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Public Lands

Howard J. Bromberg
University of Michigan Law School, hbromber@umich.edu

Colleen M. Driscoll

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CATEGORY: Government and resources

The federal government owns millions of hectares of land in the United States. Some is used by ranching, logging, and mining companies, and some is set aside as wilderness or national park land. The use, management, and disposal of U.S. public lands have been issues since the country's first government under the Articles of Confederation. The debate over whether public lands or private rights should take precedence seems to be insoluble to everyone's satisfaction.

BACKGROUND

Throughout the history of the United States, public land has generally been defined as all the land owned by the federal government. The "public domain" comprises those public lands subject to sale or transfer to private uses. Early in the nation's history, most of the land of the continental United States was in the public domain; the federal government owned nearly four of every five hectares. It began transferring that land to private ownership to meet its financial obligations

and to achieve the objective of settling the country. Although much of that land has been transferred to private ownership, approximately 30 percent of the total U.S. land area is still under federal control.

This land is held in trust for the people of the United States under the control of Congress, which was given the constitutional mandate "to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States" (Article IV, section 3 of the U.S. Constitution). Until the early conservation movement at the beginning of the twentieth century first made Congress aware that the country was losing some of its natural resources, Congress was engaged mainly in divesting the government of its public lands. The public lands remained open for disposal by the government until 1976. That year the Federal Land Policy and Management Act (FLPMA) was passed, stating that "it is the policy of the United States that . . . the public lands shall be retained in Federal ownership." The act was the result of recommendations made by the Public Land Law Review Commission.

Historical Context

The concept that land could be claimed and legally owned by an individual was brought to the New World by the English. The native peoples had lived by traditions under which land and its resources were shared by all tribal members as common property. The public domain originally included most of the land in the forty-eight states with the exception of Texas and the thirteen colonial states. The land was gradually transferred to private owners through homestead acts, grants to railroads, and other government programs. The lands retained under federal government ownership, most of which are in the West, are the public lands of today.

The first legislation passed by the United States dealing with public lands was the Land Ordinance of 1784. The public domain west of Pennsylvania and the Ohio River had been claimed by seven of the new states. Those states which had not made claims wanted the western lands "considered as common property." During the period from 1781 to 1802, the western lands were gradually ceded by the states to the central government. Congress, realizing that it was going to have to make decisions on who could acquire public lands, passed the Land Ordinances of 1784 and 1785. The latter established a rectangular survey method to identify ranges and towns, creating 9.5-kilometer townships. This method was subsequently used by all public-land states and by the central government in disposing of public lands. For the next two years, with many decisions to be made, Congress established a doctrine that the public domain would be dealt with in an orderly fashion: First the Indian titles would be cleared, and then the land would be surveyed and offered at auction. The first land offices, established in 1796, did not have sufficient personnel or resources. The Public Lands Commission of 1880 nevertheless reported that the land offices had for the most part done a good job, although there were some abuses of authority.

In 1807, after the discovery of vast mineral deposits on public land, Congress authorized a leasing system. Public and private pressure was brought to bear on the federal government to develop legal standards for the use of public lands. One result of that pressure was a decision to use monies earned from them for land-grant schools and colleges. Between 1785 and 1880, around thirty-five hundred public-land laws were passed by Congress.

In the 1820's, grants were made for the use of rivers on public land and for access to build canals and roads. In 1831, Congress declared cutting and removing timber from public lands without permission a felony and established timber agencies to enforce the law. The Department of the Interior was created in 1849 and given the role of protecting public timber. In 1891, the first national forest reserves were created. A management plan for them was put in place by the Sundry Civil Appropriations Act of 1897. The first national park, Yellowstone, was established in 1872.

At the beginning of the twentieth century, John Muir and President Theodore Roosevelt debated the proper use of public lands: Should they be preserved for future generations because of their value as a wilderness heritage, or should they be developed for economic purposes? At the turn of the century there was limited demand for public lands and their products. As demand grew, so did government management, which had become extensive by the 1950's.

Uses and Management of Public Lands

Large portions of some western states remain in the public domain. Some of these lands were deemed useless for farming or grazing, and others were held in trust for American Indian tribes. However, much of this public land contained extensive mineral, timber, and energy reserves, including more than one-half

the undiscovered U.S. petroleum and low-sulfur coal reserves. Access to and use of federal lands by states and private interests was a contentious issue throughout the twentieth century.

The Department of the Interior is the largest landowner in the United States, owning more than 450 million hectares of public lands. Four federal agencies manage the use of public lands: the Bureau of Land Management (BLM), the Forest Service (in the Department of Agriculture), the Fish and Wildlife Service, and the National Park Service, with the first two managing the largest amounts of land. The BLM administers Natural Resource Lands of 232 million hectares, the largest single portion of the federal lands. The Multiple Use Sustained-Yield Act of 1960 mandated that the BLM and the Forest Service administer public lands according to multiple-use principles. The act states that multiple use means "the management of all the various renewable surface resources of the national forest so that they are utilized in the combination that will best meet the needs of the American people, making the most judicious use of the land for some or all of these resources or related services." The act intends that all uses of the lands should have minimal effect on—and preferably should complement—other uses.

Horses gallop across the public lands of Simpson Park in Nevada. The Bureau of Land Management controls 98 percent of Simpson Park. (Bureau of Land Management)

There is an inherent contradiction in the multiple-use philosophy that places the BLM and other agencies in the position of trying to balance private and state access to federal lands with protecting the resources found there. Users tend to want maximum, even unlimited, access to the lands and their resources at little or no cost. Under the General Mining Act of 1872, a business or an individual can acquire a federal permit to mine minerals on federal land without having to pay royalties. It also allows whoever holds the permit to take absolute title to the land and its minerals at a nominal cost, usually about $5 a hectare.

The Federal Land Policy and Management Act and the National Forest Management Act of 1976 endorsed Aldo Leopold's land ethic emphasizing the preservation of the integrity, stability, and beauty of the natural environment. Scientific land-use planning was mandated, including full consultation with all interested parties. Permanent federal ownership of the public lands was also mandated, setting the stage for further attempts to loosen federal control. In the mid-1980's, the Forest Service made plans to permit timber companies to do significant cutting in old-growth forests in Oregon. In 1985, however, the Fish and Wildlife Service stated that the northern spotted owl should be designated an endangered species and therefore that its critical habitat—the old-growth forests—should be protected. In 1988, environmental groups were able to obtain a federal court order instructing the secretary of the interior to list the spotted owl as endangered, which occurred in 1989. The listing effectively stopped cutting in the old-growth forests of the Northwest.

Between 1977 and 1979, the BLM and the Forest Service inventoried federal public lands in the Roadless Area Review Evaluation (RARE II). Their purpose was to decide which "roadless areas" would remain in multiple use and which would be designated wilderness. Their final recommendation to Congress was for 13.6 million hectares to become wilderness, 33 million to remain in multiple use, and another 10 million to be retained for further study. Many westerners were angered by the plan, especially by the provision that 10 million hectares would effectively remain out of use even though not designated as wilder-

ness. This anger added fuel to the movement known as the Sagebrush Rebellion. Conflict between the states and the federal government began brewing in the early 1970's, when the oil crisis had prompted states to fight for control of energy resources.

The Nevada legislature passed a resolution demanding that the federal government transfer 44 million hectares of federal land to state control. They claimed that the states would be better managers of the land, that economic growth in the West was being restricted, and that the states have the right to control land within their borders. Environmentalists responded that the states had given up their right to public lands in the name of all Americans early in their histories and that federal ownership had not been disputed since those days.

The portion of public lands designated as rangeland was originally unregulated, and overgrazing destroyed the value of much of the land. The Taylor Grazing Act of 1934 imposed federal controls to prevent overgrazing; it was supplemented in 1978 with the Public Rangelands Improvement Act, which authorized funds for improvements to the rangelands. One impetus to the Sagebrush Rebellion was what its leaders termed "unreasonable restrictions on grazing, mining, and logging." They therefore demanded transfer of ownership of federal lands to the states.

The BLM administers public grazing lands. The fact that fees for grazing on public land are much lower than grazing fees on private land has been the subject of considerable controversy. Some opponents of the low fees have argued that they are essentially subsidies for the users. In 1993, President Bill Clinton and Secretary of the Interior Bruce Babbitt proposed raising the fees for using public lands, making them more comparable to the private-market value. (The proposal was seen as a way of financing the costs of managing public lands.) The plan immediately provoked an outcry from ranchers, loggers, miners, communities, and the states. In March of 1994, the administration announced a proposal that had been negotiated with Western interests that would gradually raise annual fees from $0.80 to $1.60 a hectare. That proposal was not adopted by Congress, and the government instead lowered the grazing fee to $1.35 per animal per month in 2008. Since 1891 and 1897, when the national forest system was created through laws, the U.S. Forest Service has also overseen considerable land area. After that time, the Forest Service sold millions of dollars of timber. In the second half of the twentieth century, legislation shifted the emphasis of national forest management from timbering to conservation, multiple use, and environmental and species management.

Little control has existed over mining wastes or abandoned mines on federal lands. In 1991, Secretary of the Interior Babbitt noted that "hard-rock mining is the one area of federal resource law where the unrestrained giveaway, environment-be-damned attitudes of the nineteenth century have persisted." A 1993 Senate committee report discussed the extent of problems with hazardous-waste management on federal lands, calling on the Department of the Interior to begin to alleviate the environmental problems. The same year, Congress began considering ways to legislate control of the waste problem. Nothing was done. The Hardrock Mining and Reclamation Act was introduced in 2007 to address this problem. Royalties would be collected on mining revenue and the majority of the funds would go to reclamation. The bill died in the Senate and was reintroduced in 2009.

Since the 1950's, Congress has used its constitutional authority to require federal agencies to give strong consideration to conservation in its land-use decisions. This concern was evidenced in such legislation as the Wilderness Act of 1964, declaring more than 8 million hectares of public lands to be wilderness; the National Environmental Policy Act (enacted in 1970), which requires environmental impact statements before land-use decisions are made; and the Endangered Species Act of 1973. The Supreme Court has supported legislative authority in public land decisions, although in the early 1990's, the Court did compel Congress to share the power to withdraw public lands from private use with the executive branch.

The "New Federalist" Approach of the 1980's

Public lands issues were prominent in the presidential campaign of 1979, in which incumbent Jimmy Carter ran against Ronald Reagan; these issues were a part of a national debate on energy. Reagan claimed that a small number of elitist Americans, whom he called "environmental extremists," were closing off public lands from uses that would benefit the middle class. He stated that the United States had to use public lands to help rebuild the country. He planned to open these lands to exploration and development as a way of "saving" the country's troubled economy.

James G. Watt, appointed by President Reagan as secretary of the interior, had been director of the

Mountain States Legal Foundation (MSLF), which extolled individual liberties. Although he backed away from the Sagebrush Rebellion, he intimated that environmentalists wanted to weaken the country. In his confirmation hearings he stated that he and the president had four major goals regarding public lands: "to make more public lands available for multiple uses rather than limiting them to wilderness or recreation; to develop a policy for production of strategic minerals; to maintain public access to and upgrade the management of parks and recreational lands; and to work toward national self-sufficiency in energy." The new administration believed that they had received an electoral mandate for the development of public lands.

Although Watt resigned in 1983, his policies remained, as did the dispute over them. Environmentalists went to court to stop the sale of western shale oil lands for $2.25 a hectare, an attempt by a lame-duck administration to lower royalties, and other policies. Congress was not supportive of these policies, and the administration of President George H. W. Bush distanced itself from the policies of its predecessors.

THE 1990'S

In the 1990's, conflicts continued over the nature of the public lands and the proper mix of conservation and public and private use of those lands and their resources. In 1995, some property owners in the West took the matter into their own hands and defied the Forest Service and officers of other federal agencies by seizing control of land under federal management. Western state and conservative members of Congress worked to open resources to more private exploitation, to close some national parks, and to rewrite the Endangered Species Act to make it less restrictive. Some members of Congress suggested that public lands be sold along with other federal assets as a means of deficit reduction. Environmental damage on federal lands was further revealed. There was damage from road building as well as environmental degradation from private uses such as mining. Moreover, the government itself was found to have violated its own environmental laws.

Beginning in 1992, attempts to reform mining law were hampered by the mining industry. Seeing that they had no chance to rewrite the General Mining Law of 1872, reformers had to be content with a moratorium on the issuance of mining patents. Two mining bills passed in 1994, one dealing with royalties and fees, the other requiring mining companies to have an approved plan of operation in order to mine within federal lands. With the intent of protecting the lands from "undue degradation," the BLM passed regulations restricting the use of public lands for mining purposes. Meanwhile, continuing discussions took place regarding waste-disposal policies for federal lands.

There was an attempt to rewrite grazing law, using the proposed Public Rangelands Management Act (PRMA) of 1995 as a focus for revising the Taylor Grazing Act of 1934. Congress was trying to develop a plan for integrating the PRMA with the Federal Lands Policy and Management Act, the Endangered Species Act, and the Clean Water Act. In 1996, the BLM revised its regulations on rangeland management. A major point was the inclusion in planning processes of all interested people and agencies, including federal and state government, environmentalists, and private interests.

The House of Representatives held hearings on how to finance maintenance of, and improvements to, national forests, including road building. Transfers of some national forestlands to states and American Indian tribes took place in 1996 and 1997.

Early in 1996, a number of individual bills were combined into a bipartisan legislative package known as the Omnibus Parks and Public Lands Management Act of 1996. This act, signed by President Clinton on November 12, 1996, created or improved almost 120 parks, trails, rivers, and historical sites in forty-one states. The intent of the legislation was to assist federal agencies in protecting public lands, especially national parks and forests.

Colleen M. Driscoll

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