Land Commission when he was appointed a member of that body in July 1879.

The Public Land Commission was formally charged to (1) codify existing land laws, (2) recommend a system for the classification of public lands, (3) develop a substitute surveying method based on the classification system, and (4) recommend the best methods for the disposal of the public lands “to actual settlers.”⁴⁴ For about four months, the Commission visited all the western states, collecting most of their information from a questionnaire they circulated among “land officers, miners, lumbermen, stock raisers, real estate dealers and, indeed, representatives of most elements interested in administering, buying, and selling, as well as exploiting the lands.”⁴⁵

⁴² Ibid., 236

⁴³ Gates, *History of Public Land Law Development*, 423; Stegner, *Beyond the Hundredth Meridian*, 237.

⁴⁴ Congress, *Preliminary Report of the Public Land Commission*, 3.

⁴⁵ Gates, *History of Public Land Law Development*, 424

The Commission's final report was submitted to the President and Congress in separate parts between February 1880 and January 1881. Given the events described above, it was of no surprise to Congress that "Powell's ideas and philosophy permeate[d] every part of the commission's report."⁴⁶ For example, it asserted that all western arable lands had been settled and the remaining lands should be divided up for pasturage use only, which process required modification or repeal of the Homestead and Preemption Acts. The Commission also documented in its report the widespread abuses of the Preemption Act, Timber Culture Act, and Desert Lands Act, and called for the repeal of each.⁴⁷ In short, the report consisted of a comprehensive history of the public land laws as well as a wide range of recommendations relating to surveying methods, land classification, and disposal of the public lands, most of which "echo[ed] the thesis and at least some of the proposals of the Arid Region Report and the Report of the National Academy."⁴⁸ Accompanying the report was the draft of a bill embodying many of the Commission's recommendations.⁴⁹

While Powell certainly influenced the report of the commission, he also, with his overt participation in all the events leading up to the Commission's creation, inadvertently influenced its poor reception in Congress. Neither the "Report on the Arid Region" nor the National Academy of Sciences' recommendations had been well received in Congress, and its treatment of the Commission's report was no different,

⁴⁶ Ibid.

⁴⁷ Congress, *Preliminary Report of the Public Land Commission*, 100.

⁴⁸ Stegner, *Beyond the Hundredth Meridian*, 241.

⁴⁹ Congress, *Preliminary Report of the Public Land Commission*, 49.

except that it caused even less fanfare than the others. Congress perceived the Public Land Commission's report as a mere reiteration of the content of those previous documents, and for the most part, it was accurate in its assessment. As a result, the report was almost completely ignored, and Congress never considered the legislation submitted with the report.

In spite of these problems, the Public Land Commission should not be perceived as a complete failure. One tangible result that arguably came out of the work and deliberations of the Commission was the passage of the General Land Law Revision Act of 1891.⁵⁰ Following a provision in Sec 155 of the Commission's draft legislation,⁵¹ the Act of 1891 provided for the establishment of forest reserves. This was quite a departure from previous policy and reflected the radical nature of the Commission's report and its visionary focus on retention of public lands. This provision allowed Presidents Harrison and Cleveland to place millions of acres of forested lands in forest reserves over the next few years. Consequently, 1891 has often been cited as the year that closed the curtain on the disposal era.⁵²

In retrospect, many would agree with Gates that "it was unfortunate that the report of the commission . . . [was] so completely disregarded."⁵³ However, the blame should

⁵⁰ *General Land Law Revision Act of 1891, Statutes at Large* 26, sec. 1095 (1891); Robbins, *Our Landed Heritage*, 302; Samuel T. Dana, *Forest and Range Policy: Its Development in the United States* (New York: McGraw-Hill, 1956), 66; Harold H. Dunham, *Government Handout: A Study in the Administration of the Public Lands, 1875-1891* (New York: Columbia University Press, 1941), 338.

⁵¹ Congress, *Preliminary Report of the Public Land Commission*, 76.

⁵² Robert B. Keiter, ed., *Reclaiming the Native Home of Hope: Community, Ecology, and the American West* (Salt Lake City: University of Utah Press, 1998), 24.

⁵³ Gates, *History of Public Land Law Development*, 434.

not be placed entirely upon an un-visionary Congress. Congress did see the need for a review of the public land laws, as is demonstrated by its approval of a commission. In their rejection of the Commission's report and recommendations, legislators were at least partially reacting to what they perceived as a rigged commission. They were also reacting to Powell, whom they had essentially rejected twice already. Had Powell not been involved with the Commission, its recommendations certainly would have been different, but they would have had a better chance of being heard and implemented. As will be seen shortly, this will not be the first time a powerful personality would influence a commissions and its reception in Congress.

Public Lands Commission, 1903 – 1905

Twenty-two years after the Public Land Commission released its report, the second commission charged to examine public land law was created in 1903. Because the earlier commission's recommendations had been so thoroughly disregarded, abuse of some of the very laws that commission had recommended be repealed continued on an even larger scale.⁵⁴ Problems were exacerbated by other laws unfit for dealing with the growing number of settlers locating in the Western United States. By 1903, exploitation of resources and laws mixed with unprecedented population increases had created a dire situation on public lands in which "the public supply of farmland had all but disappeared; private irrigation was but a drop in the bucket; western grazing lands were in poor condition; wildlife resources were at historical lows; and timber resources were severely

⁵⁴ Abuse of the preemption laws and the Timber and Stone Act was particularly widespread. Powell's commission had recommended the repeal of each.

depleted. Scandal was endemic, reforms had been repeatedly thwarted, and the trend toward large holdings and monopoly grew.”⁵⁵

Not only were the two commissions created to deal with many of the same problems, but just as John Wesley Powell almost single-handedly created the first commission, events leading up to the creation of the 1903 commission reveal that one man — Gifford Pinchot, then Chief of the Bureau of Forestry and at that time the “foremost architect of radical revision in public land policy”— was primarily responsible for bringing it into existence as well.⁵⁶

Having been appointed by President McKinley as head of the Division of Forestry in 1898, by 1903 Pinchot had become quite familiar with the public land laws and their ramifications for forest lands in particular. He complained that “many of the public-land laws were more or less defective [and] their administration by the Interior Department was horrible.”⁵⁷ Pinchot was in charge of government forestry practices but had no actual forests under his jurisdiction. His primary objective was to transfer the jurisdiction of the forest reserves from the Interior Department to the Department of Agriculture, where he was stationed.⁵⁸

Pinchot was in a good position to influence public land law in 1903, particularly because of his strong friendship with President Theodore Roosevelt. Pinchot and Roosevelt had become acquainted while Roosevelt served as Governor of New York. By

⁵⁵ Coggins, Wilkinson, and Leshy, *Federal Public Land and Resources Law*, 119.

⁵⁶ *Ibid.*, 120.

⁵⁷ Gifford Pinchot, *Breaking New Ground* (Washington, D.C.: Island Press, 1974), 244.

⁵⁸ *Ibid.*, 246; Gates, *History of Public Land Law Development*, 598; M. Nelson McGeary, *Gifford Pinchot: Forester-Politician* (Princeton: Princeton University Press, 1960), 58.

the time Roosevelt became President in 1901, their shared interest in the outdoors had strengthened their friendship, and they were known to participate in many outdoor adventures together. As a result, Pinchot had “access to the oval office that no division chief had ever had before or since.”⁵⁹

Having already successfully urged President Roosevelt to create a Committee on the Organization of Government Scientific Work in early 1903 (of which Pinchot was a member, and which made the recommendation that the reserves be transferred from Interior to Agriculture), Pinchot again used this approach to create a commission to study the public land laws. Exercising his influence on the President, Pinchot drafted and delivered to Roosevelt a letter, ready for his signature, creating a commission “to report upon the condition, operation, and effect of the present land laws, and to recommend such changes as are needed to effect the largest practicable disposition of the public lands to actual settlers who will build permanent homes upon them, and secure in permanence the fullest and most effective use of the resources of the public lands.”⁶⁰

Roosevelt first asked Congress to create the commission, knowing perhaps that it had a better chance of long-term success if it had congressional buy-in. However, Roosevelt’s frequent use of commissions “to emphasize and provide the substance for reforms he favored” had taken its toll on Congress, and they refused to honor his request to create a public land commission.⁶¹ Using his own executive powers, Roosevelt created

⁵⁹ Pinchot Institute for Conservation, “Biography of Theodore Roosevelt, Jr.,” [<http://www.pinchot.org/gt/tr.html>] (accessed 21 July 2003).

⁶⁰ Congress, *Report of the Public Lands Commission*, 58th Cong., 3d sess., 1905, S. Doc. 189, Serial 4766, 3.

⁶¹ Gates, *History of Public Land Law Development*, 492.

the Public Lands Commission on October 22, 1903 and personally appointed its three members: W.A. Richards, then Commissioner of the General Land Office, who was chairman; Frederick H. Newell, then Chief Engineer of the newly created Reclamation Service, and who later served as Reclamation Commissioner from 1907 to 1914; and Gifford Pinchot. Remaining steady in its opposition, Congress refused to appropriate any funds to the Public Lands Commission. Consequently, the members of the Commission used their respective staffs, primarily in the Bureau of Forestry and the Reclamation Service, to gather data, prepare reports, and provide general support. The Commission itself traveled throughout the public lands states and talked to governors, land boards, public officials, and private citizens. Hearings were held in the West and in Washington, D.C. They also submitted questionnaires to selective groups and spent a considerable amount of time on the public lands themselves.

The Commission's recommendations, delivered in two separate reports in March 1904 and February 1905, would have significantly curtailed what proved to be continued abuse of many public land laws, but, as Gates points out, "the recommendations were disregarded . . . by a Congress whose western members were generally hostile to the report, and elsewhere it attracted little attention."⁶² The report embodied six major recommendations that would have increased federal control over public lands — an unpopular notion to western lawmakers — but their hostility toward the report stemmed more directly from the fact that it was a product of Pinchot, who by this time was known for his prominent role in the rapid expansion of forest reserves. Gates notes, "A reading of the two reports of the commission suggests that it was created to give support to views

⁶² Ibid., 491.

already well crystallized in the minds of Pinchot and Newell.”⁶³ This of course was expected, considering the fact that Pinchot was the force behind the creation of the Commission and fully involved in its operations, and that Newell was an “ardent conservationist” whose philosophical views of public land management fell right in line with Pinchot’s.⁶⁴ The Public Lands Commission was not seen as an impartial body objectively assessing the public land laws, but rather as a vehicle used by Pinchot to further institutionalize his views and push his proposals through Congress.⁶⁵ Indeed, Pinchot saw it this way as well. He writes in his memoirs, “

The appointment of the Public Land Commission was thoroughly justified on its merits and in its results. As with the Committee on the Organization of Government Scientific Work, however, I had an ulterior motive, of which I made no secret. In both cases I hoped the investigations would prove the need for transferring the Forest Reserves from the Department of the Interior, where they were thoroughly mishandled, to the Department of Agriculture, where I was confident we could do a good job.⁶⁶

Pinchot never even had to write this reorganization recommendation into the report of the Commission because the transfer occurred before the third installment of the report, which we can safely assume would have carried the recommendation, was drafted. After years of debate, Congress finally approved the transfer in early 1905.⁶⁷ Consequently, the intended third installment of the report was never written.⁶⁸ Once the

⁶³ Ibid., 489.

⁶⁴ Ibid., 578.

⁶⁵ Ibid.

⁶⁶ Pinchot, *Breaking New Ground*, 246.

⁶⁷ McGeary, *Forester-Politician*, 61.

⁶⁸ Roosevelt refers to an upcoming third installment of the Commission’s report in Congress, *Report of the Public Lands Commission*, 11.

transfer of the forest reserves occurred, the Commission disbanded, no longer seeing a need to exist.

However, Pinchot's assertion that the Public Lands Commission "was thoroughly justified on its merits and in its results," should not be interpreted merely as a rationalization for the highly political maneuvers he used to achieve his goals for the forest reserves. As has been explained, there was indeed great need for some type of examination of the public land laws in this period of transition from the era of disposition to the new era of conservation. Abuse of the Timber and Stone Act, the Desert Land Act, and the commutation clause of the Homestead Act was rampant, and the results on the ground were neither what disposition laws nor conservation laws intended for the public domain.⁶⁹ Private ownership of the land, the primary purpose of disposition laws, was in large part going to lumber companies, land-grant corporations, cattle barons, and other large interests rather than to the small homesteaders disposition laws were intended to benefit. This in turn resulted in the land being stripped of its natural resources by commodity interests and degraded for future users, a result that did not fulfill conservation purposes for the public lands either. The idea of a Public Lands Commission was timely, and the work of such a commission should have had much bearing on the public land deliberations of the day. The Commission's few recommendations were sound, insightful, and for the most part, right on target for solving some of the most glaring problems facing the public lands system at that time. For example, one of the Commission's key recommendations—repeal of the forest lieu

⁶⁹ The commutation clause allowed homesteaders to buy land after making minor improvements and living on it for six months, rather than the otherwise requisite five years. Speculators and other larger interests used dummy entrymen to acquire the land quickly under this provision of the law.

provision⁷⁰ of the Forest Service's "Organic Act" Act of 1897⁷¹—actually occurred shortly before the report was transmitted to Congress, and that only because of the publicity received by the Interior Department's investigations that revealed extensive abuse of the forest lieu provision by members of Congress.⁷² The commission also noted that grazing needed to be regulated, and recommended that grazing districts be established on the public lands and that ranchers be charged annual fees for grazing livestock in those districts. Not until the passage of the Taylor Grazing Act in 1934, after public rangelands had been all but destroyed by unregulated grazing, did anything like that occur.

However restrained its immediate influence may have been, the Public Lands Commission may have played a more important long-term role in the transformation of public land law. Dana notes that the report of the commission did gain the public's attention and that it "performed a useful service in focusing public attention on some of the more glaring defects in the handling of the public hands."⁷³ Public awareness of public land law abuses and natural resource exploitation in turn played a major role in the looming conservation movement. Pinchot may have had reason to boast, then, that the report of the Public Lands Commission "had a part in planting and watering the seed which developed into the world-wide policy of Conservation." If this is the case — and

⁷⁰ This provision allowed the owners of in-holdings within the forest reserves to trade their land and select in lieu vacant land elsewhere in the amount equal to that relinquished.

⁷¹ *Sundry Civil Appropriations and Lieu Lands Act, Statutes at Large* 30, sec. 11 (1897).

⁷² Gates, *History of Public Land Law Development*, 491; E. Louise Peffer, *The Closing of the Public Domain: Disposal and Reservation Policies* (Stanford: Stanford University Press, 1951), 48.

⁷³ Dana, *Forest and Range Policy*, 133.

events do not indicate otherwise — then the influence of the report was actually very far-reaching. Indeed, the impact of Pinchot's and Roosevelt's Commission was not lost on Congress even twenty-five years later when, during a debate on the House floor, one congressman claimed that the greatest result of the Commission "was the focusing of the attention of the people of the United States to the importance of conservation of their remaining forest resources and the definite shaping of sentiment which made possible a great national forest policy."⁷⁴

Committee on the Conservation and
Administration of the Public Domain, 1930 – 1931

The political atmosphere leading to the creation of the third public land commission in 1930 was similar in many respects to the atmosphere surrounding public lands politics today: there was nearly unanimous agreement that something needed to be done to improve the public lands and the public land system, but virtually nothing was happening legislatively to deal with the problems. In 1930, the chief problem was unregulated grazing on the federal lands that had not been set aside as forest reserves or for other purposes. As the rangelands rapidly deteriorated, Congress was unable to come to agreement on how to deal with the situation, and the problem grew worse as time went on.⁷⁵ Much of the congressional debate regarding the need for a commission highlighted the sentiment that there was gridlock in public land policy-making, and the best way to

⁷⁴ *Congressional Record*, 72, pt. 2: 2251.

⁷⁵ Robbins, *Our Landed Heritage*, 410-412.

break that gridlock was to assign a commission to examine the problems and suggest avenues for action.⁷⁶

This was, at least, the way newly elected President Herbert Hoover chose to deal with difficult problems facing the country. Hoover is well known for the many commissions he convened during his presidency, and his critics maintained that he appointed commissions to simply advance his ideas before Congress.⁷⁷ This became an issue in his push for a public land commission in 1930, especially because the President's ideas and those of his Secretary of Interior, Ray Lyman Wilbur, regarding the public lands had been made known in speeches each delivered in 1929; both advocated turning the unreserved public domain over to the states within whose borders that land was located.⁷⁸ Opponents of a commission were quick to point out that Wilbur, who was to serve as an ex-officio member of the commission, had drafted the legislation.⁷⁹ One congressman argued that the commission's recommendations "can pretty safely be recognized in advance" and that members of the commission, many of who had already been pre-selected "could write 90 percent of their report the day after they are appointed."⁸⁰

⁷⁶ *Congressional Record*, 72, pt. 2: 2242-2252; *Congressional Record*, House, 71st Cong., 2d sess., 1930, 72, pt. 3: 2323-2338.

⁷⁷ Carl Marcy, *Presidential Commissions* (New York: Da Capo Press, 1945), 65; Congress, *Congressional Record* (23 January 1930), 2245.

⁷⁸ Hoover's speech was to a gathering of the Western Governors Association in Salt Lake City, Utah, and Wilbur's was to a gathering in Boise, Idaho. Selections of both speeches are found in Dana, *Forest and Range Policy*, 232.

⁷⁹ *Congressional Record*, 72, pt. 2: 2244.

⁸⁰ *Congressional Record*, 72, pt. 3: 2324.

The majority of the debate over the bill that would fund President Hoover's commission, however, dealt less with how Wilbur's and the President's views on public land policy might be transmitted through a commission, and more with the question of a commission as an effective and appropriate tool to deal with the public land problems of the day. Representative William Bankhead of Alabama, in referring to the many commissions established during his time in Congress, argued that "no practical legislative result . . . has ever come from a single one of them."⁸¹ Both Democrats and Republicans (only a handful of Democrats supported the bill) referred to similar efforts of the past, and both acknowledged that almost all of the recommendations of the Public Lands Commission of 1903 had been completely ignored.⁸² Democrats questioned whether this was not a problem that should be left to Congress' two public land committees to deal with. Representative R. A. Green of Florida, while noting there was no "member of Congress that would not like to see the public domain question settled," admonished Congress to "discuss the question as representatives of the people and decide, instead of relying upon some commission to tell us what to do" and to not "shirk our duties and share with the executive department those prerogatives which rightly and justly belong to the Congress."⁸³

In response to the Democrats' complaints, Republicans attempted to portray the work of a commission as having a much broader purpose. Representative Scott Leavitt of Montana argued that the commission's study would "unquestionably arouse public

⁸¹ *Congressional Record*, 72, pt. 2: 2245.

⁸² *Congressional Record*, 72, pt. 2: 2251.

⁸³ *Congressional Record*, 72, pt. 3: 2324.

opinion throughout the country and in the Congress that will make possible the passage of legislation” that would benefit the public domain.⁸⁴ He also referenced the Public Lands Commission of 1903, asserting that it was the primary tool responsible for galvanizing support for conservation policy among Americans. Much of the Republicans’ arguments consisted of the admission that they were incapable of effectively resolving the country’s public land problems without more information. Representative Don Colton of Utah summed up the anxiety of many western members of Congress: “We have had bills introduced time and time again, but we seem to get nowhere . . . If this plan is not followed, what shall we do?”⁸⁵

Possessing a strong majority in both chambers of Congress, Republicans easily won passage of the bill, and in April 1930 President Hoover created the Committee on the Conservation and Administration of the Public Domain. The commission was instructed to advise the President and Congress on five fronts: the future disposition of the unreserved public lands and a program to regulate grazing resources; conservation of water resources; conservation of subsurface mineral resources; conservation of timber resources and changes to the national forest system; and changes in the administration of natural resources to produce greater efficiency in their conservation.⁸⁶ James A. Garfield, who had served as Secretary of Interior for the last two years of Theodore Roosevelt’s presidency, served as chairman of the twenty-member commission. Other members

⁸⁴ *Congressional Record*, 72, pt. 2: 2252.

⁸⁵ *Ibid.*, 2243.

⁸⁶ *Report of the Committee on the Conservation and Administration of the Public Domain*, reprinted in Congress, Senate, Committee on Public Lands and Surveys, *Granting Remaining Unreserved Public Lands to States: Hearings before the Committee on Public Lands and Surveys*, 72nd Cong., 1st sess., 5 April 1932, 335.

included widely respected leaders from various natural resource, political, and journalism professions, all appointed by President Hoover, with half the nominations recommended by governors of the eleven western states containing most of the public land.⁸⁷ Wilbur and Arthur M. Hyde, Secretary of Agriculture, were *ex officio* members. These members broke into sub-groups and toured the public lands, holding hearings and meeting with individuals from federal, state, and local governments and from various interested organizations. The entire group convened and drafted a final report and submitted it to President Hoover in January 1931, who enthusiastically transmitted it to Congress.

Embodied in the Commission's report were twenty separate recommendations, the most notable of which reiterated Hoover and Wilbur's policy objectives for the public domain: that all unreserved federal land be transferred to the states, with subsurface mineral rights reserved to the federal government. Also within the report were recommendations that each state possessing national forest land within its borders create a board to determine which forest lands should remain in or be transferred to the national forest system, and which should be transferred to the states; that private ownership be the objective and final use of the unreserved lands; and that the president be granted authority to reorganize and consolidate the executive bureaus concerned with the administration of public land laws.

Reaction to the commission's recommendations ranged from skepticism to outright opposition. Virtually every party of interest stood to lose, in its own view, if the

⁸⁷ Gates lists what he judges to be the Commission's six most "distinguished leaders": William B. Greeley, Chief Forester of the Forest Service from 1920-1928; H.O. Bursum, former Senator from New Mexico; Gardner Cowles, publisher of the *Des Moines Register*; George Horace Lorimer, editor of the *Saturday Evening Post*; Elwood Mead, Commissioner of Reclamation; and Mary Roberts Rinehart, a writer. Gates, *History of Public Land Law Development*, 525.

recommendations were in fact carried out. The Departments of Interior and Agriculture would forfeit to the states huge portions of their respective estates. Conservationists, believing in the virtue of a central authority over the public lands, and led by the still active Gifford Pinchot, opposed every part of the report.⁸⁸ While some of the larger livestock associations supported the transfer of public domain lands to the states, smaller stock operations interpreted the report in the same light as one official reportedly described it: “The plan, in essence, is one of monopoly and eviction, antisocial, and undemocratic.”⁸⁹ The media generally lambasted the report. Ward Shepard of *Harper’s Monthly* described it as an “atavistic throwback to the economic philosophy and the land politics of the 1880’s” and called its foremost recommendation “a good old-fashioned land-grab.”⁹⁰ Most surprising was the opposition that came from the western states. Letters decrying the transfer appeared in newspapers throughout the West,⁹¹ and Governors of western states objected to the idea that they were “wise enough to administer the surface rights but not wise enough to administer the minerals contained in the public lands.”⁹² Dana and Fairfax attribute the states’ skepticism of such a large land grant to two factors. First, that “the lands were so run down that they were more of a liability than an asset,” especially because mineral rights would not be included in the

⁸⁸ Pinchot was very active in the opposition movement to the Commission’s recommendations, and testified against bills embodying the recommendations. Congress, *Granting Remaining Unreserved*, 297.

⁸⁹ Robbins, *Our Landed Heritage*, 416.

⁹⁰ Ward Shepard, “The Handout Magnificent,” *Harper’s Monthly Magazine*, October 1931, 602.

⁹¹ One letter that illustrates the general sentiment in the West was printed in *Congressional Record*, Senate, 71st Cong., 3d sess., 1931, 74, pt. 4: 3742-3743.

⁹² Congress, *Granting Remaining Unreserved*, 30.

grant; and second, “that the grant would reduce the substantial contributions to the states from the federal government for the building and maintenance of highways which were apportioned on the basis of the amount of land in each state in federal ownership.”⁹³

No immediate action was taken as a result of the report of the Committee on the Conservation and Administration of the Public Domain. A Republican Congress had strongly endorsed the creation of the Commission, but the mid-term elections of 1930 turned the majority in the House to the Democrats, who had almost unanimously voted against the measure, and who basically shelved the Commission’s report. When the Senate finally held hearings on two bills embodying most of the Commission’s recommendations in April 1932, popular sentiment opposing the transfer of the public rangelands to the states had not changed, and the bills failed.⁹⁴

By most accounts the Committee on the Conservation and Administration of the Public Domain was seen as a failure. Like the two public land commissions before it, its recommendations were essentially ignored and there were no immediate results to speak of. But unlike the previous commissions, Hoover’s Commission never even produced any long-term results. It never served any useful purpose except perhaps to confirm the fact that many Americans were no longer inclined toward the widespread disposal of public lands. Its origins and outcome reveal that it was another of President Hoover’s commissions created to advance his own agenda.

⁹³ Samuel T. Dana and Sally K. Fairfax, *Forest and Range Policy: Its Development in the United States*, 2d ed. (New York: McGraw-Hill, 1980), 139.

⁹⁴ Congress, *Granting Remaining Unreserved*.

Public Land Law Review Commission, 1964 – 1970

In June of 1970 the last commission charged to study public land law delivered its report to the President and Congress. The most comprehensive study of the public lands up to its time, the Public Land Law Review Commission's report, titled *One Third of the Nation's Land*, was the culmination of six years of work by a commission whose membership numbered nineteen and whose official family consisted of more than 130 persons for most of its lifespan.⁹⁵ It was an enormous effort that dwarfed the work of the three public land commissions that preceded it. An understanding of the origin, structure, and activities of the Public Land Law Review Commission (PLLRC) is especially important in considering the possibility of establishing a new commission to examine public land law.

Origins of the PLLRC

The 1960s were a time of dramatic change in the American public's values and views as they related to the public lands. While mineral exploration and production, timber harvesting, and livestock grazing had been the primary uses of the public lands since virtually the beginning of their ownership by the United States, a post-World War II public began to use these lands for leisure purposes, and recreation on the public lands boomed.⁹⁶ This trend was bolstered by a simultaneous increase in population in the western public land states. Increasingly large segments of the population began to view

⁹⁵ Public Land Law Review Commission, *One Third of the Nation's Land* (Washington, D.C.: GPO, 1970).

⁹⁶ Jan G. Laitos and Thomas A. Carr, "The Transformation of Public Lands," *Ecology Law Quarterly* 26, no. 2 (1999): 140.

public lands as valuable for uses other than those related to the production of commodities.⁹⁷

However, the many public land laws that had been passed over the years to facilitate commodity uses and disposal of public lands were entirely unfit to deal with the recreation demands and the associated preservation demands brought about by such a dramatic change in public values. Standing in the way of any simple modification of law to accommodate these new demands was a body of law comprised of approximately 5000 statutes built up over 175 years.⁹⁸ President Kennedy described this body of law in January 1963 as “a voluminous, even forbidding, body of policy determinations within which the land management agencies must operate. Dating back as much as a century and a half, this complex of statutory guidelines varies from the most detailed prescription of ministerial acts to mere definition of an objective coupled with broad grants of discretion to administrators.”⁹⁹ Kennedy identified problems that are echoed by today’s federal land law critics when he called the structure of public land law “uncoordinated and disjointed and containing conflicts and inconsistencies.”¹⁰⁰

The need for reform was also noted by the administrative agencies. Stewart Udall, Secretary of Interior under President Kennedy, made the informative comparison, “Our statutory setup for administering these lands reminds me of a ghost town that time

⁹⁷ Dana and Fairfax, *Forest and Range Policy*, 209-213.

⁹⁸ *Congressional Record*, House, 88th Cong., 2nd sess., 1964, 110, pt. 4: 4865.

⁹⁹ Letter from President Kennedy to Wayne Aspinall, in Committee on Interior and Insular Affairs, *Public Land Law Review Commission: Background and Need*, 88th Cong., 2d sess., 1964, Committee Print 39, 121.

¹⁰⁰ *Ibid.*

has passed by. We are being forced to use horse-and-buggy statutes in a guided-missile age.”¹⁰¹ The Bureau of Land Management complained of the constant problems faced by its land managers who were “attempting to meet today’s demands with yesterday’s laws.”¹⁰²

The problems associated with outdated land laws gained the attention of Congress as well. Congress considered some type of public land reform legislation in every session from 1947 to 1964, including several bills that would have created a public land law review commission, but none of them had ever passed.¹⁰³ New recreational demands competed with traditional user demands, the result being congressional gridlock as members intent on updating the public land laws to accommodate new uses ran head-on against members who were loyal to the traditional commodity users of public lands.

The administrative land agencies, on the other hand, were more freely able to respond to the changing demands of the public than was Congress, by using the broad discretionary powers they had inherited through years of congressional delegation, to an extent that some viewed as abdication. The land agencies and bureaus began to create numerous recreation programs and shift their management duties away from managing commodity development and more towards the preservation of resources.¹⁰⁴

¹⁰¹ *Congressional Record* 110, pt. 4: 4865.

¹⁰² Department of the Interior, Bureau of Land Management, *Public Land Law Review Commission: Information Source Book for H.R. 8070* (Washington, D.C., 1963), Appendix D, 3.

¹⁰³ Robert Wolf, “Wilderness Act, 1955-64 (Part 1),” interview by Thurman Trospen and Dan Hall (25 April 1989), *Robert Wolf Oral History Project*, [<http://depts.washington.edu/wrcrf/Wolf/#>], OH 227-11 (accessed 13 July 2003).

¹⁰⁴ For a listing of the actions of the federal land management agencies with regards to recreation during the 1960s, see Department of the Interior, Bureau of Outdoor Recreation, *Federal Outdoor Recreation Programs* (Washington, D.C., 1967).

It was out of this interplay between complex laws, congressional gridlock and discretionary executive action that the Public Land Law Review Commission was born. On October 15, 1962, Wayne Aspinall, a Democratic Representative from Colorado and the powerful Chairman of the House Interior and Insular Affairs Committee, delivered a letter to President Kennedy in which he pointedly addressed two issues. First, Aspinall conveyed his concern over the executive agencies' increasing tendency to use broad administrative discretion in managing the public lands. Second, he stated his bargaining position with regard to the Wilderness Act, which Kennedy enthusiastically supported and which Aspinall thoroughly opposed and was holding up in his committee. Aspinall argued that the question that needed to be answered first, before any wilderness legislation would be considered by his committee, was that of "the degree of responsibility and authority to be exercised by the legislative and executive branches" with respect to public land management.¹⁰⁵ He expressed his interest in legislation that would delineate these responsibilities and broadly address other public land issues.

In his response, Kennedy assured Aspinall that he concurred "wholeheartedly . . . that the system warrants comprehensive revision," but he did not back down from his administration's proactive stance in public land management, noting that much good had come to the public lands because of the decisions of "progressive-minded Presidents."¹⁰⁶

This interchange defined the positions of Aspinall and Kennedy on the matter of legislative vs. executive authority as they pertained to public land management and it opened a bargaining door for eventual passage of the Wilderness Act. Aspinall then took

¹⁰⁵ Committee on Interior and Insular Affairs, *Background and Need*, 119.

¹⁰⁶ *Ibid.*, 121.

the next step, announcing his intention to create a public land law review commission to “undertake a complete review of all the laws and regulations affecting Federal public land ownership and the natural resources thereof.”¹⁰⁷ Aspinall did not hesitate to acknowledge his intention that this commission would examine the role of the legislative and executive branches in public land affairs and that, as a result of its study, responsibility would necessarily be shifted back to Congress.

However important it may have been in Aspinall’s mind to settle the issue of agency discretion, creating a study commission with the magnitude of what he envisioned would have been overkill to resolve such a singular problem. Perry Hagenstein, who served as staff to the PLLRC, describes Aspinall’s greater intentions in these insightful terms:

Responding to a growing national interest in recreation and preservation of natural values on the public lands, the administrative agencies, under the broad grants of authority referred to by President Kennedy, were increasingly restricting economic uses of these lands. These uses—mining, grazing, and logging—had strong local constituencies from which western members of Congress derived much of their support and which provided grist for the legislative mills of the Interior and Insular Affairs Committees. At least some members of the Interior Committees realized that they were unable to slow the administrative agencies against which they were arrayed and which had the discretionary authority ultimately to bring economic uses of the public lands to a halt. As Chairman of the House Interior and Insular Affairs Committee, Aspinall was looking for a way to place some of the control over public land decisions back in the Congress and especially in his Committee.

It was Congressman Aspinall who, as a representative from a public land district in Colorado, most acutely felt the contrasting development and preservation pressures on the public lands. In one sense it was western congressmen who had most to gain through a revision of the public land laws that would provide a more rational system of allocating public lands to conflicting

¹⁰⁷ Ibid., 43. Aspinall first publicly mentions his intention to introduce legislation creating a commission in this speech.

uses and one that would satisfy, even if only for a time, the various interests clamoring for their votes.¹⁰⁸

Dennis Rapp, who also served on the staff of the PLLRC, advances this view and further argues that Aspinall, by creating a commission to review public land law, was also reacting against the Wilderness Act itself because it would become “the latest step in the continuing erosion of economic interests’ access to public land resources.” He continued, “The Public Land Law Review Commission was a last attempt, at least in the minds of both its congressional architects and some of their sympathizers downtown, to reestablish some type of equilibrium.”¹⁰⁹

So, while the need for public land law reform was indeed great, as had been acknowledged by both the legislative and executive branches on multiple occasions, the mechanism that was to be chosen to perform the task of reform, according to Hagenstein and Rapp, was in a sense manipulated by Aspinall to fulfill his dual motives of 1) putting the primary responsibility over public lands back in Congress’s hands, and 2) increasing (or at least stabilizing) industry’s access to public land resources, which had been steadily declining. Aspinall knew that the Wilderness Act was not going to just eventually fade away, even if he was able to indefinitely hold it up in his committee. Aspinall took advantage of the existing political leverage to negotiate a tradeoff with supporters of wilderness legislation.¹¹⁰ He was then able to disguise his ulterior motives for the

¹⁰⁸ Perry R. Hagenstein, “Commissions and Public Land Policies: Setting the Stage for Change,” *Denver Law Journal* 54, no. 3-4 (1977): 630-631.

¹⁰⁹ Dennis Rapp, “Comments on ‘Commissions and Public Land Policies: Setting the Stage for Change,’” *Denver Law Journal* 54, no. 3-4 (1977), 651-653.

¹¹⁰ Robert Wolf, who was a staff member of the Senate Committee on Interior and Insular Affairs from 1959-1964, tells in his oral history how the situation unraveled in an interesting account involving Interior Committee member Senator Clint Anderson of New Mexico. Robert Wolf, “Public Land Law,”

PLLRC beneath the genuine issues and problems associated with public land law at that time. It would be unfair and erroneous to assume that Aspinall did not think the PLLRC could also do some greater good and rectify the morass of public land law as well as achieve his purposes for the commission. Indeed, Aspinall's earnest interests in reforming the public land laws are detailed in numerous speeches he gave that date back to May of 1962.¹¹¹ Still, the details of Aspinall's involvement in the PLLRC's origins, his prominent role overseeing its operations, and his obvious influence over its recommendations all ultimately support the ideas expressed above by Hagenstein and Rapp that Aspinall created the PLLRC to help bring to pass his particular interests for public land use — interests that were increasingly not in the public's interest.

Aspinall's public land law review proposal was met with immediate support, which can be traced to two factors. First, support for a PLLRC meant that Aspinall would let the Wilderness Act out of his committee onto the House floor, where it was sure to pass.¹¹² The second factor was that it was generally recognized among lawmakers that something drastic needed to be done to help Congress deal with all of the changes occurring in public land management and values. A PLLRC seemed like a good idea across the board, or at least was perceived as something that couldn't do too much harm

interview by Margy Brown and Dan Hall (15 November 1989), *Robert Wolf Oral History Project*, [<http://depts.washington.edu/wrcrf/Wolf/#>], OH 227-33 (accessed 13 July 2003).

¹¹¹ Committee on Interior and Insular Affairs, *Background and Need*.

¹¹² Douglas W. Scott, *A Wilderness-Forever Future: A Short History of the National Wilderness Preservation System* (Washington, D.C.: Pew Wilderness Center, 2001), 14. A Wilderness Bill had already easily passed in the Senate, and when it was finally introduced on the Floor of the House it was passed by a vote of 373-1 (the dissenting vote was not Aspinall's).

by those who only supported it because it was attached to passage of the Wilderness Act.¹¹³

Those who did not support the creation of a PLLRC objected for reasons similar to those raised by dissenters to the commission appointed by Hoover in 1930: they argued that “a substantial waste of public funds will be involved for a task which can better be — in fact, eventually must be — undertaken by both of our legislative bodies through the standing committees of Congress.”¹¹⁴ The public funds referred to at that time totaled \$4 million, and was seen by PLLRC opponents as a large sum of money being spent on a job that committees in Congress could have done at a lesser expense. Aspinall responded that his committee was unfit to deal with such large-scale problems by itself. He contended, “We do not have the staff, we do not have the time, and we do not have the space to take care of the tasks which confront the Congress and the American people in these problems.”¹¹⁵ In view of the many changes that were occurring at that time with regard to public lands, Aspinall was probably correct.

Two other critiques of Aspinall’s PLLRC legislation that surfaced during hearings and debate on the bill deserve attention, particularly because they shed further light on Aspinall’s personal intentions for the PLLRC. Representative Harold Gross of Iowa maintained that he was unable to see the need for a PLLRC, arguing, “I do not understand why the Department of Interior cannot come up with recommendations with respect to

¹¹³ Bob Wolf explains that Senators Henry Jackson of Washington, Alan Bible of Nevada, and Clint Anderson of New Mexico, all proponents of the Wilderness Act, were not supportive of PLLRC legislation before they recognized the potential it served for a tradeoff for the Wilderness Act. Wolf, “Public Land Law.”

¹¹⁴ *Congressional Record* 110, pt. 4: 4873.

¹¹⁵ *Ibid.*, 4865.

the public land situation in this country.”¹¹⁶ Gross’ suggestion that the Interior Department handle the review entirely negated one of Aspinall’s primary purposes for the commission — to take the power out of the executive’s hands. An executive branch inquiry would certainly come to different conclusions, especially with regard to executive discretion in management decisions.

Howard Zahniser, then executive director of The Wilderness Society and principle author of the Wilderness Act, testified in favor of the creation of a PLLRC during a hearing before Aspinall’s Committee on Interior and Insular Affairs, but objected to its policy statement, which read, “It is hereby declared to be the policy of Congress that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public.”¹¹⁷ Zahniser suggested that any mention of disposal of public lands be removed from the commission’s policy statement, noting, “Our understanding of public land values in the Nation has progressed to the point that we recognize that the disposal tradition of our pioneer years, of the 19th century has been supplanted by a recognition of public needs for these lands.”¹¹⁸ However, excluding the option of disposition would have severely hampered Aspinall’s intentions for the PLLRC to be a vehicle to facilitate industry access to natural resources. Zahniser’s counsel was ignored, and no subsequent changes were made to the commission’s policy statement.

¹¹⁶ Ibid., 4875.

¹¹⁷ *Statutes at Large* 78, sec. 982, 982.

¹¹⁸ Congress, House, Committee on Interior and Insular Affairs, Subcommittee on Public Lands, *Public Lands Review: Hearings before the Subcommittee on Public Lands*, 88th Cong., 1st sess., 4 October 1963, 222.

Despite some criticism, Aspinall's PLLRC bill was well on its way to congressional passage from the time it was recognized as a tradeoff for the Wilderness Act. In negotiations and in passage, the two bills were joined at the hip. After an eight-year campaign to pass wilderness legislation, wilderness advocates celebrated the passage of the Wilderness Act when President Lyndon Johnson finally signed it into law on September 3, 1964. The Public Land Law Review Commission Act was signed by the President on the 19th of that same month.

Structure of the PLLRC

The Public Land Law Review Commission Act's "Declaration of Purpose" laid out the justification for the creation of the Commission:

Because the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other and because those laws, or some of them, may be inadequate to meet the current and future needs of the American people and because administration of the public lands and the laws relating thereto have been divided among several agencies of the Federal Government.¹¹⁹

The duties of the newly formed Commission were outlined in Section 4 of its enabling legislation. Congress charged the Commission to

- (i) study existing statutes and regulations governing the retention, management, and disposition of the public lands;
- (ii) review the policies and practices of the federal agencies charged with administrative jurisdiction over such lands insofar as such policies and practices relate to the retention, management, and disposition of those lands;
- (iii) compile data necessary to understand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future; and
- (iv) Recommend such modifications in existing laws, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out

¹¹⁹ *Statutes at Large* 78, sec. 982, 982.

the policy that . . . the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefits for the general public.¹²⁰

Eighteen of the commission's nineteen members were chosen according to the following provisions:¹²¹

- (i) Three majority and three minority members of the Senate Committee on Interior and Insular Affairs to be appointed by the President of the Senate;
- (ii) Three majority and three minority members of the House Committee on Interior and Insular Affairs to be appointed by the Speaker of the House of Representatives;
- (iii) Six persons to be appointed by the President of the United States from among persons who . . . are not . . . officers or employees of the United States.¹²²

The eighteen members then elected a chairman, which, with some behind-the-scenes negotiations, turned out to be a unanimous vote for Aspinall.¹²³ Kennedy had disputed Aspinall's early attempts to outweigh administrative with Congressional appointees,¹²⁴ but in the end it was Aspinall who won that battle, and the lopsided congressional representation reflected Aspinall's belief that Congress needed to take the upper hand in determining substantive policy for the public lands.¹²⁵

To assist the commission in its work, a large staff was appointed, along with an advisory council consisting of representatives from executive departments with an

¹²⁰ *Statutes at Large* 78, sec. 982, 983.

¹²¹ See Appendix: Members of the Public Land Law Review Commission.

¹²² *Statutes at Large* 78, sec. 982, 982.

¹²³ Wolf indicates that Aspinall objected to other suggestions for chairmen, and that Commission insiders decided to let Aspinall take control of a project they had little faith would have much of an effect. Wolf, "Public Land Law."

¹²⁴ PLLRC staff member, interview with author, 1 July 2003.

¹²⁵ R. McGregor Cawley, *Federal Land, Western Anger: The Sagebrush Rebellion and Environmental Politics* (Lawrence: University Press of Kansas, 1993), 26.

interest in public land policy, and twenty-five other members “representative of various major citizen groups interested in problems relating to the retention, management, and disposition of the public lands.”¹²⁶ The governors of each of the 50 states were also invited to appoint one representative each to work with the commission.¹²⁷

The PLLRC undertook a massive study that included thirty-three reports on an array of public land problems, testimony from over 900 witnesses at sixteen public meetings held throughout the nation, tours of the public lands for members of the commission, its staff and advisory council, and advice from the advisory council and the governors’ representatives.¹²⁸

Despite the considerable effort that was made to create the appearance of a very bipartisan PLLRC, two aspects of its membership and make-up later undermined the commission’s legitimacy. First, the chairmanship of the commission was given to Aspinall, who appointed one of his committee staff, Milton Pearl, to serve as director of the PLLRC staff. These appointments practically ensured that any product to proceed from the commission would reflect Aspinall’s views. The *National Journal* later noted, “Aspinall’s influence over PLLRC [has been] criticized. The Colorado Representative conceived the commission, sponsored its legislation, became its chairman, appointed the

¹²⁶ Public Land Law Review Commission, *One Third*, vi.

¹²⁷ *Statutes at Large* 78, sec. 982, 984.

¹²⁸ Jerome C. Muys, “The Unfinished Agenda of the Public Land Law Review Commission,” *Public Land Law* 1992, no. 4 (1992): 1.5.

staff director and other key professionals, and has been the commission's chief spokesman."¹²⁹

Secondly, advisory committee members supposedly came from "organizations representative of state and local government, private organizations working in the field of public land management and outdoor recreation resources and opportunities, landowners, forestry interests, livestock interests, oil and gas interests, commercial and sport fishing interests, commercial outdoor recreation interests, industry, education, labor, and public utilities."¹³⁰ Conspicuously absent from this list and from the resulting advisory committee was any substantial representation from the well-established conservation and environmental communities at that time. One member of the advisory committee, Wildlife Management Institute Vice-President C.R. Guttermuth, called himself "one of the damn few conservationists on the whole set-up."¹³¹ PLLRC member John Saylor, a Republican representative from Pennsylvania, complained that the advisory committee was largely made up of "vested interests who don't look down the road at all—they only look for the almighty dollar."¹³² Indeed, lack of representation and input from conservationists, environmental groups, and preservation-oriented interests proved to be a large stumbling block for the commission when it delivered its report in 1970.

¹²⁹ James R. Wagner, "CPR Report/Government Lands Study Stirs Public-Private Interest Debate," *National Journal* 2, no. 21 (1970): 1094.

¹³⁰ *Statutes at Large* 78, sec. 982, 983.

¹³¹ Wagner, "CPR Report," 1094.

¹³² *Ibid.*

PLLRC Report and Recommendations

The PLLRC delivered its report, titled *One Third of the Nation's Land*, to the President of the Senate, the Speaker of the House of Representatives, and President Richard Nixon on June 20, 1970. It contained 17 general recommendations, derived from 137 major recommendations, accompanied by over 400 other recommendations and suggestions.

Several dominant themes permeate the report. The commission advocated a policy of “dominant use” over “multiple use,” the latter described by the commission as having “little practical meaning as a planning concept or principle.”¹³³ In the commission’s view, “public lands should be zoned for the particular use for which they are most suited,” and that use, being the dominant use, would take precedence over any other use in land-use planning and allocation processes.¹³⁴ This theme was alarming to environmental interests because the report clearly states that “mineral exploration and development should have a preference over some or all other uses on much of our public lands.”¹³⁵ Other general themes include provisions for clarifying the conflicting mandates and directives contained in public land law, and, of course, permeating the entire report is an emphasis on the need for Congress to “assert its constitutional authority by enacting legislation reserving unto itself exclusive authority” over the majority of

¹³³ Public Land Law Review Commission, *One Third*, 45.

¹³⁴ Dana and Fairfax, *Forest and Range Policy*, 234; the Commission’s 6th “general” recommendation gives a full description of a dominant use policy in Public Land Law Review Commission, *One Third*, 3.

¹³⁵ Public Land Law Review Commission, *One Third*, 122.

affairs associated with the management of the public lands.¹³⁶ By specifying the designation of national monuments as a responsibility that “should be accomplished only by an act of Congress,” the commission in effect recommended repeal of the Antiquities Act.¹³⁷ The theme with the most far-reaching effect, however, was that of the retention-disposal question that had been laid out in the commission’s enabling legislation.

On the first page of its report, the commission urged “reversal of the policy that the United States should dispose of the so-called unappropriated public domain lands,” claiming that the “disposal policy . . . has been rendered ineffective.”¹³⁸ The Commission appeared to clearly declare a new policy of retention in its very first recommendation:

We . . . recommend that: The policy of large-scale disposal of public lands reflected by the majority of statutes in force today be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.¹³⁹

However, the Commission seemed to contradict itself later in the report with its assertion that “wholesale retention in Federal ownership . . . [is] not a sound policy.”¹⁴⁰ Moreover, many of report’s recommendations were aligned more with this statement than with its prior, seemingly bold policy statement on retention. Consider, for example, the following four recommendations:

¹³⁶ Ibid., 2.

¹³⁷ Ibid., 54; see also John F. Shepherd, “Up the Grand Staircase: Executive Withdrawals and the Future of the Antiquities Act” in the *43rd Rocky Mountain Mineral Law Institute Proceedings*, by the Rocky Mountain Mineral Law Foundation (Denver: Rocky Mountain Mineral Law Foundation, 1997), 4.27-4.32.

¹³⁸ Public Land Law Review Commission, *One Third*, 1.

¹³⁹ Ibid.

- Statutory authority should be provided “for the sale at full value of public domain lands required for certain mining activities or where suitable only for dryland farming, grazing of domestic livestock, or residential, commercial, or industrial uses.”¹⁴¹
- Federally owned lands, if not required for a federal purpose, should be transferred at less than full value to state and local governments on the condition that they remain in public ownership.¹⁴²
- Legislation should be enacted to “provide a framework within which large units of land may be made available for the expansion of existing communities or the development of new cities.”¹⁴³
- “An immediate review should be undertaken of all lands not previously designated for any specific use, and of all existing withdrawals, set asides, and classifications of public domain lands that were effected by Executive action to determine the type of use that would provide the maximum benefit for the general public.”¹⁴⁴

The latter recommendation alarmed many because the text leading up to the recommendation specifically listed national forests and national monuments as subject to review and possible disposal.

¹⁴⁰ Ibid., 48.

¹⁴¹ Ibid., 4-5.

¹⁴² Ibid., 5.

¹⁴³ Ibid.

¹⁴⁴ Ibid., 2.

Due to its lack of clarity on the retention-disposal question, disparate views have been expressed about the general nature of the report and its treatment of the disposal issue. Jerome Muys, the PLLRC's Chief Counsel, and who has written extensively about the PLLRC, calls the first, retention-oriented recommendation the "fundamental thrust of the Commission's recommended federal land retention, planning and management system."¹⁴⁵ Coggins, Wilkinson and Leshy concur, adding that "The [PLLRC] Report of 1970, addressing one of the fundamental issues throughout the history of public land policy, found that retention, not disposition, of federal lands should be the guiding principle for the future."¹⁴⁶

Seeing disposal as the more dominant theme, Sally Fairfax and Samuel Dana, in their comprehensive examination of public land history and policy, *Forest and Range Policy*, argue that "the commission appeared to favor disposition over retention wherever justifiable," and that the report was therefore entirely oriented "toward commodity users."¹⁴⁷ Considering the public's response and reaction to the commission's report when it appeared in June 1970, it becomes apparent that most interests at that time interpreted the report as disposition oriented as well.

For the most part, industry endorsed the report, while environmental and conservation groups immediately dubbed it an industry giveaway.¹⁴⁸ Fueled by the

¹⁴⁵ Muys, *Unfinished Agenda*, 1.6.

¹⁴⁶ Coggins, Wilkinson, and Leshy, *Federal Public Land and Resources Law*, 9.

¹⁴⁷ Dana and Fairfax, *Forest and Range Policy*, 233.

¹⁴⁸ "Revised Policy for U.S. Lands Asked in Study," *New York Times*, 24 June 1970, A1. Muys sheds additional light on the reaction of environmentalists due to their relationship with Aspinall in Muys, "Unfinished Agenda," 1.8.

commission's focus on disposition and its practical exclusion of environmental representation, environmentalists described the report as "anti-environmental, blatantly in favor of exploitive development of resources, and antithetical to social interests."¹⁴⁹ Most of their major complaints stemmed from the report's emphasis on regional and local authority over public land decision-making, recommendations that called for reviewing and reconsidering land within national monuments and forests for disposal, and its general emphasis on maximizing commercial uses on public lands.¹⁵⁰ Environmentalists construed the report's many references to the "environment" as hollow and insincere, and interpreted its few environmental recommendations as meaningless generalizations with no chance of being implemented against "the commercialism implicit in the commodity oriented chapters."¹⁵¹ It was no secret that environmental considerations were not among the commission's top priorities, and in fact were studied last and retrofitted to the Commission's report.¹⁵² The commission's failure to please the environmental community was lamented by Commission member Philip Hoff, one of six presidential appointees, who pointed to the commission's failure to reach out to and educate the

¹⁴⁹ "Highlights of the September Board Meeting," *Sierra Club Bulletin*, October 1970, 17.

¹⁵⁰ Numerous reviews of the PLLRC report, most from an environmental standpoint, can be found in Hamilton K. Pyles, *What's Ahead for Our Public Lands? A Summary Review of the Activities and Final Report of the Public Land Law Review Commission*, (Washington, D.C.: Natural Resources Council of America, 1970).

¹⁵¹ Michael McCloskey, "An Analysis: The Public Land Law Review Commission Report," *Sierra Club Bulletin*, October 1970, 29.

¹⁵² Wagner, "CPR Report," 1094.

public as the cause of “deep-seated suspicion and distrust of the Commission and its reports by conservationists, naturalists, and environmentalists.”¹⁵³

In the executive branch, the reaction was less hostile but equally unsupportive. While the BLM was pleased with some aspects of the report that suggested increased management authority for that agency, the rest of the Interior Department and the Forest Service were expecting recommendations that might officially confirm a retention policy that had slowly permeated public land management over many years. What they saw instead were recommendations that made the agencies’ tenure over public lands less sure than it had been for many years, perhaps since the report of the previous public land commission in 1930.¹⁵⁴ The land agencies did not welcome the commission’s numerous recommendations aimed at sifting away the management discretion upon which they had come to depend. The Nixon White House felt no attachment to the report primarily because the commission had been organized during Democratic administrations.

Because the PLLRC was the product of the political machinations of Aspinall, rather than the outcome of public outcry for solutions to public land problems, there was virtually no public buy-in or interest in the PLLRC. Consequently, when the commission released its report, the public basically ignored it. The little attention that it did receive was usually the result of spirited objections by environmental groups, and the news of the commission’s recommendations to dispose of certain public lands generally “shocked citizens, many of whom did not know that federal lands *could* be disposed of, let alone

¹⁵³ Philip H. Hoff, “An Insider’s View of the PLLRC: Comments and Suggestions,” *Denver Law Journal* 54, no. 3-4 (1977): 659.

¹⁵⁴ Rapp, “Comments,” 652.

that it was being contemplated.”¹⁵⁵ The public did not respond positively to media coverage relating that the commission recommended that “public land laws be revised to help such commercial activities as mining, timber, and agriculture.”¹⁵⁶ With its remaining six months of existence after submission of the report, the PLLRC did hold several meetings throughout the country to attempt to educate the public about its recommendations and to gain the attention of opinion makers, but with limited success.¹⁵⁷ Public attention essentially waned when environmentalists ceased their complaints shortly after the release of the report. As Dana and Fairfax observed, “There was a brief cry of horror from most conservationists and preservationists, and then silence. It was unnecessary to criticize the report or to elaborate its themes because the recommendations were being ignored by almost everyone.”¹⁵⁸

Outcome

The story of the PLLRC would be far from complete without accounting for the substantive outcomes that have arguably resulted from the Commission’s report. A precise evaluation of any commission’s influence is probably impossible, but the outcomes of the PLLRC are particularly ambiguous for a number of reasons. First, as has been noted, the Commission’s recommendations are wildly varied, promoting widespread

¹⁵⁵ Dana and Fairfax, *Forest and Range Policy*, 233.

¹⁵⁶ “Revised Policy for U.S. Lands Asked in Study,” *New York Times*.

¹⁵⁷ Hagenstein, “Commissions and Public Land Policies,” 642. The transcript of one of these meetings reveals a rather disapproving public audience, in Harriet Nathan, ed., *America’s Public Lands: Politics, Economics, and Administration, Conference on the Public Land Law Review Commission Report*, December 1970 (Berkeley: University of California, 1972).

¹⁵⁸ Dana and Fairfax, *Forest and Range Policy*, 235.

retention of public lands in one and advocating possible disposal of national monument land in the next. Klyza demonstrates the duality associated with the Commission's recommendations when he credits them for fueling the Sagebrush Rebellion in two distinct ways: 1) they advertised the devolutionary ideas that would become the backbone of the Sagebrush movement, and 2) they produced the recommendations that would eventually be implemented in the Federal Land Policy and Management Act of 1976 (FLPMA), which became the Rebellion's worst enemy.¹⁵⁹

The varied nature of the Commission's recommendations also led to a multiplicity of interpretations, which in turn produced utter confusion in the implementation stage. Charles Conklin, Assistant Director of the PLLRC staff, lamented the lack of implementation of the Commission's recommendations, attributing it to a problem of communication. "The language that the Commission so carefully used," explained Conklin, "is nevertheless capable of different interpretations, depending perhaps most of all on whether the interpreter favors the Commission recommendation or whether he opposes it. Someone fighting a Commission position often seems to speak or understand a language different entirely from that used by the Commission. And when people cannot communicate with a common understanding, it takes longer to attain desirable goals."¹⁶⁰ Commentary from two evaluators of PLLRC recommendations is illustrative: Muys and Leshy claim that "the Report placed great emphasis on environmental

¹⁵⁹ *Federal Land Policy and Management Act, Statutes at Large* 90, sec. 2743 (1976).

¹⁶⁰ Charles Conklin, "PLLRC Revisited: A Potpourri of Memories," *Denver Law Journal* 54, no. 3-4 (1977): 454.

considerations,”¹⁶¹ while Dana and Fairfax saw the report’s statements on environmental quality as a “thin veneer” over commodity-oriented recommendations.¹⁶²

Another factor that causes ambiguity in assessing the outcome of the PLLRC is the contradictory accounts of its level of influence, especially with regard to public land law and legislation. While David Clary, author of *Timber and the Forest Service*, argues that “the report had little positive influence,”¹⁶³ Muys claims that “Congress and the executive branch agencies have implemented the vast bulk of the Commission’s recommendations.”¹⁶⁴

Strange as it may seem, both statements are probably correct. While the PLLRC’s influence over forthcoming legislation was considerable, it fell far short of its ambitious claim that “upon adoption of this Commission’s recommendations, no public land law will be left intact.”¹⁶⁵ That no such revolution in public land law ever took place as a result of the Commission’s report might be attributed most directly to the fact that its recommendations were “sorely out of tune with the times.”¹⁶⁶ But first we should examine the influence of the PLLRC over legislation.

¹⁶¹ Muys and Leshy, “Whither the Public Lands?,” 3.9.

¹⁶² Dana and Fairfax, *Forest and Range Policy*, 235.

¹⁶³ David A. Clary, *Timber and the Forest Service* (Lawrence: University Press of Kansas, 1986), 175.

¹⁶⁴ Jerome C. Muys, “The Public Land Law Review Commission’s Impact on the Federal Land Policy and Management Act of 1976,” *Arizona Law Review* 21, no. 2, 307. Some of the bills Muys mentions as having embodied PLLRC recommendations are the National Forest Management Act of 1976, the Federal Coal Leasing Amendments Act of 1975, the Outer Continental Shelf Lands Act Amendments of 1978, the Public Rangelands Improvement Act of 1978, and FLPMA.

¹⁶⁵ Public Land Law Review Commission, *One Third*, xi.

¹⁶⁶ Dana and Fairfax, *Forest and Range Policy*, 235.

Aspinall purposely avoided submitting legislation with the report that embodied the Commission's recommendations, for which he was later criticized. His concern was that preconceived legislation would preclude meaningful debate among members of Congress regarding the fine-tuning of PLLRC recommendations as they should appear in legislative form.¹⁶⁷ To his credit, Aspinall took this step in order to allow more input on the commission's recommendations in Congress.

According to Muys, however, Aspinall did conceive of a strategy to implement PLLRC recommendations: "[Aspinall's] concept was to first enact legislation that would state the basic elements of a new congressional public land policy and establish general land use planning guidelines for the federal lands. That foundation legislation would be followed with revisions of the laws dealing with the various resources and uses of the public lands, much along the line of the format of the Commission's report."¹⁶⁸

Following this plan, Aspinall introduced a bill at the beginning of the 92nd Congress in 1971 embodying general PLLRC policy goals and recommendations. Senator Henry Jackson (D-WA), who had been a member of the PLLRC, also introduced a bill embodying many of the PLLRC's recommendations, but it differed from Aspinall's in that it was more "an attempt to implement the PLLRC recommendations as interpreted by the environmental community."¹⁶⁹ Aspinall's bill was laid to rest when, in the 1972 primaries, after 24 years in Congress, he was defeated by an opponent running on an

¹⁶⁷ Muys, *Unfinished Agenda*, 1.8.

¹⁶⁸ *Ibid.*

¹⁶⁹ Cawley, *Federal Land*, 37.

environmental platform.¹⁷⁰ His sudden displacement in Congress made way for Jackson's bill, which eventually became FLPMA, signed in October 1976.¹⁷¹

Several PLLRC recommendations were implemented through other bills and executive agency actions. Muys lists no less than seven pieces of legislation that had implemented PLLRC recommendations by 1979, including the National Forest Management Act of 1976 (NFMA), and the Payment in Lieu of Taxes Act of 1976 (PILT), which originated directly from a PLLRC recommendation.¹⁷² Executive agencies implemented various PLLRC recommendations as well.¹⁷³ Hagenstein notes the trouble with linking these outcomes, many of which occurred several years after the commission disbanded, directly to PLLRC recommendations, but gives credit where it is probably due: "To attribute these actions solely to the persuasiveness of the Commission's report and the soundness of its ideas would be exaggeration, but there can be no doubt that the terms of the dialogue leading up to these actions were influenced by the PLLRC."¹⁷⁴

As successful as the PLLRC may have been in affecting immediate public land legislation, it fell far short of achieving its more overarching goal of framing the debate

¹⁷⁰ Aspinall's opponent was a young lawyer and avowed environmentalist named Alan Merson who eventually lost in the general election to a Republican candidate.

¹⁷¹ Muys calls FLPMA a hybrid of the Aspinall bill, the Jackson bill, and a bill submitted by the Interior Department, in Muys, *Unfinished Agenda*, 1.10. John Carver makes a comparison between PLLRC recommendations and FLPMA provisions in John A. Carver, "Federal Land Policy and Management Act of 1976: Fruition or Frustration," *Denver Law Journal* 54, no. 3-4 (1977).

¹⁷² Muys, "Commission's Impact," 307. Several years passed between the release of PLLRC recommendations and enactment of FLPMA and other laws embodying PLLRC recommendations, which was right in line with the 6-8 years Aspinall and others had predicted as the probable timeline for implementing PLLRC recommendations. "Revised Policy for U.S. Lands Asked in Study," *New York Times*; Conklin, "PLLRC Revisited," 452.

¹⁷³ Public Land Law Review Commission, *One Third*, xii.

over public land policy. This can easily be attributed to the presence of Aspinall's heavy hand in all of its operations, since Aspinall essentially advocated policy that reflected old, out-of-date values.¹⁷⁵ With the environment becoming a focal point in policy-making at the beginning of the 1970s, as evidenced by the passage of the National Environmental Policy Act, the report seemed a step backward to most Americans. Indeed, this is what led to the end of Aspinall's career in Congress; just like the adoption of FLPMA, Aspinall's defeat can probably be traced back to the PLLRC report. His defeat, according to Dana and Fairfax, "signaled the end of an era and the rise to power of new values in public land management."¹⁷⁶

III. Historical Analysis: Lessons from History

Many useful lessons emerge from the histories of the four public land commissions. Carefully examined, they can inform the decisions we make in the future about how to most effectively address and solve the many problems experts say now plague the public lands. In the following analysis I highlight some of the trends found throughout the history of the commissions and extract some of the lessons that can be learned from them.

¹⁷⁴ Hagenstein, "Commissions and Public Land Policies," 643. Hagenstein was referring primarily to the report's influence on FLPMA and PILT.

¹⁷⁵ Cawley, *Federal Land*, 28.

¹⁷⁶ Dana and Fairfax, *Forest and Range Policy*, 235. A detailed account of Aspinall's enormous impact on public land policy and law during his lengthy tenure in Congress is provided in Steven C. Schulte's new book, *Wayne Aspinall and the Shaping of the American West* (Boulder: University of Colorado Press, 2002).

Politics, Personalities, and Predetermined Solutions

The most prevalent characteristic common to all of the past public land commissions has been their unvarying tendency to be immediately rejected or ignored when they released their reports. There are many reasons why this can happen to a commission, but the personalities involved and political maneuvers they employed to create each commission probably played the most significant role. The origins of each commission can be traced back to the political machinations of one or two persons.

The origins of the Public Land Commission of 1879 reveal that its architects at least partially intended it to be used as a tool to implement John Wesley Powell's recommendations. The failing state of public land law at the time certainly called for drastic measures to be taken, and a commission was probably a good tool to address its associated problems. Having acknowledged that, Congress later saw the commission become tainted by Powell and rejected its report upon arrival.

The final assessment of the Public Lands Commission of 1903 mimics in many ways that of the commission that preceded it. In both cases, a prudent message was ignored due not to its content but rather to circumstances surrounding its conception and delivery. Sound recommendations that arguably would have improved the public land system and the management of the lands were ignored simply because of the perception that the Commission's operations were unduly influenced by one person from beginning to end. While the recommendations of both the Public Land Commission of 1879-1881 and the Public Lands Commission of 1903-1905 were in most cases worth implementing (especially in retrospect), the process by which they were developed dashed from the outset any hope for immediate consideration or enactment of the commission's

recommendations. John Wesley Powell and Gifford Pinchot can both be at least partially blamed for the failure of their respective commissions to influence public land law in any immediate way.

Hoover fell into the same trap Powell and Pinchot had fallen into: he created a commission specifically designed to generate predetermined recommendations. The *New Republic* described the commission as a “political rather than an expert commission in spite of the fact that a goodly proportion of its members [were] indubitably experts in public land matters.”¹⁷⁷ How Garfield (the commission’s chairman who had worked closely with conservation champion Pinchot in Roosevelt’s administration, and who was “one of Roosevelt’s radical conservation leaders) came to sign the commission’s report is a mystery.¹⁷⁸ But it was no mystery that the commission was set up from the beginning to produce recommendations that would endorse Hoover’s public land policy pursuits. In that way, the commission was manipulated in essentially the same way the commissions of 1879 and 1903 had been. In each case, the agenda of one particular interest was vigorously pushed through the commission. And in each case the public and Congress looked at the commissions as illegitimate bodies manipulated to generate specific results, as opposed to objective study commissions, as their creators hoped they would be perceived.

This story repeats itself through every public land commission. In each case a commission was created to fulfill the intentions of one particular interest, and in each

¹⁷⁷ “Flinging Away an Empire,” *The New Republic*, 24 February 1932, 33. One can only assume that Garfield was strongly influenced by Hoover, most likely before the President appointed him chairman.

¹⁷⁸ *Ibid.*

case the commission had almost no immediate influence on public land policy or legislation. This occurred simply because Congress or the public perceived these commissions as illegitimate bodies manipulated to generate predetermined recommendations, and rejected their reports. It didn't matter whether the recommendations embodied within the commissions' reports were sound or not; it was the origin of each commission that effectively rendered it obsolete, at least for the moment. Thomas Wolanin, in his systematic study of presidential advisory commissions, argues that the most important characteristics of government study commissions are their independence and objectivity. In order to ensure that commissions possess these characteristics, Wolanin says, they should "not be guided by a hope of future preferment from the President" or any other interest, and should "not be dominated by Executive Branch or single clientele points of view."¹⁷⁹ In order to achieve the level of independence and objectivity that Wolanin describes, commissions should be free from the political wrangling, deal-making, and other maneuvers that are usually—and legitimately—used to achieve political and policy objectives. Commissions are bipartisan, impartial bodies charged to objectively find the solutions to difficult problems. Powell, Pinchot, Hoover, and finally Aspinall all learned too late that the process by which commissions are established and the atmosphere under which they operate should be fair, open, bipartisan, and inclusive. The possibility of convening a current commission under such conditions would undoubtedly be very difficult, especially given the highly contentious nature of public land politics at this time. These circumstances

¹⁷⁹ Thomas R. Wolanin, *Presidential Advisory Commissions: Truman to Nixon* (Madison: University of Wisconsin Press, 1975), 31.

under which a commission should be created to ensure the integrity of its objectivity and independence demonstrate the difficulty of relying on commissions to bring about policy change.

Significance of a Commission's Membership

There are many types of commissions, as demonstrated in the various forms taken by past public land commissions: the 1879 Commission was authorized by Congress, which also approved two of its five members, while the remaining three were presidential appointees; President Roosevelt created and appointed all three members of the 1903 Commission, making it a purely presidential commission; Congress authorized the 1930 Commission, while President Hoover appointed all twenty of its members; and the PLLRC was another hybrid congressional-presidential commission, with the majority of its members approved beforehand by Congress and only a few serving as presidential appointees. Because of the number of factors affecting the final outcome of each commission, it is difficult to determine which of the commissions' membership structures may have been most effective in carrying out its mission. It is likely that no sure formula for the success of a commission exists with regard to its structure.

Nevertheless, each commission's influence on public land law was greatly determined by its membership and makeup. While Congress approved two of the 1879 Commission's members, three were later appointed by President Hayes, who was influenced in his decisions by Carl Schurz, a close acquaintance of Powell's. Congress interpreted Powell's membership as another attempt by the administration to advance its reform agenda for the public lands. Pinchot's involvement in the 1903 Commission was

seen in the same light. And while Congress acknowledged that President Hoover had assembled a respected membership, it was stacked to favor one particular outcome. The makeup of each commission contributed to its eventual descent into insignificance.

Aspinall departed from the membership norms of the previous public land commissions and filled the PLLRC with congressional members. Aspinall had been a member of the highly successful Outdoor Recreation Resources Review Commission (ORRRC), convened in 1958, whose membership was made up almost entirely of members of Congress.¹⁸⁰ That experience convinced him that congressional membership was essential to the success of a commission. “The basic concept,” explains Jerome Muys, “was that the legislators could be expected to initiate and/or support the legislation necessary to implement the Commission’s recommendations. He felt that policy recommendations by traditional, blue-ribbon presidential commissions comprised of public figures who did not have to face the political heat of trying to implement often controversial recommendations generally were not implemented by Congress.”

Aspinall’s reasoning was sound, but in the end commission members did not feel the type of buy-in necessary to compel them to carry out Aspinall’s plan. As has been described, members introduced competing legislation, and one congressional member whose support had been influential in creating the commission “denounced the report roundly and disassociated himself from some of its major recommendations” within 48 hours of the release of the PLLRC report.¹⁸¹ Perry Hagenstein notes, “There seems to be

¹⁸⁰ See Department of the Interior, Bureau of Outdoor Recreation, *Federal Outdoor Recreation Programs* (Washington, D.C., 1967) for a brief history of the ORRRC.

¹⁸¹ Hagenstein, “Commission and Public Land Policies,” 644.

a common, but unfounded, presumption that having members of Congress on a commission will help pave the way for any legislative proposals that will ensue. For one thing, being party to a commission's report does not bind a member to support its recommendations."¹⁸² Hagenstein also pointed out that seven congressional members of the PLLRC, including the chairman, did not return to Congress in the second election following release of the Commission's report, and thus were unable to influence legislation in any meaningful way. Aspinall later realized that the ORRRC was successful primarily for reasons unrelated its structure or membership, but rather because of its fortunate timing, an important consideration that is discussed below.

Each commission's membership was completely capable of handling the tasks assigned to it, but the makeup of those memberships in the end caused problems for each of the commissions. Membership will be a key issue in the development of a current public land commission, and suggestions for a successful membership are offered in the final chapter of this paper.

Political Timing and Context

In its preface, *One Third of the Nation's Land* clearly states that the PLLRC began its work with no predisposition toward retention or disposal of public lands. There might be something to be said here for the Commission's attempt to be objective, but it exposed the Commission's glaring miscomprehension of where popular public opinion was moving at that time. The Wilderness Act had just been signed when the PLLRC began its study, and millions more acres were being added to the National Park

¹⁸² Ibid.

System.¹⁸³ But these were only very recent indications. Signs of shifting public values toward retention, management, and protection of public lands had been showing themselves for many years. When the Commission began its deliberations, the public had already answered the disposal vs. retention question, a point made by Howard Zahniser in his testimony regarding the PLLRC.

Six years later, with the release of its report, the PLLRC seemed to have answered that question in favor of retention with its first recommendation, but later recommendations focused on disposal of many classes of public lands, and commodity use of the majority of retained lands. Not all of the Commission's recommendations were slanted toward commodity use, and many were in fact applauded by environmental groups, but it was the Commission's reopening of the disposal question, which had been settled for many years in the eyes of the public, that led to most interests' ultimate rejection of the report.

In fact, the mere length of time that the PLLRC took to complete its report and recommendations may have contributed to its downfall. During a debate over whether or not to fund the PLLRC, one Senator argued that "only by reviewing all the public land laws can we hope to frame legislation that will satisfy the requirements of the 1960's."¹⁸⁴ Had the report of the Commission appeared in the 1960's, it may have had more of an influence in framing legislation. But the policy context in which it was delivered clashed with many of its foremost recommendations. Many of the events leading to the modern environmental movement occurred while the PLLRC was meeting from 1964 to 1970:

¹⁸³ Cawley, *Federal Land*, 28.

¹⁸⁴ *Congressional Record*, Senate, 88th Cong., 2d sess., 1964, 110, pt. 16: 21569.

the first Earth Day was celebrated, the National Environmental Policy Act was signed, and Edward Abbey's *Desert Solitaire* galvanized a generation of environmentalists.

The PLLRC began its work in one era and delivered its report in another. The report was rejected by a public, a Congress, and an administration that had moved into the future while the Commission remained in the past. Aspinall recognized the beginnings of change in the early 1960's, and acknowledgements of changing times are found in the Commission's enabling legislation and in its report.¹⁸⁵ But the changes that occurred from 1964 to 1970 proved to be too much for Aspinall to work against. "In the broad history of public land policies, six years is not long," observed Hagenstein," but these particular six years appear to have coincided with the threshold of major changes in the way these policies were to be viewed."¹⁸⁶

President Hoover's Commission experienced timing problems as well. Unlike the visionary recommendations put forth by Powell and Pinchot in their respective commissions, Hoover's recommendations reflected the quickly vanishing disposal doctrine of past public land policies. He and his Commission seriously underestimated the strength and breadth of the conservation movement at that time, and ignored almost thirty years of progress in conservation policy and philosophy with recommendations that reflected the policies of a different era.¹⁸⁷ The report entirely disregarded popular public opinion and values for the public lands, while pleasing a very limited number of public land users. It was simply out-of-step with how American citizens viewed their public

¹⁸⁵ Statutes at Large 78, sec. 982, 982; Public Land Law Review Commission, *One Third*, ix and throughout.

¹⁸⁶ Hagenstein, "Commission and Public Land Policies," 647-648.

lands. The National Wildlife Federation's response to the report of the 1964 PLLRC sums up the story of both commissions: "In 1930, such recommendations would have been unacceptable to the American public. In 1970, they are incredible."¹⁸⁸

Commissions can also fall victim to timing problems associated with the fluid nature of national political power. The PLLRC had executive branch buy-in from the Democratic administrations of both Presidents Kennedy and Johnson, but it delivered its report to a Republican administration to which it had absolutely no ties. Similarly, the 1930 Commission was sanctioned by a Republican controlled Congress but was later rejected by an unsympathetic, Democratic Congress. Constantly changing political and social circumstances can complicate commission operations, but change is a reality for which commissions must adequately prepare.

The Delayed Results of Public Land Commissions¹⁸⁹

Wolanin argues that the fundamental purpose of most commissions is "to formulate innovative domestic policies and to facilitate their adoption."¹⁹⁰ It is difficult to measure the success of commissions in fulfilling this purpose since results directly related to commissions sometimes emerge several years later.

¹⁸⁷ Gates, *History of Public Land Law Development*, 528.

¹⁸⁸ "More Commercial Use of Public Land Urged by Congressional Panel in Review of Policy," *Wall Street Journal*, 24 June 1970, 5.

¹⁸⁹ Perry Hagenstein gives an excellent, comprehensive account of study commissions and their short and long-term impacts on public land policy change in a paper he presented to a PLLRC reunion that took place several years after the Commission disbanded. Hagenstein, "Commission and Public Land Policies."

¹⁹⁰ Thomas R. Wolanin, *Presidential Advisory Commissions*, 11.

Failure of a commission to generate immediate implementation of recommendations does not suggest overriding failure of the commission. Three of the four commissions, while unproductive in their efforts to immediately influence public land law, seem to have been successful in influencing future policy and legislation. In 1886, Congress requested more copies of the 1879 Public Land Commission's report that it had completely ignored six years earlier.¹⁹¹ This may have played a role in scripting parts of the General Land Law Revision Act of 1891. The Act of 1891 was a direct reflection of much of the Public Land Commission's report, particularly the Act's provision to set aside forest reserves for public use, which was a radical departure from previous disposal policies for forested lands. Thus, the Public Land Commission's recommendations may have shaped the bill that ended the long era of public land disposal, and began the era of retention and management.

A similar scenario followed the report and recommendations of the Public Lands Commission of 1903. Any meaningful contribution from the work of this commission was to surface in the future. Despite the cool reception of its recommendations in Congress, the report did serve to educate and inform the public about the ongoing, extensive abuses of public lands and public land laws at that time, which triggered increased public support for the emerging conservation movement — support that was vital to the widespread adoption of conservation policy and philosophy through the next several decades and beyond.

¹⁹¹ *Joint Resolution: For the further distribution of the report of the Public Land Commission, Statutes at Large 24, sec. 341 (1886).*

Finally, the report of the PLLRC was generally battered or ignored at its release in 1970, but it eventually had quite an influence on actual public land law as many of its major recommendations were implemented several years later through important legislation such as FLPMA and NFMA.

The long-term influences of commissions demonstrate the difficulty of evaluating their success in instigating policy change, particularly those that have only recently completed their work. It is also important to remember that the “success” of a commission cannot be measured only by whether or not its recommendations are implemented, either on a short or long term basis. Commissions can have other, less tangible impacts on policy such as initiating changes in public sensibilities or laying the foundation for future policy changes by “softening” policy makers. Past public land commissions seem to have produced these impacts more often than the actual realization of commission goals for immediate policy change.

Origins of Public Land Commissions

The events surrounding the creation of each of the four past public land commissions reveal that certain individuals’ desires to implement predetermined policy objectives played perhaps the biggest role in bringing those commissions into existence. However, these individuals never would have been able to justify the creation of a commission were it not for the presence of other factors that genuinely required special attention and consideration. In other words, the public land commissions were created for legitimate reasons notwithstanding the ulterior motives of their creators.

If we can put aside for a moment the influence of these ulterior motives, important questions remain unanswered about the origins of public land commissions: What other considerations lead to the creation of a public land commission? What events bring such an option to the table for policy makers to consider? A careful look at the language used to describe the policy and social problems each commission faced reveals significant historical consistencies between them. More importantly, noteworthy similarities exist between the events leading up to the commissions of the past and recent events in public land policy and management.

The first Public Land Commission complained that the majority of public land laws in use at that time had been written for implementation in the Old Northwest Territory, as dictated in the Land Ordinance of 1785, and had later been unilaterally applied over the entire public domain as new territory was added.¹⁹² The commission complained that those laws were “not suited under the old conditions attached to them” to fulfill intents for the larger public domain.¹⁹³ Due to further exploration and advances in management approaches since the laws relating to the Northwest Territory had been drafted more than one hundred years earlier, much additional information was available about the western public lands. This expanded knowledge led to the need for laws governing those lands to be updated.

Twenty-three years later, upon organizing the Public Lands Commission of 1903, President Theodore Roosevelt echoed the concerns of the earlier commission when he

¹⁹² Congress, *Preliminary Report of the Public Lands Commission*, 9; Robbins, *Our Landed Heritage*, 290.

¹⁹³ Congress, *Preliminary Report of the Public Lands Commission*, 9.

asserted in his annual speech before Congress that “certain of the public-land laws and the resulting administrative practice no longer meet the present needs. The character and uses of the remaining public lands differ widely from those of the public lands which Congress had especially in view when these laws were passed.”¹⁹⁴ Roosevelt recognized that the purposes of the public lands had expanded beyond what earlier Congresses had envisioned for them. Much of this progress came from the growing recognition at that time that natural resources on public lands were actually finite resources whose extraction needed to be regulated to ensure sustainable production in the future. These same types of problems regarding outdated laws were repeated in discussions leading to the creation of the PLLRC in 1964.¹⁹⁵

The issue of outdated laws is once again at the forefront of public land policy discussions. Recent scientific and management developments have begun to shape much of our thinking about how public lands ought to be managed, and for what purposes they should be managed, but these developments are not formally reflected in public land law. Conservation biology, for example, is a relatively new field of study based upon the premise that biological diversity has intrinsic value.¹⁹⁶ It emphasizes what many now recognize as the inherent connections between ecosystems, human management, and survival of species. The tool many managers and scientists are using to implement the precepts of conservation biology is a new approach to public land management known as

¹⁹⁴ Congress, *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President*, 58th Cong., 2d sess., 1904, H. Doc 1, 25.

¹⁹⁵ See *supra* notes 99, 100, and 101 and accompanying text.

¹⁹⁶ For a general introduction and discussion of conservation biology that lays out the precepts of the field, see Michael E. Soule, “What is Conservation Biology?” *BioScience* 35 (1985): 727-734.

“ecosystem management.” As its name suggests, ecosystem management functions on an ecosystem-wide scale and takes plant, wildlife, and human communities into account in assessing impacts and allocating uses.¹⁹⁷ Because these developments are relatively recent, the principles embodied within them are not reflected in existing laws. Indeed, many experts now agree with Edward Grumbine that the “information drawn from conservation biology undermine[s] the prevailing view that the safety net of U.S. environmental laws is adequate to protect biodiversity.”¹⁹⁸ They feel that we are once again operating under a system of antiquated land laws, trying to achieve modern, biodiversity objectives for the public lands with laws that practically prohibit meeting those goals. Contradictory regulations and statutes are a natural outcome of this scenario.

Another indication that we are now experiencing what commissions have been called upon to deal with in the past is manifest through congressional inaction in the public land arena. The debate leading up to the establishment of the 1930 Commission is full of references about Congress’s failure, after many attempts, to pass any substantial legislation to provide guidance for the management of public lands, the result being “no definite policy by which they are controlled.”¹⁹⁹ Similarly, the PLLRC of 1964 was preceded by eight Congresses that all tried to revise public land laws to no avail.²⁰⁰

¹⁹⁷ For an excellent introduction and comprehensive overview of ecosystem management, see Edward Grumbine, “What is Ecosystem Management?” *Conservation Biology* 8 (1994): 27-38. Cortner and Moote examine the role of policy and politics in ecosystem management in Hanna J. Cortner and Margaret A. Moote, *The Politics of Ecosystem Management* (Washington, D.C.: Island Press, 1999).

¹⁹⁸ Edward Grumbine, *Ghost Bears: Exploring the Biodiversity Crisis* (Washington, D.C.: Island Press, 1992), 12.

¹⁹⁹ *Congressional Record*, 72, pt. 2: 2243.

²⁰⁰ *Congressional Record*, 110, pt. 4: 4866.

Congressional gridlock in the public lands arena is again upon us, as described earlier in this paper.

Public land commissions have been created out of public land political contexts with striking similarities to the one we are experiencing right now. Given these parallels, an assessment of the positive and negative aspects of convening a commission under current circumstance is useful for determining a course of action for the future.

IV. Current Political Context and Climate

One of the common challenges of any commission is recognizing and effectively working within its current political and policy context.²⁰¹ While each of the four past land law review commissions was convened under very different political circumstances, the creation and outcome of each was equally affected by its political setting. For example, the mere length of time that the PLLRC took to complete its report and recommendations undermined its relevance, due to the vast changes that took place in the political context as it related to the environment from 1964 to 1970. While it would have been difficult for the PLLRC to respond to those changing times, that commission's experience illustrates how critically important it is that a commission takes into account the political context and climate in within which it will operate.

The political context and climate under which a current commission would be convened would play an equally important role in its establishment, work, and receptivity in Congress. For example, the current presidential administration has been very active in influencing environmental policy, focusing most of its efforts in this arena on

²⁰¹ Hagenstein, "Commission and Public Land Policies," 647.

streamlining processes mandated by the National Environmental Policy Act (NEPA) that have made environmental analysis less efficient than the administration would like.²⁰² This effort has taken effect on several fronts, including through the administration's establishment of a special NEPA Task Force headed by the President's Council on Environmental Quality,²⁰³ the Healthy Forests Initiative,²⁰⁴ and through transportation planning projects.²⁰⁵ Closely related to these administrative actions are Forest Service allegations of "analysis paralysis" in public land management, defined by Forest Service Chief Bosworth as "difficult, costly, confusing, and seemingly endless processes" that Forest Service personnel must comply with in order to manage according to law and agency regulations.²⁰⁶ Bosworth's assessment of Forest Service "paralysis" led the administration in December 2002 to propose changes to Forest Service planning regulations that would streamline NEPA-mandated processes.²⁰⁷ Several interview participants for this project noted that these current trends in streamlining environmental regulations would have a good chance of being carried over into a public land law review commission's work.

²⁰² *National Environmental Policy Act, Statutes at Large* 83, sec. 852 (1970).

²⁰³ Council on Environmental Quality, Notice and request for comments, "National Environmental Policy Act Task Force," *Federal Register* 67, no. 131 (9 July 2002): 45510-45512.

²⁰⁴ President, Address, "Remarks on the Healthy Forests Initiative in Ruch, Oregon," *Weekly Compilation of Presidential Documents* 38, no. 34 (26 August 2002): 1395.

²⁰⁵ President, Executive Order, "Environmental Stewardship and Transportation Infrastructure Project Reviews," *Weekly Compilation of Presidential Documents* 38, no. 38 (23 September 2002): 1577.

²⁰⁶ Congress, *Conflicting Laws and Regulations*, 4; U.S. Forest Service, *The Process Predicament*.

²⁰⁷ U. S. Forest Service, Proposed rules, "National Forest System Land and Resource Management Planning; Proposed Rules," *Federal Register* 67, no. 235 (6 December 2002): 72769-72816.

The public land policy experts I interviewed for this project identified and described several arguments for and against creating a commission to examine and propose revisions to public land law within our current political context. They are presented below in a “case for/case against” format.

The Case For a Commission

Significant Congressional Interest in Public Land Law Review

A majority of interview participants commented that a current commission, in order to be effective, would have to be tied somehow to congressional support. It is therefore extremely important that there be enough congressional interest in public land review and reform for Congress to endorse or even take notice of a commission. Recent actions taken by Congress and the administration show that this interest does indeed exist. In December 2001, the Forests and Forest Health Subcommittee of the House Resources Committee held an oversight hearing on “Conflicting Laws and Regulations” in public land management. At a follow-up hearing on “Process Gridlock on the National Forests” in June 2002, Forest Service Chief Dale Bosworth presented the Subcommittee with a study examining the ineffective processes and management inefficiencies that are a direct result of Forest Service statutes and regulations. That report, “The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management,” called for the modification of the Forest Service’s statutory framework to reflect “the new era of public land management.”²⁰⁸

²⁰⁸ U.S. Forest Service, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management* (Washington, D.C.: GPO, 2002), 8.

In its actions, Congress and the administration seem to be seeking guidance on how to move forward with the complex issues surrounding public land governance and law. A commission would provide comprehensive guidance outside of the political wrangling of Congress.

Current congressional interest in public land issues could also motivate various constituent groups—particularly environmental interests—to get involved, one interview participant noted. Because the present Congress seems to be poised to pass some type of far-reaching public land legislation, an incentive might exist for environmental groups to participate in a commission that might curb, or at least stall, Congress's actions.

The Opportunity to Learn from Past Mistakes

As discussed earlier, the words often used to describe current problems with public land law, governance, and management are remarkably similar to those used in the past to describe the conditions that led to the convening of the four previous commissions. Specific circumstances often dictate specific outcomes, and in this case history indicates that a commission may indeed be our best response to the problems the public lands are experiencing.

This of course raises the point that the commissions of the past, historically and to a degree in this paper, have been perceived as fairly unsuccessful. How, then, could indications that a new commission will soon be convened be presented as a *case for* a current commission? One interview participant responded that policy makers could plan for, shape, and improve upon a commission if they were aware of the likelihood of one being created. All four commissions partially failed because of the highly political

maneuvers used to create them, and they had many other closely related problems. However, there is much evidence that despite the public's and Congress's hostile or disinterested reactions, the reports of past commissions were considered later by Congress in establishing important new legislation, demonstrating that many of the recommendations that came out of these commissions were timely, sound proposals. Immediate implementation of recommendations did not occur because the commissions' recommendations were overshadowed by what the public and Congress perceived as the commissions' inappropriate origins. A current effort to create a commission could carefully avoid these problems and, at the end of its work, the commission could present needed recommendations without the extra political baggage.

The current policy discussions described earlier in this paper indicate that a commission might be the next major public land initiative to be considered by Congress. If lawmakers, policy makers, experts, agencies, or whoever it is that might help in creating a commission are up to the task, they can plan to make it an effective one.

Increased Public Interest and Understanding of Public Land Issues

Reflecting on his experience as a member of the PLLRC, Philip Hoff insists that part of what accounted for the failure of the PLLRC to connect with the public was the fact that the press did not have a firm understanding of public land issues, and that the public did not have a tight grasp on them either.²⁰⁹ Dana and Fairfax note the public's general lack of interest in public land issues, and argue that the commission alienated

²⁰⁹ Hoff, "An Insider's View," 661.

citizen interest because, at the time, “public land law was a morass and studying it was a lawyer’s game.”²¹⁰

Public land law might still be a morass, but hundreds of representatives of citizen interest groups throughout the country are now very capable of participating in a review of public land law, and in fact demand involvement in such initiatives. Public land issues are much more visible to the general public as well, due in part to the many actions proposed and implemented by the Clinton and George W. Bush administrations in particular. Public land issues now boast large interested constituencies while new issues command our attention on a regular basis.²¹¹ In comparing the current setting to that which was present when the PLLRC did its work, Muys contends that the public’s amplified interest in public land matters warrants improvement of the current structure: “The American people can no longer be accused of ‘withholding themselves’ from concern about our public lands. They are greatly concerned and increasingly involved in a variety of ways. I believe they are entitled to better organizational, planning and management systems to protect and enhance the values of the public lands than are now in place.”²¹²

Commissions Encourage Compromise, Deliberation, and Productive Debate

One interview participant, commenting on the difficult process of comprehensive reform, noted that for any reform attempt to be successful within the currently

²¹⁰ Dana and Fairfax, *Forest and Range Policy*, 232.

²¹¹ For example, consider the widespread focus on recent events surrounding the Arctic National Wildlife Refuge, executive designation of national monuments, public land fire policy, roadless areas, and wilderness rights, for example.

contentious field of public land policy, it would need to occupy a process allowing people to shed their positions, find areas of agreement with which to move forward, and make compromises. A government study commission, pursuing consensus among commissioners, can be just the tool to instill this type of process within the public lands debate. Commissions “are outside the usual channels of government,” explains Hagenstein, “and, therefore, are blessed with a detached point of view.”²¹³ The history of public land commissions in the U.S. unfortunately imparts a conflicting message, since they were in no way “detached” from “the usual channels of government.” However, a government study commission, removed from partisan posturing, has the potential to facilitate impartial examination by experts that can ultimately lead to a more balanced view of the material it is charged to study.

Commissions “are effective as a forum in which their members can be educated and thereby form a consensus.”²¹⁴ The experience of serving on a commission is often a view-changing experience, due to the learning that occurs as commissioners share their varied experiences with the material. It is almost always required of commissioners to compromise on certain positions they might advocate outside of the commission setting in order to generate a meaningful consensus report. Hagenstein shares the following comment, made by a member of the PLLRC during a private Commission meeting, to illustrate the point:

As a representative of the fine people of the sovereign state of _____, I must oppose in no uncertain terms this hare-brained proposal, which would lead to

²¹² Muys, “Unfinished Agenda,” 1.32.

²¹³ Hagenstein, “Commission and Public Land Policies,” 625.

²¹⁴ Wolanin, *Presidential Advisory Commissions*, 32.

disaster and confusion throughout my state. But, as a member of the Public Land Law Review Commission, I applaud the highmindedness of this statesmanlike approach and urge my fellow members to join me in voting for it.²¹⁵

Commission members, outside of their usual roles in politically energized atmospheres, are able to reach beyond the partisanship of issues to generate good, balanced public policy. This type of approach desperately needs to be injected into the current public land policy debate, which, as has been repeatedly mentioned, has become increasingly characterized by polarization. While grassroots efforts to collaborate on public land issues can have this balancing effect on a small scale, a large-scale commission would catalyze and institutionalize these types of deliberations at a much more significant level.

The Case Against a Commission

Public Land Issues are Too Polarized

Two participants, including one that worked closely with the 1964 PLLRC, suggested that public land issues have become too partisan and polarized for a commission to deal with them effectively. They both maintained that in 1964, public land management was not yet a hot-button issue, as most Americans still thought of public lands as needing expert scientific management and nothing more. Moreover, as Hagenstein points out, partisanship was not much of an issue with the PLLRC because “the issues that it faced did not divide on party lines.”²¹⁶ This left public land issues out of the partisan political arena and made them much easier to deal with in a commission

²¹⁵ Paraphrased from notes Hagenstein’s took during an executive session of the Commission. Hagenstein, “Commission and Public Land Policies,” 634.

setting. Now, public land issues have been claimed by partisanship, argue these interview participants, which makes it difficult to proceed with an objective study, and even more difficult to expect policy makers to deliberately ponder commission recommendations as good policy-making guidelines. One interview participant warned that public land issues have become so politicized that the mere appointment of commission members would be a hotly contested, difficult task, bound to politicize the commission before it could even get to work. In their informative assessment of gridlock in current environmental policy-making, Klyza and Sousa cite partisanship and other related factors for halting meaningful reform to the public land laws: “High levels of interest group mobilization, intense partisanship in a closely divided government, broad if shallow public support for the status quo, and the growing complexity of issues have combined to make major changes in the basic environmental laws extremely difficult.”²¹⁷

Two interview participants argued that current efforts to achieve consensus on such polarized topics often produce watered-down, zero-sum recommendations. They asserted that this is exactly what might happen if a commission were to be convened now, particularly due to the splintered nature of the environmental community. Satisfying all those demands, they argued, along with the demands of other legitimate stakeholders, would lead to a report without teeth. The price of demanding consensus, notes Hagenstein, is often “fuzzy recommendations supported by generalities in a report that lacks passion, none of which bodes well for convincing the public, the Congress, or the

²¹⁶ Hagenstein, “Commission and Public Land Policies,” 638.

²¹⁷ Klyza and Sousa, “Environmental Policy Beyond Gridlock,” 15. See Klyza and Sousa generally for an analysis on the recently heightened partisanship associated with environmental issues.

President. The problem becomes one of gaining too little attention for recommendations that have the support of an entire commission, but are difficult to translate into meaningful legislation or administrative action.”²¹⁸ Without the zeal needed to get the attention of lawmakers, there is no impetus for them to follow up on the work of a commission, and a commission’s report is shelved indefinitely.

Ensuring follow-up on recommendations by figures in government leadership positions is a difficult task in itself, and has no chance of occurring if recommendations are too general, insignificant, or difficult to package. If watered-down recommendations do get implemented with the support of Congress or an administration that feels like it needs to act on the issue, the end result is that little actually occurs on the ground, while the issue is then relegated to the back-burner and deemed solved. If this were to occur, a commission could indirectly do more damage than good.

No Prominent Issue to Build a Public Constituency

However “aware” of public land issues Americans may now be, some argue that there is no public land issue major enough to garner the type of interest needed for the public to support a commission. In fact, current times may reflect the setting PLLRC staff member Dennis Rapp described as contributing to the ineffectiveness of the PLLRC; “There was no major political issue of national importance concerning the public lands,” he argued. Instead, other issues demanded the people’s attention, such as the escalation of the Vietnam War and the launching of the Great Society programs.²¹⁹ Today, citizens are generally much more concerned about terrorism, war, and an impending recession

²¹⁸ Hagenstein, “Commission and Public Land Policies,” 624.

than they are about any one public land problem. The problems that experts cite most readily, such as archaic laws and ineffective governance, are not “charismatic” issues and are not likely to attract massive public support. While general interest in the public lands has grown immensely since the 1960s, the bar has been raised for a public land issue that gains national attention. Again, Klyza and Sousa are instructive on this point:

The environment seems to be a settled issue in public opinion. There is considerable generic support for the existing green state despite conservative concerns about costs and inefficiency, and despite environmentalists’ concerns that efforts at pollution control and natural resource preservation have been too weak. A sense of crisis is crucial for overcoming the normal barriers to non-incremental policy change in the U.S. There is little evidence of any widespread sense of crisis on the part of the public — either overwhelming fears about continuing environmental degradation and health risks *or* deep concern about the economic and social costs of environmental protection. There is little room for congressional policy innovation from either side of the aisle. Public opinion supports the status quo, feeding legislative gridlock.²²⁰

This description of gridlock may point to the need for a commission, but it certainly will not help to create one.

Unified Party Government

At this writing, the legislative and executive branches are entirely controlled by one party. This was a major concern of most participants, including two associated directly with national environmental organizations. When asked if the groups they represented would support or participate in a commission organized under existing circumstances with particular regard to the currently unified party government, both responded in the negative, indicating that the result of such a commission would be a foregone conclusion. Their responses suggest that in times when one party is in control,

²¹⁹ Rapp, “Comments,” 651.

there will be interests who feel enough distrust for that party, or alienated enough by that party, to elect not to participate. This non-participation on the part of key public land stakeholders would compromise the integrity of a commission attempting to represent all relevant points of view.

The 1930 Commission demonstrates another negative aspect of unified party government. The Commission—the brainchild of a Republican President—was approved by a nearly party-line vote in a Republican controlled Congress. The fact that Congress was predisposed to the Commission’s expected recommendations, yet still approved of the Commission’s creation, should bring caution to those considering the creation of a new commission during a time of unified party government.

Another participant suggested that an additional negative effect of unified party governments on study commissions is that a commission’s recommendations could swiftly and easily be swept under the rug by the administration and Congress if the recommendations did not fit with the unified party’s agenda.

Climate Is Right for a “Political” Commission

Participants made many comments indicating their skepticism of commissions as agents for meaningful change because of the ways presidential administrations and Congress often use commissions as political tools to advance specific agendas. Three interview participants noted that the current political setting might actually favor a public land law review commission, albeit an ineffective, politically influenced one. The

²²⁰ Klyza and Sousa, “Environmental Policy Beyond Gridlock,” 11.

following comments from a former member of the PLLRC Advisory Council clearly indicate why:

The political climate for a new commission, oddly, might be favorable. There is a conservative, Republican administration in office for at least two more years and possibly four additional. There has been enough congressional concern expressed to establish a favorable legislative setting for an inquiry. And given the current federal budgetary and national economic situation, the prospect for meaningful reform that costs money is a number of years away. Thus, politicians and interest groups might seem to be addressing public lands issues if they at least authorized such an inquiry.²²¹

This description would fit into the second of Elizabeth Drew's eight reasons for appointing commissions: "to postpone action, yet be justified in insisting that you are at work on the problem."²²² The current administration could also use this type of political commission to bolster its environmental record, which has been lambasted by Democrats and environmental organizations.

Commissions May Now be an Outdated Concept

It has been shown that there exists a strong tendency for public land commissions to operate within a controlled environment that produces predetermined recommendations. Considering the effect this had on the final outcome of each commission, a current effort would need to be especially cautious that this does not occur again. But, according to the interviews I conducted for this project, it seems that those

²²¹ Anonymous, letter to author, 8 May 2003.

²²² Drew's other reasons include: to obtain the blessing of distinguished men for something you want to do anyway; to postpone action, yet be justified in insisting that you are at work on the problem; to act as a lightning rod, to draw political heat away from the White House; to conduct an extensive study of something you do need to know more about before you act, in case you do; to investigate, lay to rest rumors, and convince the public of one particular set of facts; to educate the commissioners, or get them aboard on something you want to do; because you cannot think of anything else to do; and to change the

same tendencies to produce predetermined recommendations still exist in one form or another. Several of the individuals I interviewed described hypothetical recommendations they would support, and described others that they would refuse to support. This subjective response is similar to the way some environmental groups responded to the PLLRC in 1970. In an analysis he wrote of the PLLRC report, Michael McCloskey, who was then Executive Director of the Sierra Club, laid out the recommendations his group would have supported and then criticized the PLLRC's recommendations because they did not match up with those the Sierra Club would have made. This type of critique entirely defeats the purpose of a study commission, as recommendations are finalized before any study has been undertaken.

Given the number of public land interests and interest groups that now so readily participate in public land policy affairs, it would not be surprising that they might react this way to a commission in current times. But it does highlight a certain trend that is now difficult to ignore—"expert" commissions do not command as much attention or operate with as much authority as they possibly once did. As one interview participant put it, "I think that commissions are no longer effective because we don't defer to 'elites' or 'blue-ribbon groups' any longer."²²³ She attributes this to the increasingly influential role the general public now plays in the policy-making arena through powerful advocacy organizations and, particularly with public land policy, through the courts. The situation was different in Gifford Pinchot's day, when the public simply deferred to agency experts to make science-based decisions in managing the nation's natural resources. As these

hearts and minds of men. Elizabeth Drew, "On Giving Oneself a Hotfoot: Government by Commission," *Atlantic Monthly*, May 1968, 45-46.

decisions have become more value and interest-based over the years, the public no longer simply allows scientists and economists to dictate public land policy. Now, we expect to be included and involved in all major decisions affecting the public lands.

V. Suggestions and Options for Moving Forward

The arguments for and against convening a commission to help solve current public land problems are probably infinite. At some point policy makers and others must move forward and address these problems using either a commission or some other tool to instigate change. Integrating ideas and comments from interview participants, in this section I follow up on the arguments presented in the previous section, first offering further guidance for those who wish to go forward with a commission, and then suggesting a few alternative options to a commission. The lessons learned from past commissions can be applied to any far-reaching effort to improve the law governing the nation's public lands, including those listed below.

Suggestions for a New Public Land Law Review Commission

Commission's Mandate

Several interview participants insisted that problems with the public land system must be agreed upon and acknowledged before a commission sets out to investigate those problems. This would allow the commission to have a clear mandate with specific questions to answer. Two questions, argued one participant, need to be answered right now regarding the public lands: 1) what is the general purpose of the public lands? and,

²²³ Anonymous, personal communication with author, 8 May 2003.

2) how do we generate rules and regulations in conformance with that purpose? He felt that the first question needed to be addressed and answered by Congress, and when that is done, a clear mandate would be established to help a commission effectively tackle the second question.

Two participants with ties to the PLLRC argued that it would be difficult at this time to assign a clear mandate to a commission considering the wide range of current public land problems. They argued that one single commission could not effectively address all of these problems, but that a commission might be set up to help solve problems related to one specific agency or issue.

Commission's Membership

Most interview participants acknowledged the need for a commission to be tied to Congress in some way in order to provide the commission authority and legitimacy in the policy-making arena. Nevertheless, they were generally opposed to the idea of placing members of Congress on a commission, arguing that the commission would not be insulated from politicization. They offered several membership alternatives, including federal and state agency officials, representatives from academia, ex-agency officials, and representatives from an array of public land interest groups. The presence of agency officials would undoubtedly provide a commission with individuals experienced in implementing public land laws, but one participant said that the commission should be as far removed as possible from any presidential administration to decrease the chance of executive influence.

Two participants, noting the relatively recent advances in conservation biology that have drawn attention to the ecological importance of public lands, argued that the majority of commission members should be ecologists and other biological scientists. Most participants stressed the importance of broad public land stakeholder representation in the makeup of a commission's membership. One participant argued that the selection of commission members should be based on three criteria: those who would provide political clout to the commission; those whose membership would ensure support from a broad spectrum of interests; and those who would have the ability to make bold recommendations.

Commission's Report and Recommendations

The immediate success of a commission hangs directly upon the type of reception it gets from Congress, the White House, the media and the public. Several people associated with the PLLRC have argued that it ran into problems early on because of the structure of its report and recommendations. One problem with the PLLRC's report, argues Muys, was that "it did not prepare model legislative proposals that could be used as a starting point by Congress for implementing its over 400 recommendations."²²⁴ Lack of legislative direction and the incredible number of recommendations combined to make the report difficult for anyone to swallow.

Interview participants made several suggestions to improve the reception and overall impact of a commission's report and recommendations. Two interview

²²⁴ Muys, *Unfinished Agenda*, 1.8. Philip Hoff, a member of the PLLRC, is especially critical of the absence of incorporated legislation in Hoff, "An Insider's View."

participants who had very recently been involved in one government study commission stressed the importance of doing informed, documented, defensible research to support a commission's recommendations. The research, they argued, would extend the life of the commission's report. In the case of the commission they served on, Congress decided that the recommendations lacked objectivity and rejected them outright. That commission's research, however, continues to be used by policy makers to influence decisions because it was carefully performed and recorded. Thus, while its immediate goal of implementation of recommendations failed, the report continues to have a long-term influence on policy associated with its subject matter.

Other participants suggested that recommendations should be subject to public review and comment, that they be region-based rather than apply to the entire public lands, and that pilot projects be used to test the commission's recommendations before they are implemented system-wide.

Two participants suggested that a commission should refrain from making recommendations and instead offer only conclusions. They argued that a commission's report should be used as a reference by which to make decisions, and that the commission should not make those decisions itself.

Alternative Means of Instigating Public Land Law and Policy Change

Non-governmental System-wide Review

While most interview participants felt that some type of system-wide review of laws and policy was needed to address the myriad of problems associated with public land management and governance, some were dubious about the government study

commission approach. They felt that commissions had generally been unsuccessful in the past and suggested that a non-governmental organization might better accomplish such a review. One such effort has been proposed by a consortium of non-governmental policy centers that plan to “critically evaluate the state of federal public lands management and governance and to produce a comprehensive set of reports aimed at strengthening the capacity of the public lands system to fulfill its mission.”²²⁵ Other examples of these types of efforts on a smaller scale might include the Society of American Foresters’ comprehensive review of public land policy problems in their report, “Forest of Discord: Options for Governing Our National Forests and Federal Public Lands” or the Natural Resource Law Center’s “Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy.”²²⁶

Pilot Projects/Experimentation

Several participants suggested the use of pilot projects to test different approaches to public land governance and management. Under a pilot project, proposed policy changes could be implemented in several locations on a limited geographical scale throughout the public lands, and be closely monitored to measure public benefits. Final evaluation of these experiments, based on monitoring results, public comment and other factors, would determine whether the tested policies and approaches should be

²²⁵ Text is taken from a draft letter dated 32 May 2003, composed by several policy centers convened by the Western Consensus Council, *supra* note 14.

²²⁶ Society of American Foresters, *Forest of Discord: Options for Governing Our National Forests and Federal Public Lands* (Bethesda: Society of American Foresters, 1999); Natural Resources Law Center, *Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy* (Boulder: Natural Resources Law Center, 2000).

implemented system-wide. An example of this type of experimental approach is the stewardship contracting pilot projects that were implemented in several areas of the national forest system. Stewardship contracting was implemented on a limited basis and monitored by a non-governmental research organization before the practice was recently extended to the entire national forest system and to Bureau of Land Management lands as well.²²⁷

Incremental Reform

According to some interview participants, public land issues have become so polarized and claim such diverse constituencies that any attempt to implement substantial changes or enact reform measures would be unsuccessful. They suggested that the only way to move forward is through incremental changes to policy. Incremental changes usually occur through administrative rule changes and legislative provisions dealing with parts of the public land system. Recent revisions to the PILT program are an example of incremental change: Democrats and Republicans both recognized problems emerging from an outdated PILT system and came together in a bipartisan effort to fix the program, which resulted in the Secure Rural Schools and Community Self-Determination Act of 2000.²²⁸ These types of legislative successes seem less and less frequent in an increasingly partisan Congress, but constitute durable fixes to a brittle system.

²²⁷ This example illustrates one of the possible drawbacks of pilot projects as well: stewardship contracts had not yet undergone full evaluation before Republicans tacked a rider onto an appropriations bill authorizing its expansion in February 2003.

²²⁸ *Secure Rural Schools and Community Self-Determination Act, Statutes at Large* 114, sec. 1607 (2000).

VI. Conclusion

The alternatives to a commission presented above all eventually lead back to Congress, which was identified by most interview participants as the place to focus efforts for reform in public land law. Congress itself, then, could be considered an alternative to a commission. However, several criticisms were leveled at the current and recent sessions of Congress for their inability to produce legislation that properly reflects the changes occurring on the ground in public land governance and management. Congress in the end will play the central role in effectuating policy change, but simply relying on Congress to pass public land reform legislation in its current state of gridlock is unrealistic. A commission may be the most suitable tool to instigate action in Congress.

Perhaps the only thing now certain within the realm of federal public land and resources law is that forthcoming changes are inevitable. Too many important and influential stakeholder groups, including agency officials, environmental organizations, industry representatives, and even lawmakers continue to express their frustration with the public land management and governance system for the situation to remain in its current state much longer. As Congress fails to respond, others have begun to mobilize and propose their own changes to public land governance and management. With so many constituencies demanding it, conflicting laws and regulations must eventually give way to a clearly defined public land policy.

Will these forthcoming changes continue to be shaped by the partisan, piecemeal tactics of a Congress that finds itself at a legislative standstill or will they be guided by

the deliberative processes and critical analyses that are essential to the long-term viability of public policies? While public land commissions of the past have largely proven to be ineffective bodies, susceptible to the same political maneuvers that currently permeate public land policy-making, they have also proven successful in providing in-depth analysis of problems, recommending progressive changes, and in some cases influencing important legislation. Although a current effort to convene a commission would face serious challenges, a new public land law review commission, carefully planned for and appropriately executed, could incorporate the thoughtful, collaborative processes that are so absent from current public land policy making today. In the end, it will be our willingness to face these challenges that determines our ability to move public land policy and management out of confusion and into the future.

APPENDIX: Members of the Public Land Law Review Commission, 1964-1970

Chairman

Representative Wayne N. Aspinall, Colorado

United States Senate

Gordon Allot, Colorado

Clinton P. Anderson, New Mexico

Alan Bible, Nevada

Paul J. Fanin, Arizona

Henry M. Jackson, Washington

Len B. Jordan, Idaho

House of Representatives

Walter S. Baring, Nevada

Laurence J. Burton, Utah

John H. Kyle, Iowa*

John P. Saylor, Pennsylvania

Roy A. Taylor, North Carolina

Morris K. Udall, Arizona

Presidential Appointees

H. Byron Mock (Vice Chairman), Practicing Attorney

Salt Lake City, Utah

Robert Emmet Clark, Professor of Law, University of Arizona

Tucson, Arizona

Maurice K. Goddard, Secretary of Forests and Waters

Harrisburg, Pennsylvania

Philip H. Hoff, Former Governor of Vermont

Burlington, Vermont

Laurance S. Rockefeller, Chairman, Rockefeller Brothers Fund

New York, New York

Nancy E. Smith, Supervisor, Fifth District, County of San Bernardino

San Bernardino, California

Former Members

Mrs. John Blessner Lee, Farmington, Connecticut, from inception until August 1965.

Senator Thomas H. Kuchel, California, from inception until January 1969.

Representative Leo W. O'Brien, New York, from inception until August 1966.

Representative Rogers C.B. Morton, Maryland, February 1965 – January 1967.

Representative Walter Rogers, Texas, July 1965 – January 1967.

Representative Ralph J. Rivers, Alaska, August 1966 – January 1967.

* Served from inception until January 1965; reappointed in January 1967.

Bibliography

- Andrus, Cecil D. and John C. Freemuth. "How should the next administration approach public land management in the western states?" In *Policy after Politics: Proceedings of the Conference in Boise, Idaho, June 1, 2000*, by the Andrus Center for Public Policy, 1-15. Boise: Andrus Center for Public Policy, 2000.
- Brunner, Ronald D., Christine H. Colburn, Christina M. Cromley, Roberta A. Klein, and Elizabeth A. Olson, eds. *Finding Common Ground: Governance and Natural Resources in the American West*. New Haven: Yale University Press, 2002.
- Carver, John A. "Federal Land Policy and Management Act of 1976: Fruition or Frustration." *Denver Law Journal* 54, no. 3-4 (1977): 387-408.
- Cawley, R. McGregor. *Federal Land, Western Anger: The Sagebrush Rebellion and Environmental Politics*. Lawrence: University Press of Kansas, 1993.
- Clary, David A. *Timber and the Forest Service*. Lawrence: University Press of Kansas, 1986.
- Coggins, George Cameron, Charles F. Wilkinson, and John D. Leshy. *Federal Public Land and Resources Law*, 4th ed. New York: Foundation Press, 2001.
- Conklin, Charles "PLLRC Revisited: A Potpourri of Memories." *Denver Law Journal* 54, no. 3-4 (1977): 445-457.
- Cortner, Hanna J. and Margaret A. Moote. *The Politics of Ecosystem Management*. Washington, D.C.: Island Press, 1999.
- Council on Environmental Quality. Notice and request for comments. "National Environmental Policy Act Task Force." *Federal Register* 67, no. 131 (9 July 2002): 45510-45512.
- Dana, Samuel T. *Forest and Range Policy: Its Development in the United States*. New York: McGraw-Hill, 1956.
- Dana, Samuel T. and Sally K. Fairfax. *Forest and Range Policy: Its Development in the United States*, 2d ed. New York: McGraw-Hill, 1980.
- Denver Post*. 2002. 3 March.
- Drew, Elizabeth. "On Giving Oneself a Hotfoot: Government by Commission." *Atlantic Monthly*, May 1968, 45-46.

- Dunham, Harold H. *Government Handout: A Study in the Administration of the Public Lands, 1875-1891*. New York: Columbia University Press, 1941.
- Endangered Species Act. Statutes at Large* 87, sec. 884 (1973).
- Federal Land Policy and Management Act. Statutes at Large* 90, sec. 2743 (1976).
- Gates, Paul W. *History of Public Land Law Development*. Washington, D.C.: GPO, 1968.
- General Land Law Revision Act of 1891. Statutes at Large* 26, sec. 1095 (1891).
- Grumbine, Edward. *Ghost Bears: Exploring the Biodiversity Crisis*. Washington, D.C.: Island Press, 1992.
- Grumbine, Edward. "What is Ecosystem Management?" *Conservation Biology* 8 (1994): 27-38.
- Hagenstein, Perry R. "Commissions and Public Land Policies: Setting the Stage for Change." *Denver Law Journal* 54, no. 3-4 (1977): 619-650.
- "Highlights of the September Board Meeting." *Sierra Club Bulletin*, October 1970, 17.
- Hoff, Philip H. "An Insider's View of the PLLRC: Comments and Suggestions." *Denver Law Journal* 54, no. 3-4 (1977): 657-661.
- Joint Resolution: For the further distribution of the report of the Public Land Commission. Statutes at Large* 24, sec. 341 (1886).
- Keiter, Robert B., ed. *Reclaiming the Native Home of Hope: Community, Ecology, and the American West*. Salt Lake City: University of Utah Press, 1998.
- Klyza, Christopher M. and David J. Sousa. "Environmental Policy Beyond Gridlock" (paper presented at the 2003 Annual Meeting of the Western Political Science Association, Denver, Colorado, 27-29 March, 2003). [<http://www.ups.edu/faculty/sousa/wpsa2003.htm>]. Accessed 15 July 2003.
- Laitos, Jan G. and Thomas A. Carr. "The Transformation of Public Lands." *Ecology Law Quarterly* 26, no. 2 (1999): 140-242.
- Love, Bob. "A Dose of Straightforward Management Would Greatly Improve Forest Health." [<http://www.headwatersnews.org/p.092502.printer.html>]. September 2002. Accessed 8 July 2003.
- Mansfield, Marla E. "A Primer of Public Land Law." *Washington Law Review* 68 (October 1993): 801-857.

- McCloskey, Michael. "An Analysis: The Public Land Law Review Commission Report." *Sierra Club Bulletin*, October 1970, 21-30.
- McGeary, M. Nelson. *Gifford Pinchot: Forester-Politician*. Princeton: Princeton University Press, 1960.
- Meyers, Greg. "Old Growth Forests, the Owl, and the Yew: Environmental Ethics versus Traditional Dispute Resolution under the Endangered Species Act and the Public Lands and Resources Laws." *Boston College Environmental Affairs Law Review* (Summer 1991): 623-668.
- Missoulian* (Montana). 10 September 2002; 11 February 2003.
- Multiple-Use, Sustained-Yield Act. Statutes at Large* 74, sec. 215 (1960).
- Muys, Jerome C. "The Public Land Law Review Commission's Impact on the Federal Land Policy and Management Act of 1976." *Arizona Law Review* 21, no. 2 (1977): 301-309.
- Muys, Jerome C. "The Unfinished Agenda of the Public Land Law Review Commission." *Public Land Law* 1992, no. 4 (1992): 1.1-1.36.
- Muys, Jerome C. and John D. Leshy. "Whither the Public Lands?" In the *41st Rocky Mountain Mineral Law Institute Proceedings*, by the Rocky Mountain Mineral Law Foundation, 3.1- 3.45. Denver: Rocky Mountain Mineral Law Foundation, 1995.
- Nathan, Harriet, ed. *America's Public Lands: Politics, Economics, and Administration, Conference on the Public Land Law Review Commission Report, December 1970*. Berkeley: University of California, 1972.
- National Environmental Policy Act. Statutes at Large* 83, sec. 852 (1970).
- Natural Resources Law Center. *Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy*. Boulder: Natural Resources Law Center, 2000.
- Peffer, E. Louise. *The Closing of the Public Domain: Disposal and Reservation Policies*. Stanford: Stanford University Press, 1951.
- Pinchot, Gifford. *Breaking New Ground*. Washington, D.C.: Island Press, 1974.
- Pinchot Institute for Conservation. "Biography of Theodore Roosevelt, Jr.," [<http://www.pinchot.org/gt/tr.html>]. Accessed 21 July 2003.

- Public Land Law Review Commission. *One Third of the Nation's Land*. Washington, D.C.: GPO, 1970.
- Public Land Law Review Commission Act. Statutes at Large* 78, sec. 982 (1964).
- Pyles, Hamilton K. *What's Ahead for Our Public Lands? A Summary Review of the Activities and Final Report of the Public Land Law Review Commission*. Washington, D.C.: Natural Resources Council of America, 1970.
- Rapp, Dennis. "Comments on 'Commissions and Public Land Policies: Setting the Stage for Change.'" *Denver Law Journal* 54, no. 3-4 (1977): 651-653.
- "Revised Policy for U.S. Lands Asked in Study." *New York Times*, 24 June 1970.
- Robbins, Roy M. *Our Landed Heritage: The Public Domain, 1776-1970*, 2d ed., rev. Lincoln: University of Nebraska Press, 1976.
- Schulte, Steven C. *Wayne Aspinall and the Shaping of the American West*. Boulder: University of Colorado Press, 2002.
- Scott, Douglas W. *A Wilderness-Forever Future: A Short History of the National Wilderness Preservation System*. Washington, D.C.: Pew Wilderness Center, 2001.
- Secure Rural Schools and Community Self-Determination Act. Statutes at Large* 114, sec. 1607 (2000).
- Shepard, Ward. "The Handout Magnificent." *Harper's Monthly Magazine*, October 1931, 602.
- Shepherd, John F. "Up the Grand Staircase: Executive Withdrawals and the Future of the Antiquities Act." In the 43rd *Rocky Mountain Mineral Law Institute Proceedings*, by the Rocky Mountain Mineral Law Foundation, 4.1-4.33. Denver: Rocky Mountain Mineral Law Foundation, 1997.
- Society of American Foresters, *Forest of Discord: Options for Governing Our National Forests and Federal Public Lands*. Bethesda: Society of American Foresters, 1999.
- Soule, Michael E. "What is Conservation Biology?" *BioScience* 35 (1985): 727-734.
- Stegner, Wallace. *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West*. New York: Penguin, 1992.
- Sundry Civil Appropriations Act of 1879. Statutes at Large* 20, sec. 377 (1879).

- Sundry Civil Appropriations and Lieu Lands Act, Statutes at Large* 30, sec. 11 (1897).
- Thomas, Jack Ward. "The Instability of Stability." In *Landscapes and Communities on the Pacific Rim: Cultural Perspectives from Asia to the Pacific Northwest*, ed. Karen K. Gaul and Jackie Hiltz, 20-31. Armonk, New York: M.E. Sharpe, 2000.
- U.S. Congress. House. *Congressional Record*. 71st Cong., 2d sess., 1930. 72, pt. 2.
- U.S. Congress. House. *Congressional Record*. 71st Cong., 2d sess., 1930. 72, pt. 3.
- U.S. Congress. House. *Congressional Record*. 88th Cong., 2d sess., 1964. 110, pt. 4.
- U.S. Congress. House. Committee on Interior and Insular Affairs, Subcommittee on Public Lands. *Public Lands Review: Hearings before the Subcommittee on Public Lands*. 88th Cong., 1st sess., 4 October 1963.
- U.S. Congress. House. Committee on Resources, Subcommittee on Forests and Forest Health. *Conflicting Laws and Regulations: Gridlock on the National Forests: Oversight Hearing before the Subcommittee on Forests and Forest Health*. 107th Cong., 1st sess., 4 December 2001.
- U.S. Congress. *Papers Relating to the Foreign Relations of the United States, with the Annual Message of the President*. 58th Cong., 2d sess., 1904, H. Doc 1.
- U.S. Congress. *Preliminary Report of the Public Land Commission*. 46th Cong., 2d sess., 1880. H. Ex. Doc. 46. Serial 1923.
- U.S. Congress. *Report of the Public Lands Commission*. 58th Cong., 3d sess., 1905, S. Doc. 189, Serial 4766.
- U.S. Congress. Report on the Lands of the Arid Region of the United States, with a More Detailed Account of the Lands of Utah by John Wesley Powell. 45th Cong., 2d sess., 1878. H. Exec. Doc. 73.
- U.S. Congress. Senate. *Congressional Record*. 71st Cong., 3d sess., 1931. 74, pt. 4.
- U.S. Congress. Senate. *Congressional Record*. 88th Cong., 2d sess., 1964. 110, pt.16.
- U.S. Congress. Senate. Committee on Public Lands and Surveys. *Granting Remaining Unreserved Public Lands to States: Hearings before the Committee on Public Lands and Surveys*. 72nd Cong., 1st sess., 5 April 1932.
- U.S. Department of Agriculture. Press Release No. 0312.95. [<http://www.usda.gov/news/releases/1995/04/0312>]. 12 April 1995. Accessed 8 July 2003.

- U.S. Department of the Interior. Bureau of Land Management. *Public Land Law Review Commission: Information Source Book for H.R. 8070*. Washington, D.C., 1963.
- U.S. Department of the Interior. Bureau of Outdoor Recreation. *Federal Outdoor Recreation Programs*. Washington, D.C., 1967.
- U.S. Forest Service. Proposed rules. "National Forest System Land and Resource Management Planning; Proposed Rules." *Federal Register* 67, no. 235 (6 December 2002): 72769-72816.
- U.S. Forest Service, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management* (Washington, D.C.: GPO, 2002), 8.
- U.S. General Accounting Office. *Federal Land Management: Streamlining and Reorganization Issues*. Washington, D.C., 1996.
- U.S. General Accounting Office. *Forest Service Decision-Making: A Framework for Improving Performance*. Washington, D.C., 1997.
- U.S. President. Address. "Remarks on the Healthy Forests Initiative in Ruch, Oregon." *Weekly Compilation of Presidential Documents* 38, no. 34 (26 August 2002): 1395.
- U.S. President. Executive Order. "Environmental Stewardship and Transportation Infrastructure Project Reviews." *Weekly Compilation of Presidential Documents* 38, no. 38 (23 September 2002): 1577.
- Wagner, James R. "CPR Report/Government Lands Study Stirs Public-Private Interest Debate." *National Journal* 2, no. 21 (1970): 1088-1097.
- Wilkinson, Charles W. *Crossing the Next Meridian: Land, Water, and the Future of the West*. Washington, D.C.: Island Press, 1992.
- Wolanin, Thomas R. *Presidential Advisory Commissions: Truman to Nixon*. Madison: University of Wisconsin Press, 1975.
- Wolf, Robert. "Wilderness Act, 1955-64 (Part 1)." Interview by Thurman Trosper and Dan Hall (25 April 1989). *Robert Wolf Oral History Project*. [<http://depts.washington.edu/wrcrcf/Wolf/#>]. Accessed 13 July 2003.
- Wolf, Robert. "Public Land Law." Interview by Margy Brown and Dan Hall (15 November 1989). *Robert Wolf Oral History Project*. [<http://depts.washington.edu/wrcrcf/Wolf/#>]. Accessed 13 July 2003.