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# Comments on Commissions and Public Land Policies: Setting the Stage for Change

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# COMMENTS ON "COMMISSIONS AND PUBLIC LAND POLICIES: SETTING THE STAGE FOR CHANGE"

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"The Public Land Law Review Commission was not the President's idea in the first place."[1] This observation by Mr. Hagenstein distinguishes the political origins of the Public Land Law Review Commission (PLLRC) from most of the other types of commissions he explores in his survey of commissions as the tools of presidential politics. Because it was a congressional idea, the success or failure of the PLLRC cannot properly be judged by the motives behind a presidential initiative to create commissions for various purposes.

The absence of strong presidential interest in a comprehensive study of public land policy in 1964 was not surprising. There was no major political issue of national importance concerning the public lands which demanded presidential leadership in its resolution. Other problems commanded White House attention. The Viet Nam war had escalated, and a new set of social problems was being launched under the Great Society banner. The most recent event concerning the public lands that had attracted national attention was the enactment of the Wilderness Act of 1964:[2] the latest step in the continuing erosion of economic interests' access to public land resources. The Wilderness Act particularly threatened timber and mining interests in public lands.

Neither the President then in the White House nor the agencies of the executive branch responsible for the administration of the public lands were especially enthusiastic about the prospects of joining in a thoroughgoing review of public land policy by a congressionally-dominated Commission, among whose announced goals was redress of Congress' weak legal and political power over public lands decisions involving assignments of the use of the land and its resources. Much the same attitudes and priorities existed at the White House and in the land management agencies when the Commission reported in the summer of

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[1] Hagenstein, *Commissions and Public Land Policies: Setting the Stage for Change*, (this issue).

[2] 16 U.S.C. §§ 1131-1136 (1964).

1970. Viet Nam was the major international and domestic political issue that summer. No one downtown really wanted to start a major legislative effort to rewrite public land policy based on the Commission's report, especially when, as the Commission's studies made clear, the executive branch was holding all the cards to administer the public lands its own way—well, almost all the cards.

The Department of the Interior wanted a statutory pronouncement that would have made clear that the remaining public domain holdings were to be retained and managed, and further, wanted to remove the uncertainties of the applicability of disposal policies of the nineteenth and the early twentieth centuries still on the statute books. The Forest Service needed little, in its opinion, to augment the broadly written statutory powers it already possessed than gave it virtually limitless discretion in the way it chose to withhold or distribute the resources of the National Forests. Both agencies wanted an end to the disengaging and disruptive effect of the self-operating Mining Law[3] on land management programs under agency administration. No one in the executive branch wanted any basic redirection of the national parks and federal wildlife refuge-game range systems.

But none of these issues were important enough to convince the White House and the land managing agencies that they had to create a commission to come to terms with Congress on their resolution. Actually, the President's signature on the statute creating the Public Land Law Review Commission was the fulfillment of a political commitment made by President Kennedy in exchange for delivery by Congress, or more specifically by the Chairman of the House Interior Committee, of the Wilderness Act of 1964. That was all there was to it as far as the White House was concerned.

If presidential commissions were created to lend blue ribbon prestige (and therefore acceptability) to the resolution of public policy issues too hot or too complicated for a President to sponsor from within the normal institutions of the executive branch, the Public Land Law Review Commission was created to assure, in the minds of some members of Congress, congressional domina-

[3] 30 U.S.C. §§ 621-625 (1955).

tion of its recommendations, with the intention of co-opting the President by association with the Commission's presidential appointees.

Western regional and interest-group political power associated with purely economic interest in and control over the public lands has been waning for 100 years. It represents a regionalism destined to come out second best in Washington, where federal policymaking has and will probably always favor the conservation and public use interests in the public lands—recreation, preservation, and the resources for "all the people"—an interest inherently identified as "national" in the minds of both the executive and the nonpartisan majority in Congress.

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. It failed in this purpose.

If Congress wanted to recapture power in public land decisionmaking, the time and money may have been better spent on a singular congressional effort aimed at producing well-written legislation to return to Congress a portion of the discretionary power for public land policymaking handed to the executive branch for decades by the very same Congress that now wanted it back. As Mr. Hagenstein points out, the Senate Select Committee on National Water Resources was a congressional commission only[4] and achieved a significant measure of success, indicated by the number of its recommendations and policy precepts that became federal water policy. Even if the PLLRC effort had been confined to the east end of Pennsylvania Avenue, any chance that recapture legislation, even if it succeeded in getting through both Houses of Congress, would escape a veto at the other end of town was slim. No contemporary President—neither a Great Society Democrat nor a Law and Order Republican—is interested in relinquishing executive power.

So much for one test of the PLLRC's success. If one uses only the test of its architects' initial motives and their actions that have ensued in the nearly seven years since it filed its report, then PLLRC was a complete failure, except perhaps to illustrate to

[4] Hagenstein, *supra* note 1.

Congress the futility of attempting to capture the Executive by way of a joint commission.

There is another test, however, of the success of PLLRC. That is the obvious test of the efficacy of its product—its report and its recommendations for change in public lands policies. Did the Commission, in its recommendations, really offer a sound blueprint for modernization of the policies and programs that should control the disposal, management, and administration of the public lands in the decades ahead? Will the public lands resources best serve the needs of both the nation as a whole and the regions in which they lie if they are managed and administered and their resources used under the principles espoused by the Commission? If the answers are yes, then why haven't the Commission's proposals been written into law—nearly seven years after it issued its report?

Mr. Hagenstein suggests some of the answers to the last question: no organized program for a follow-through after the report was issued, and the rapid loss of elected offices of the Congressional Commission members, including Chairman Aspinall, within a few years after the Commission's work was completed. But within the last two years, a number of the Commission's recommendations on controversial issues have been enacted into law. The Federal Land Policy and Management Act of 1976[5] embraced the spirit and much of the substance of the Commission's report in establishing the policy foundations for a retention and management program for the residual unreserved public domain. The 1976 Act also resolved the tenure uncertainties that have prevailed during more than forty years since enactment of the Taylor Grazing Act.[6]

The settlement laws have been repealed. Congress has made provision for moving toward the kind of withdrawal review program recommended by the Commission. A program for comprehensive public land planning, including a requirement for federal-state planning coordination, has been enacted into law. Congress took a step in the direction of modernizing the public land lien tax payment policies along the lines recommended by the Commission. Mining in the national parks has been prohib-

[5] Pub. L. No. 94-579, 90 Stat. 2744 (1976).
[6] 43 U.S.C. §§ 315, 485, 1171 (1934).

ited by law, again as the Commission recommended. Although no action has been taken by Congress to change the Mining Law,[7] it should be remembered that the Commission was not unanimous in its conclusions for needed reform of this controversial law. Not all of the above-mentioned enactments have adopted the Commission's recommendations in precisely the form suggested by the Commission, but the principles of the Commission's proposals have been substantially adopted by these new statutes.

While these moves to modify public land policy followed a release of the Commission's report by more than five years, there is no doubt that the Commission's work and proposals have had a major influence on their shape and substance. Thus the blueprint is becoming structure; its enactment is proof of its political acceptability; and the changes in policy that they constitute are unquestionably improvements more suited to the needs of today's culture than the policy structure displaced.

Most of the policy and program changes enacted into law extend the erosion of congressional power, strengthen the hand of the executive and the management agencies, and weaken the opportunities for exclusive economic capture of public lands resources. While most of the congressional members of the Commission supported the adoption of these policy recommendations by the Commission, only two members were still in Congress when the policies were enacted into law. One wonders whether this much progress would have been realized if all the original congressional members of the Commission were still members of Congress and members of the Interior Committees.

Only time will tell how much more of the Commission's blueprint will be adopted as policy structure for the public lands. The pattern of delay and then recent gradual adoption of some of its proposals may lead one to observe, first, that the motives of the Commission's architects and the principal features of its final product did not converge; second, that although the Commission's report does offer a politically acceptable blueprint for the modernization of public land policy, it had little chance for enactment so long as key congressional members of the Commission remained in power in Congress after the Commission's report was

[7] 30 U.S.C. §§ 621-625 (1955).

completed and released; and third, that service by members of Congress on joint congressional-presidential commissions brings out the best of their statesmanship in perceiving and adopting the shape of policies that serve all of society best.