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This is the first of a series of annual articles on the organization, goals and activities of the Public Land Law Review Commission, established by Congress in 1964 to review and recommend changes in the laws which control so much of the area of the Western States. The first article, published below, is an introduction to the Commission, the history leading up to its establishment, its purposes and its personnel. Future articles will annually assess the work of the Commission, culminating in a final summary at the end of the Commission's statutory life.

## THE PUBLIC LAND LAW REVIEW COMMISSION – A CHALLENGE TO THE WEST

*David R. Phipps\**

### INTRODUCTION

THE United States is the owner of fifty percent of the land area of the eleven Western states.<sup>1</sup> Federal ownership ranges from approximately 29 percent in the State of Washington to more than 85 percent in the State of Nevada. Land—or perhaps more accurately—the availability of land played a major role in the settlement of the West. At the present time, however, the mere availability of land cannot be expected to contribute materially to the continued development and economic growth of the West. If the land is to play any part of importance in this development and growth,

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1. Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

it must be on the basis of effective and balanced utilization. Further, because so much of the economic activity of the West stems from the use of the land, a failure to achieve effective utilization will ultimately impede our continued growth and development. Accordingly, in light of the federal government's status as the major landowner in the West, its activities upon and plans for the utilization of federally-owned lands are of vital concern to all of us either directly or indirectly.

On August 14, 1963, Wayne N. Aspinall, United States Representative from the State of Colorado and Chairman of the House Committee on Interior and Insular Affairs, addressed the Section of Mineral and Natural Resources Law of the American Bar Association. In his presentation,<sup>2</sup> Representative Aspinall recommended the enactment of a legislative program designed, in part, to "obtain a reconsideration of all the public land laws and the policies underlying them in the light of conditions as they exist in the mid-20th century."<sup>3</sup> He announced that, as a part of this program, he was that day introducing in Congress a bill to establish the Public Land Law Review Commission.<sup>4</sup> This bill was subsequently enacted into law on September 19, 1964, as Public Law 88-606.<sup>5</sup>

Section 2 of this act declares the purpose of the legislation to be as follows:

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 has been divided among several agencies of the Federal Government, it is

2. Remarks before the Section of Mineral and Natural Resources Law at the American Bar Association Annual Meeting, Chicago, Illinois, Aug. 14, 1963, in Aspinall, HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 88TH CONG., 2D SESS., THE PUBLIC LAND LAW REVIEW COMMISSION—BACKGROUND AND NEED 39 (Comm. Print No. 39, 1964).

3. *Id.* at 43.

4. H.R. 8070, 88th Cong., 1st Sess. (1963). See 88th Cong., 1st Sess., 109 CONG. REC. 15045 (1963).

5. 78 Stat. 982 (1964), 43 U.S.C. §§ 1391-1400 (1964).

necessary to have a comprehensive review of those laws and the rules and regulations promulgated thereunder and to determine whether and to what extent revisions thereof are necessary.<sup>6</sup>

The congressional language, albeit rather bland, enumerates a series of problems—long standing laws, not correlated, inadequate, a divided administration—that could well constitute a classic definition of confusion. Without doubt, confusion does exist in large measure and this, by itself, is ample justification for the legislation. Further, there are a number of basic policy questions that must be resolved, as indicated by the congressional reports<sup>7</sup> pertaining to Public Law 88-606. Some of these problem areas are stated; others are implied. A partial listing of areas in which basic policy must be defined and implemented would include the following: the question of disposal or retention of public lands; conflicts between the legislative and executive branches of the federal government; and, conflicts between the federal government and the several states. Each of these problem areas are extremely broad and numerous specific problems can be isolated under each heading. Moreover, within any given area of legislation, such as the mining laws or the mineral leasing laws, we can anticipate an enormous number of problems and questions being raised.

Public Law 88-606 may well be the most important legislative enactment of this century from the standpoint of the Western states. If the work of the Commission is effective, if there is a resolution of the basic problems of policy, and if meaningful legislation stems from the Commission's work, every part of our society—state and local government, industries of all kinds, labor, education, and others—will be vitally affected. It is incumbent upon all of us, then, to become familiar with the organization, scope and functions of the Commission and, to the extent possible, contribute to its studies, deliberations and the formulation of its recommendations.

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6. 78 Stat. 982 (1964), 43 U.S.C. § 1392 (1964).

7. S. REP. No. 1444, 88th Cong., 2d Sess. (1964); H.R. REP. No. 1008, 88th Cong., 1st Sess. (1963).

## POLICY, LANDS AFFECTED AND SCOPE OF REVIEW

Section 1 of the act declares the policy of Congress to be 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."<sup>8</sup> No position was taken as to these alternatives of retention or disposal in the reports of the House and Senate Interior and Insular Affairs Committees<sup>9</sup> and it was stated that the alternatives "shall be exclusively within the scope of recommendations to be made by the Commission." Nevertheless, Representative Aspinall has unequivocally stated in debate in the House<sup>10</sup> and elsewhere<sup>11</sup> that means must be found to provide for the transfer of much of the public land out of federal ownership to encourage the continued expansion of the economy of the West.

"Public lands," for purposes of the review authority of the Public Land Law Review Commission, include:

(a) [T]he public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public

8. 78 Stat. 982 (1964), 43 U.S.C. § 1391 (1964).

9. S. REP. No. 1444, 88th Cong., 2d Sess. (1964); H.R. REP. No. 1008, 88th Cong., 1st Sess. (1963).

10. On March 10, 1964, Representative Aspinall, during the course of the House debate on H.R. 8070, stated:

At this point I would like to make it clear . . . that I believe that some of the public lands of the United States, although not reserved under statutory authority for retention by the Federal Government, are not suitable for disposition and that provision for retention in Federal ownership will be necessary. But, let me also hasten to add that I think we must find the means to provide for the transfer of much of this public land into non-Federal ownership and provide development and, at the same time, broaden the tax base of communities affected.

110 CONG. REC. 4693 (daily ed. March 10, 1964).

11. Address at 50th Annual Convention of New Mexico Cattle Grower's Association, Albuquerque, New Mexico, March 23, 1964, reprinted in Aspinall, HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 88TH CONG., 2D SESS., THE PUBLIC LAND LAW REVIEW COMMISSION—BACKGROUND AND NEED 52 (Comm. Print No. 39, 1964); address at Natural Resources Conference sponsored by American Farm Bureau Federation, Wichita, Kansas, March 23, 1964, *id.* at 58; address at Public Lands Conference jointly sponsored by Colorado Division of Natural Resources and Colorado State Chamber of Commerce, Denver, Colorado, April 4, 1964, *id.* at 67; remarks before 97th Annual Convention of Colorado Cattlemen's Association, Pueblo, Colorado, June 12, 1964, *id.* at 73.

land laws, including the mining laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forest, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.<sup>12</sup>

In effect, under this statutory definition, most classes of lands in federal ownership are subject to review except Indian lands and lands acquired for national park, military and certain other purposes.

As indicated above, the review contemplates more than a mere study of the public land laws and their underlying policies. The rules and regulations promulgated pursuant to those laws will also be the subject of study.<sup>13</sup> Further, any such review, in order to be meaningful, must also devote considerable attention to the interpretation of the laws by administrative bodies and the courts. Finally, although the act itself does not spell it out in so many words, the procedures governing the administration of the public land laws are also an integral part of the study.<sup>14</sup>

#### ORGANIZATIONAL STRUCTURE

The legislation creating the Public Land Law Review Commission also provided for the creation of an Advisory Council, liaison with each affected federal department or independent agency and a representative appointed by the governor of each state.

#### *Public Land Law Review Commission and Staff*

The Commission itself is composed of nineteen members: three majority and three minority members of the Senate Committee on Interior and Insular Affairs to be appointed by the President of the Senate;<sup>15</sup> three majority and three

12. 78 Stat. 985 (1964), 43 U.S.C. § 1400 (1964).

13. 78 Stat. 982 (1964), 43 U.S.C. § 1392 (1964).

14. Carver, *Administrative Law and Public Land Management*, 18 AD. L. REV. 7 (1965).

15. 78 Stat. 982 (1964), 43 U.S.C. § 1393(b) (i) (1964).

minority members of the House Committee on Interior and Insular Affairs to be appointed by the Speaker of the House of Representatives;<sup>16</sup> six persons outside of the federal government to be appointed by the President,<sup>17</sup> and; one person, elected by a majority vote of the other eighteen, who is to be the Chairman of the Commission.<sup>18</sup> All appointive members of the Commission have now been designated.<sup>19</sup> Representative Aspinall was initially appointed to the Commission by the Speaker of the House of Representatives. Subsequently, however, he was elected as Chairman of the Commission and Representative Aspinall accordingly resigned his appointive membership. Although not specifically provided for by statute, the position of Commission Vice Chairman was created and H. Byron Mock, one of the public members of the Commission, was elected to this position.

The statute contemplates a staff director and "such additional personnel as may be necessary to enable [the Commission] to carry out its functions . . ."<sup>20</sup> Further, attorneys or experts in any job or professional field may be employed on either a part-time or full-time basis.<sup>21</sup> At the present time, the staff director and several other key staff members have been selected. They are as follows:

1. Staff Director: Milton A. Pearl, formerly mining and public lands consultant, House Interior and Insular Affairs Committee.
2. Associate Staff Director: Robert B. Foster, Jr., formerly with the Department of the Army.
3. General Counsel and Chief of the Legal Group: Elmer

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16. 78 Stat. 982 (1964), 43 U.S.C. § 1393(b) (ii) (1964).

17. 78 Stat. 982 (1964), 43 U.S.C. § 1393(b) (iii) (1964). Under the act, these persons were to be appointed from among persons who at the time of appointment were not, and within a period of one year immediately preceding that time had not been, officers or employees of the United States. The act excepted from this limitation "any person who is retained, designated, appointed, or employed by any instrumentality of the executive branch of the Government or by any independent agency of the United States to perform, with or without compensation, temporary duties on either a full-time or intermittent basis for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days . . ." *Ibid.*

18. 78 Stat. 982 (1964), 43 U.S.C. § 1393(b) (iv) (1964).

19. See Appendix A for a complete listing of all appointive members of the Commission.

20. 78 Stat. 985 (1964), 43 U.S.C. § 1399(b) (1964).

21. 78 Stat. 985 (1964), 43 U.S.C. § 1399(d) (1964).

F. Bennett, practicing attorney and former Under Secretary of the Department of the Interior (1958-1961). Mr. Bennett is currently Chairman of the Mineral and Natural Resources Law Section of the American Bar Association.

4. Chief of the Resources Group: Neal D. Nelson, formerly State Director of the Bureau of Land Management in the State of California.
5. Chief of the Evaluation and Editorial Group: Dennis A. Rapp, formerly senior budget analyst, Bureau of the Budget, specializing in natural resources programs.

Very recently, additional staff appointments were made. Jerome C. Muys, Clifford D. Ouellette, Leland O. Graham, Joe W. Ingram, Helen E. Fry, D. Michael Harvey, Carl L. Sandstrom, Joseph M. McDonald and Edward W. Tupling were named to the Legal Group; Max M. Tharp, Louis C. Hermel and Keith Corrigan were named to the Resources Group; and, Perry Hagenstein and Ed Kerr were named to the Evaluation and Editorial Group.

### *Advisory Council*

An Advisory Council was created by the statute<sup>22</sup> to "advise and counsel" the Commission concerning matters within the Commission's jurisdiction.<sup>23</sup> Said Advisory Council consists of two groups—the departmental liaison officers and twenty-five additional members. Under the statute, the Commission Chairman is directed to request the head of each federal department or independent agency which has an interest in or responsibility with respect to the retention, management or disposition of the public lands to appoint a liaison officer to work with the Commission.<sup>24</sup> At the present time, eight such liaison officers have been appointed.<sup>25</sup>

The additional twenty-five members are to be appointed by the Commission.<sup>26</sup> These members are to be representative

22. 78 Stat. 983 (1964), 43 U.S.C. § 1396(a) (1964).

23. 78 Stat. 893 (1964), 43 U.S.C. § 1396(b) (1964).

24. 78 Stat. 983 (1964), 43 U.S.C. § 1395 (1964).

25. See Appendix B for a listing of said liaison officers.

26. 78 Stat. 983 (1964), 43 U.S.C. § 1396(a) (1964).



of the several major citizens' groups interested in problems relating to the public lands, including 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, mining interests, oil and gas interests, commercial and sport fishing interests, commercial outdoor recreation interests, industry, education, labor, and public utilities.<sup>27</sup>

### *Governors' Representatives*

The statute further directs the Commission Chairman to invite the governor of each state to designate a representative to work with the Commission, staff and Advisory Council.<sup>28</sup> Surprisingly, but perhaps a strong indication of the importance of and interest in the work of the Commission, the governors of all fifty states have responded to this invitation and designated a representative.<sup>29</sup>

### DUTIES AND POWERS OF THE COMMISSION

The Commission has two principal duties. First, it is directed to:

(i) [S]tudy 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 the [statutory policy].<sup>30</sup>

In light of the estimated 5,000 public land laws on the books, the regulations, policies and practices pertaining to

27. The additional members of the Advisory Council are listed in Appendix C.

28. 78 Stat. 984 (1964), 43 U.S.C. § 1397 (1964).

29. The governors' representatives are listed in Appendix D.

30. 78 Stat. 983 (1964), 43 U.S.C. § 1394(a) (1964).

these laws, and the numerous and conflicting demands upon the public lands, this directive places a substantial burden upon the Commission and its staff. Their task is not made easier by the second statutory duty. The Commission is required to submit its final report to the President and the Congress not later than December 31, 1968, and it will cease to exist six months after submission of its final report or on June 30, 1969, whichever is earlier.<sup>31</sup> It seems not unlikely, however, that it may succumb at an earlier date from sheer exhaustion.

In carrying out its stipulated statutory duties, the Commission does have the assistance of the Advisory Council and the governors' representatives. If these bodies are effectively utilized, they can perform a very useful function in assisting in the determination of the problem areas arising under the pertinent laws, regulations, policies and practices and submitting them to the cross-fire of divergent viewpoints represented by these bodies. Further, the Commission is authorized to hold hearings,<sup>32</sup> issue subpoenas for the attendance and testimony of witnesses or the production of written or other matter,<sup>33</sup> and secure from any department, agency, or indi-

31. 78 Stat. 983 (1964), 43 U.S.C. § 1394(b) (1964).

32. 78 Stat. 984 (1964), 43 U.S.C. § 1398(a) (1964), which provides in part that:

The Commission or, on authorization of the Commission, any committee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this sub-chapter, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable.

In regard to hearings, Representative Aspinall has recently stated:

There may or may not be hearings held in the early stage; but it seems to me that the Commission, either directly or through its staff, must, as part of the initial phase, ascertain the problems that are bothering the people and groups using or seeking to use the public lands. We may be able to obtain this through the Advisory Council and the Governors' representatives; but public hearings may well serve a useful purpose in identifying the problem areas that should be given particular attention. This is one of the many decisions that must be made in the immediate future.

Remarks by Representative Aspinall, Annual Meeting of Rocky Mountain Oil and Gas Association, Denver, Colorado, Sept. 30, 1965.

No hearings have been held to this date nor have any hearings been scheduled as yet to the best of the author's knowledge.

33. 78 Stat. 984 (1964), 43 U.S.C. § 1398(a) (1964). Such subpoenas may be issued "only on the authority of the Commission." Subpoenas may not be used to require the presence of parties at a hearing outside of the state where such parties are found, reside, or transact business. Provision is made for the submission of material directly to the Commission on a confidential basis. Provision is also made to protect the confidential character of materials previously submitted to a governmental agency on a confidential basis. 78 Stat. 984 (1964), 43 U.S.C. § 1398(c) (1964).

vidual instrumentality of the executive branch any information it deems necessary to carry out its function under the act.<sup>34</sup>

The Commission, in fulfilling its duty to study and review the public land laws, regulations, policies and practices, should be greatly assisted by its statutory authority to enter into contracts or agreements for studies and surveys with either public or private organizations.<sup>35</sup> While the Commission staff can carry out a portion of this work, it would be physically impossible for the staff to complete the comprehensive review called for by the act within the limited life of the Commission. It is the author's understanding that the Commission has not yet entered into any such contracts or agreements, but considerable attention is being given to desirable areas of study and the organizations best equipped to carry out such studies.

#### SUPPLEMENTAL LEGISLATION

Public Law 88-606, providing for the creation of the Public Land Law Review Commission, was enacted into law on September 19, 1964. On the same date, Public Law 88-607,<sup>36</sup> providing generally for the interim management of the public lands, and Public Law 88-608,<sup>37</sup> providing the Secretary of the Interior with interim disposal authority, were also enact-

34. 78 Stat. 984 (1964), 43 U.S.C. § 1398(b) (1964).

35. 78 Stat. 985 (1964), 43 U.S.C. § 1399(c) (1964). It has been indicated that much of the initial phase of this review will be carried out by the Commission staff or under its direction.

The early stage of the study will be primarily a staff responsibility: the drudgery of developing the status of the law as it is today while, at the same time, engaging in such basic studies as may be necessary for the later effort in which we will seek to determine whether the existing law is adequate or whether the Commission should recommend changes.

Remarks by Representative Aspinall, Annual Meeting of Rocky Mountain Oil and Gas Association, Denver, Colorado, Sept. 30, 1965. That a substantial portion of this work will be contracted out to other organizations appears quite likely in light of a recent policy statement by the Commission's staff director, Milton A. Pearl, as follows:

To accomplish the task assigned to the Commission, the chairman and I have pledged ourselves to maintain only that minimum staff essential to our work and to perform, through contract, with consultants and research groups, the maximum part of the work that it is feasible to be accomplished through these means.

Pearl, *Public Land Law Review Commission Organizes*, Mining Congress Journal, Oct., 1965, p. 80.

36. 78 Stat. 986 (1964), 43 U.S.C. §§ 1411-1418 (1964).

37. 78 Stat. 988 (1964), 43 U.S.C. §§ 1421-1427 (1964).

ed. Both acts are closely tied to Public Law 88-606. In both instances, the legislation was enacted "pending the implementation of recommendations to be made by the Public Land Law Review Commission"<sup>38</sup> and, for the most part, the legislation is not effective beyond June 30, 1969,<sup>39</sup> the date upon which the Commission will cease to exist. These acts appear to expand upon the underlying philosophy of Public Law 88-606 in addition to supplementing that legislation.

*Public Law 88-607—Classification and Multiple Use Act*

This act directs the Secretary of the Interior to develop and promulgate regulations containing criteria by which he will determine which of the public lands, as therein defined,<sup>40</sup> shall be disposed of because they are required for orderly community growth and development or are chiefly valuable for residential, commercial, agricultural, industrial or public uses or development, and which shall be retained in federal ownership and managed for certain enumerated purposes.<sup>41</sup> Further, the Secretary is directed to review the public lands in light of the criteria contained in said regulations to determine which lands shall be classified as suitable for disposal and which lands should be retained for interim management.<sup>42</sup> Those lands determined to be suitable for interim management are to be administered for multiple use and sustained yield under regulations to be promulgated by the Secretary. One of the most interesting aspects of this act is the definition therein contained of the term "multiple use," a term frequently used but seldom defined. As used in this act, "multiple use" is said to mean:

[T]he management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and

38. 78 Stat. 986 (1964), 43 U.S.C. § 1411 (1964); 78 Stat. 988 (1964), 43 U.S.C. § 1421 (1964).

39. 78 Stat. 988 (1964), 43 U.S.C. § 1418 (1964); 78 Stat. 989 (1964), 43 U.S.C. § 1427 (1964).

40. 78 Stat. 987 (1964), 43 U.S.C. § 1415(a) (1964).

41. 78 Stat. 986 (1964), 43 U.S.C. § 1411(a) (1964). The uses enumerated are (1) domestic livestock grazing, (2) fish and wildlife development and utilization, (3) industrial development, (4) mineral production, (5) occupancy, (6) outdoor recreation, (7) timber production, (8) watershed protection, (9) wilderness preservation, or (10) preservation of public values that would be lost if the land passed from federal ownership.

42. 78 Stat. 986 (1964), 43 U.S.C. § 1411(b) (1964).

future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.<sup>43</sup>

Notice of proposed classifications must be given in the Federal Register, a newspaper of general circulation in the area of the lands to be affected, and by other means, if deemed appropriate by the Secretary.<sup>44</sup> Such a notice will have the effect of segregating the land from disposal under the public land laws, including the mining and mineral leasing laws, except to the extent that the proposed classification or notification specifies that the lands shall remain open for disposal.<sup>45</sup> Segregation of such lands continues for a period of two years from publication of the notice unless classification is completed prior to that time or unless the Secretary terminates the segregation at an earlier date.<sup>46</sup>

As noted above, Public Law 88-607 required the Secretary to develop and promulgate regulations containing criteria by which he is to determine which of the public lands shall be disposed of and which shall be retained in federal ownership. Pursuant to this direction, proposed regulations were published on February 20, 1965.<sup>47</sup> Written comments on these proposals were invited and public hearings were held in Washington, D.C.; Twin Falls, Idaho; Reno, Nevada; Phoenix, Arizona; Albuquerque, New Mexico; and Grand Junction, Colorado. Subsequently, certain recommended changes in the proposed regulations were adopted and, on October 9, 1965,

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43. 78 Stat. 987 (1964), 43 U.S.C. § 1415 (b) (1964).

44. 78 Stat. 986 (1964), 43 U.S.C. § 1412 (1964).

45. 78 Stat. 987 (1964), 43 U.S.C. § 1414 (1964).

46. *Ibid.*

47. 30 Fed. Reg. 2384 (1965).

the final regulations were published in the Federal Register<sup>48</sup> and became effective upon such publication. As adopted, these regulations establish general criteria for all land classification,<sup>49</sup> retention for multiple use management classification criteria,<sup>50</sup> disposal classification criteria<sup>51</sup> and criteria for segregation.<sup>52</sup>

On the same date, regulations were also adopted which establish the basic policy of the Department of the Interior for the disposition and multiple use management of public lands administered by the Bureau of Land Management.<sup>53</sup>

*Public Law 88-608—Public Land Sale Act*

This act authorizes and directs the Secretary of the Interior to dispose of public lands which have been classified for disposal as required for orderly community growth and development or which have been deemed to be chiefly valuable for residential, commercial, agricultural, industrial or public uses or development.<sup>54</sup> Disposals may be made to qualified governmental agencies at the appraised fair market value and to qualified individuals through competitive bidding at not less than the appraised fair market value.<sup>55</sup> Zoning regulation by the appropriate local governmental agency of the lands to be sold is made a condition precedent to the sale of lands.<sup>56</sup> Patents issued under the act are to contain a reservation to the United States of "all mineral deposits" and said reserved mineral interests are thereupon to be

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48. 30 Fed. Reg. 12916 (1965).

49. 30 Fed. Reg. 12918 (1965), which will appear as 43 C.F.R. § 2410.1-1.

50. 30 Fed. Reg. 12918 (1965), which will appear as 43 C.F.R. § 2410.1-2.

51. 30 Fed. Reg. 12918 (1965), which will appear as 43 C.F.R. § 2410.1-3.

52. 30 Fed. Reg. 12919 (1965), which will appear as 43 C.F.R. § 2410.1-4.

53. 30 Fed. Reg. 12913-14 (1965), which will appear as 43 C.F.R. § 1725.01-1725.3-3.

54. 78 Stat. 988 (1964), 43 U.S.C. § 1421 (1964).

55. The term "qualified governmental agency" is said to include the state, county, municipality, or other local government subdivisions within which the land is located and any municipality within convenient access to the lands if the lands are in the same state as the municipality. "Qualified individuals" are (a) any individual who is a citizen or otherwise a national of the United States (or who has declared his intention to become a citizen) aged 21 years or more, (b) any partnership or association if each member thereof is a qualified individual as stated above, and (c) any corporation organized under the laws of the United States or of any state thereof and authorized to hold title to real property in the state in which the land is located. 78 Stat. 989 (1964), 43 U.S.C. § 1425(b), (c) (1964).

56. 78 Stat. 988 (1964), 43 U.S.C. § 1422 (1964).

withdrawn from appropriation under the public land laws, including the mining and mineral leasing laws.<sup>57</sup>

Regulations have also been promulgated to implement the provisions of the Public Land Sale Act.<sup>58</sup>

#### PROGRESS REPORT

At the time of this writing, the Public Land Law Review Commission has virtually completed its organizational work. Subsequent to the selection of the eighteen appointive Commission members, the initial organizational meeting of the Commission was held on July 14 and 15, 1965, in Washington, D.C. At that meeting, Representative Aspinall was elected as permanent Chairman of the Commission, H. Byron Mock was elected as Vice Chairman, and Milton A. Pearl was named as the Commission's staff director. Also, Representative Aspinall was requested to obtain nominations for the appointment of the 25 nongovernmental members to the Advisory Council from a broad cross-section of organizations and citizens-users groups representing the various interests to be reflected in the Council membership.

The next meeting of the full Commission was held on August 18, 1965, at which time the Commission appointed the 25 nongovernmental members of the Advisory Council, issued invitations to the governors of each state to designate their representatives to work with the Commission, and issued invitations to the interested federal departments and agencies to appoint liaison officers. As heretofore noted, all such governors' representatives and liaison officers have now been named.

Key staff appointments, in addition to the appointment of the staff director, were announced on November 4, 1965. As heretofore noted, additional staff appointments have now been made, and these were announced on March 9, 1966.

On March 24 and 25, 1966, a joint meeting will be held involving not only the Commission but also the Advisory Council and the governors' representatives. At this time,

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57. 78 Stat. 989 (1964), 43 U.S.C. § 1424 (1964).

58. 30 Fed. Reg. 12914-16 (1965), which will appear as 43 C.F.R. §§ 2243.01-2243.2-7.

the organizational meeting of the Advisory Council will be held. Also, during a joint meeting of the Commission and the Advisory Council, the liaison officers from the several federal departments and agencies will discuss the specific responsibilities and interests of each such department or agency. Finally, it is the author's understanding that each member of the Advisory Council has been requested to make a short presentation and summary of problem areas that should be considered by the Commission.

Since approximately a year and a half have been taken up by the problems of organizing and staffing the Commission, it is apparent that the actual work of the Commission must now be accomplished in a period substantially shorter than that originally contemplated. Recently, Milton A. Pearl, staff director of the Commission, summarized the intended approach to the preliminary work as follows:

The initial phase of the Commission's study will be directed at determining the existing statute law in each of the principal areas involved in the public lands, e.g., grazing, mining, oil and gas development, etc., with a simultaneous examination of the manner in which these statutes have been administered and interpreted by the agencies charged with responsibility for jurisdiction of the lands defined in Public Law 88-606.

Parallel to the legal research there will be undertaken research relative to the manner in which the resources themselves are treated, giving consideration first to the direction of the laws and, secondly, to an evaluation of the manner in which these resources were given weight by the administering agencies. Simultaneously, studies of a background nature will be undertaken to determine as much as possible, factually, about the lands and the forces being applied to them in order to establish data on which later studies pointing to the future can be based.<sup>59</sup>

Hopefully, this work will be initiated at a very early date. A news release dated March 9, 1966, states that legal research is now "well under way."

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59. Pearl, *Public Land Law Review Commission Organizes*, Mining Congress Journal, Oct., 1965, p. 81.



One problem has already been posed by the mere existence of the Public Land Law Review Commission. That is, should any changes be made in current laws, policies, practices or procedures affecting the public lands during the life of the Commission? Several recent statements by Representative Aspinall may create a degree of ambiguity. In one instance, it was said:

While I anticipate that Committees of the Congress, will not, in the absence of a showing of urgency, act on substantive matters pending before the Public Land Law Review Commission, I do not expect the existence of the Commission to provide an excuse for a delay in the consideration of matters of urgency that need attention. Accordingly, if it becomes apparent that it is feasible to move forward and permit an oil shale industry to get started, such action need not await the outcome of the Commission's study and report.<sup>60</sup>

At a later date, Representative Aspinall stated:

I feel strongly that there should be no change in the fundamental policies which govern the use of Federal public lands until after the Commission has completed its work and its recommendations are laid before the President and the Congress. It is for this reason that I recently asked the President to use his offices to rescind a decision which apparently had been made on other existing policy to adjust fees for the grazing of domestic livestock on Federal lands administered under the Taylor Grazing Act.<sup>61</sup>

Presumably, Representative Aspinall's position can be said to be that there should be no changes made in current laws, policies, practices or procedures affecting the public lands during the life of the Commission except "to meet urgent or emergency needs."<sup>62</sup> It seems likely that there will be a great deal of confusion as to what constitutes an "urgent" or "emergency" situation and the viewpoint of any given individual will vary depending upon the interests affected

60. Remarks by Representative Aspinall, Annual Meeting of Rocky Mountain Oil and Gas Association, Denver, Colorado, Sept. 30, 1965.

61. Remarks by Representative Aspinall, 101st Annual Convention of National Wood Growers Association, Portland, Oregon, Jan. 20, 1966.

62. Letter from Representative Aspinall to President Lyndon B. Johnson, Nov. 30, 1965.

by a change. Nevertheless, ambiguity of this nature appears to be unavoidable where, as here, a long-range study is involved.

### CONCLUSION

It is impossible at this time to summarize the full scope of the Commission's inquiry or list all the probable areas of study with any degree of certainty.<sup>63</sup> The law contemplates a study of laws, regulations, policies, practices and procedures; the statutory definition of "public lands" is broad. The laws, of course, constitute only the tip of the iceberg. In any given area of legislation, the law may well be found to have been expanded, contracted, twisted, altered, detailed or rendered meaningless by judicial or administrative decisions, administrative policies, regulations, procedures and practices. Furthermore, any given law, however administered and interpreted, cannot be considered in a void. Full attention must be given to its relationship to other laws and to its effect and bearing upon past, present and future needs. Basic policy decisions, such as the relative responsibilities of the legislative and executive branches of the federal government, have been largely ignored by Congress for years and the executive branch has moved into the vacuum. These policy decisions must now be made and the laws and the policy must be correlated. Where existing laws no longer serve a purpose, they must be disregarded. If justified by present or anticipated requirements, new laws must be formulated. Where valid congressional policies are not being followed, adequate standards and guidelines must be incorporated into the law to guarantee that these policies are effectuated.

In light of the complexity of this task, the best thinking of interested groups and individuals must be made available to the Commission. The organization of the Commission is such that individuals and groups may make their voices heard through an appropriate member of the Commission or the Advisory Council or through the representative of their governor. While special interest pleas which disregard all other

63. An excellent summary of many of the key problems, sketched in broad terms, appears in Carver, *Role of the Federal Government in Land Management*, 11 ROCKY MT. MIN. L. INST. 345 (1966).

needs are not likely to be given substantial weight, certainly special problems which confront specific interests should be presented at this time, preferably accompanied by constructive and responsible recommendations for their solution.

This legislation presents a unique challenge to the West. If this challenge is not welcomed and met, a great opportunity will pass by default. Every effort should be made to insure the effective and balanced utilization of the public lands of the West.

### APPENDIX A

#### APPOINTIVE MEMBERS OF THE PUBLIC LAND LAW REVIEW COMMISSION

Appointed by the President of the United States:

Laurance S. Rockefeller, New York City, New York  
Governor Philip Hoff of the State of Vermont  
H. Byron Mock, Salt Lake City, Utah (Vice Chairman)  
Dr. Robert Emmet Clark, Albuquerque, New Mexico  
Dr. Maurice Goddard, Harrisburg, Pennsylvania  
Mrs. Nancy E. Smith, San Bernardino, California<sup>a</sup>

Appointed by the President of the Senate:

Henry M. Jackson, Senator from Washington  
Clinton P. Anderson, Senator from New Mexico  
Alan Bible, Senator from Nevada  
Thomas H. Kuchel, Senator from California  
Gordon Allott, Senator from Colorado  
Len B. Jordan, Senator from Idaho

Appointed by the Speaker of the House of Representatives:

Leo W. O'Brien, Representative from New York  
Walter Rogers, Representative from Texas<sup>b</sup>  
Compton I. White, Jr., Representative from Idaho  
John P. Saylor, Representative from Pennsylvania  
Laurence J. Burton, Representative from Utah  
Rogers C. B. Morton, Representative from Maryland<sup>c</sup>

- 
- a. Appointed August 26, 1965, to fill vacancy created by the resignation of Mrs. John Glessner Lee.
- b. Appointed July 22, 1965, to fill vacancy created by the resignation of Representative Wayne N. Aspinall of Colorado.
- c. Appointed February 1, 1965, to fill vacancy. The original appointee, Representative John H. Kyl of Iowa, was not re-elected to the House of Representatives.

APPENDIX B

LIAISON OFFICERS OF ADVISORY COUNCIL

<i>Department of Defense:</i> Leonard Niederlehner Acting General Counsel	<i>Atomic Energy Commission:</i> James T. Ramey Commissioner
<i>Department of Justice:</i> Edwin L. Weisl, Jr. Assistant Attorney General	<i>Federal Power Commission:</i> John C. Mason Deputy General Counsel
<i>Department of the Interior:</i> John A. Carver, Jr. Under Secretary	<i>General Services Administration:</i> Joe E. Moody Deputy Administrator
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APPENDIX C

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## APPENDIX D

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