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David R. Phipps

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This is the second 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. This article assesses the work of the Commission to date which has been that of defining and identifying the problems for study. Future articles will continue to present the progress of the Commission, culminating in a final summary at the end of the Commission's statutory life.

## THE PUBLIC LAND LAW REVIEW COMMISSION--IDENTIFYING AND DEFINING THE PROBLEMS

*David R. Phipps\**

### INTRODUCTION

At the time that the first<sup>1</sup> of this series of articles on the Public Land Law Review Commission was written, the Commission was completing its organizational and staffing phase. The appointive members of the Commission had been designated, Representative Wayne N. Aspinall of Colorado had been elected as Commission Chairman, the Advisory Council had been appointed, all fifty governors had named representatives to work with the Commission, and most of the Commission's staff had been selected. For all practical purposes, this phase of the Commission's activities was completed by April 1, 1966.

The review required by Public Law 88-606,<sup>2</sup> the legislation establishing the Commission, contemplated the public

\* Copyright David R. Phipps, 1966. Partner, Welborn, Dufford & Cook, Denver, Colorado; B.S., 1953, University of Nebraska; LL.B., 1958, University of Colorado; Order of the Coif; Member of the Denver, Colorado and American Bar Associations. Mr. Phipps was Chairman of the Public Lands Committee, 1964-66, and is presently a member of the Council, 1966-1970, Section of Mineral and Natural Resources Law, American Bar Association; co-author, *The American Law of Mining*, 1960; editor and co-author, *Law of Federal Oil and Gas Leases*, 1964; Executive Director, 1961-63, and Trustee, 1963-67, Rocky Mountain Mineral Law Foundation.

1. Phipps, *The Public Land Law Review Commission—A Challenge to the West*, 1 LAND & WATER L. REV. 355 (1966).  
2. 78 Stat. 982 (1964), 43 U.S.C. §§ 1391-1400 (1964).

land laws, their underlying policies, the rules and regulations promulgated pursuant to those laws, the interpretation of the laws by the courts and administrative bodies and the procedures governing the administration of these laws. In light of the scope and complexity of the proposed review and the limited statutory life of the Commission,<sup>3</sup> it was apparent that the Commission would be faced with two highly practical problems—identifying and defining the problem areas for study and accomplishing the requisite studies.

In its effort to identify the necessary study areas, the Commission has utilized its power to hold public hearings<sup>4</sup> and, more directly, it has drawn extensively upon the experience and background of the members of the Commission, its Advisory Council and the governors' representatives. Definitive study plans are then prepared and, upon approval, the studies are initiated either by the Commission staff or by outside consultants or research groups pursuant to contract.<sup>5</sup>

As the Public Land Law Review Commission moves into the second half of its statutory life, it is important to again survey the nature of its activities in the past year and its accomplishments to date.

#### COMMISSION AND STAFF APPOINTMENTS

As noted in the prior article, the Commission has a total of nineteen members—six members of the Senate Committee on Interior and Insular Affairs appointed by the President of the Senate, six members of the House Committee on Interior and Insular Affairs appointed by the Speaker of the House of Representatives, six persons outside of the federal government appointed by the President, and the Commission Chairman, who is elected by a majority vote of the other eighteen. Both the House and Senate appointments are to be equally divided between majority and minority members. Although the Senate appointees and, with one excep-

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3. The Commission is required to submit its final report to the President and the Congress not later than December 31, 1968, and its life ends six months after submission of its final report or on June 30, 1969, whichever is earlier. 78 Stat. 983 (1964), 43 U.S.C. § 1394 (b) (1964).
  4. 78 Stat. 984 (1964), 43 U.S.C. § 1398 (a) (1964).
  5. The authority to enter into contracts or agreements for studies and surveys is contained in 78 Stat. 985 (1964), 43 U.S.C. § 1399 (c) (1964).

tion, the Presidential appointees, have remained unchanged since their original appointments, the House appointees reflect the varying fortunes inherent in political life.

One of the original House appointees, Representative John H. Kyl of Iowa, was not re-elected in 1964 and he was replaced by Representative Rogers C. B. Morton of Maryland. In the fall of 1966, Representative Ralph J. Rivers of Alaska replaced Representative Leo W. O'Brien of New York who had decided not to seek re-election.

Following the 1966 elections, a wholesale change occurred in the House appointees. Representative Morton, although re-elected, stepped down from the Commission. Three Representatives, Compton I. White, Jr., of Idaho, Ralph J. Rivers, and Walter Rogers of Texas, did not return to the House. New Representatives appointed to the Commission by the Speaker of the House on January 31, 1967, were Walter S. Baring of Nevada, Roy A. Taylor of North Carolina and Morris K. Udall of Arizona. At the same time, a return appearance was made by Representative Kyl. Only two of the House members, Representatives John P. Saylor of Pennsylvania and Laurence J. Burton of Utah, have been on the Commission since its inception.

In July of 1966, Dr. Arthur D. Smith, formerly on the faculty of Utah State University and a range and wildlife specialist, and Douglas H. Harnish, Jr., former staff associate for the Natural Resources Department of the United States Chamber of Commerce and a mineral specialist, were added to the staff of the Commission.

Two assistant directors were named to the Commission on January 30, 1967. Harry L. Moffett, formerly associated with the American Mining Congress and recently a consultant to the House Committee on Interior and Insular Affairs, was made Assistant Director for Administrative Matters. The new Assistant Director (Program) is Charles Conklin, a former practicing attorney and member of the Colorado House of Representatives.

Roscoe E. Bell of Anchorage, Alaska, Director of the Division of Lands of the Alaska Department of Natural

Resources, was appointed to the Advisory Council by the Commission on April 7, 1967. Mr. Bell replaces Dr. Harold G. Wilm of New York who resigned in October, 1966, at the time that he accepted a position with the federal government.

#### IDENTIFYING THE PROBLEM AREAS

The legislation creating the Public Land Law Review Commission requires that specified meetings be called and authorizes the Commission to hold hearings. More particularly, in the case of the Commission itself, the act requires only that an organization meeting be held at such time and place as may be specified in a joint call issued by the senior Senate and House members of the Commission.<sup>6</sup> Pursuant to this requirement, the Commission's organization meeting was held on July 14 and 15, 1965 upon the call of Senator Anderson and Representative Aspinall.<sup>7</sup>

Meeting requirements are more explicit insofar as the Advisory Council is concerned. The act provides as follows:

The Chairman of the Commission shall call an organization meeting of the Advisory Council as soon as practicable, a meeting of such council each six months thereafter, and a final meeting prior to approval of the final report by the Commission.<sup>8</sup>

As reported earlier,<sup>9</sup> the requisite organization meeting of the Advisory Council was held on March 24 and 25, 1966.

The act further authorizes the Commission to "hold such hearings and sit and act at such times and places as the Commission . . . may deem advisable."<sup>10</sup> Although the Commission has held no formal hearings, it has called a number of "public meetings," frequently in combination with meetings of members of the Commission, the Advisory Council and governors' representatives. A summary of the meetings held and scheduled subsequent to the organizational meetings follows.

On June 7 and 8, 1966, the Commission's first public meeting was held in Salt Lake City. The news release of May

6. 78 Stat. 982 (1964), 43 U.S.C. § 1398(d) (1964).

7. Phipps, *supra* note 1, at 368.

8. 78 Stat. 983 (1964), 43 U.S.C. § 1398(d) (1964).

9. Phipps, *supra* note 1, at 368-9.

10. 78 Stat. 984 (1964), 43 U.S.C. § 1398(a) (1964).

10, 1966 announcing this meeting stated the purpose to be to "hear from users and prospective users of the public land, views as to matters that should be studied" by the Commission. It was further stated:

[I]t is not desired at this time to hear any suggestions as to what the future shape of public land law or practice should be. At this stage, the Commission is primarily concerned with identifying specific areas that require in-depth study.

Finally, the release quoted Chairman Aspinall as saying that the Commission had received many excellent suggestions for study topics and went on to note that most of the suggestions had come from the Advisory Council and governors' representatives. It was subsequently reported<sup>11</sup> that 57 individuals were heard at the Salt Lake City meeting and that the meeting had "demonstrated the desirability of similar regional meetings throughout the Nation."

Four cities in Alaska served as sites for a series of meetings in July, 1966. The announced purpose of these meetings was again to obtain suggestions for study topics and, in addition, "to find out what public land problems are encountered by individual citizens." A physical inspection of nearby areas of interest was also scheduled.

Boston was selected as the location of the third public meeting. This meeting was held on August 18 and 19, 1966, and its scope was limited to ascertaining appropriate study areas for the Commission.

The required semi-annual meeting of the Advisory Council was held in Denver on September 16 and 17, 1966. At this time, the Council met with members of the Commission and representatives of the several governors in formal business session. These meetings were, for the most part, open to the public, but the public was not invited to participate or state their views on public land matters. Among the subjects included on the agenda were (a) a proposed study plan dealing with "revenue-sharing and payments in lieu of taxes by the Federal Government as they relate to public lands," (b) discussion of "criteria to judge the facts"—defined as a ra-

11. Public Land Law Review Commission release of June 18, 1966.

tional means of determining what constitutes "the maximum benefit for the general public" for purposes of preparing the Commission's report and recommendations, and (c) a discussion of "comparison of values"—defined as the proper role of consumptive uses of resources and economic development of the public lands. Subsequent to the formal meetings, most of the official participants took advantage of a two-day air tour of public land uses throughout the State of Colorado scheduled by Governor John A. Love.

Another meeting of the Advisory Council was held in conjunction with a public meeting scheduled by the Commission in Albuquerque on November 10 and 11, 1966. In addition to receiving study recommendations and views from the public meetings, the official participants discussed matters of concern to the Southwest and toured several public land areas.

Public meetings were held in Fresno, California, on February 14 and 15, 1967, and in Palm Springs on February 17 and 18. The announced purpose was again to hear citizens' views on public land problems that should be studied by the Commission. Meetings of Commission and Advisory Council members and governors' representatives were also held.

A formal Advisory Council meeting and public meetings were held in New Orleans on May 26 and 27 and in Asheville, North Carolina, on May 29. On July 13 and 14, a regional meeting will be held in Billings, Montana. At prior meetings, the Commission had made it clear that it did not desire to hear suggestions and recommendations from users; the scope of these earlier meetings was limited to identifying problem areas. Commencing with the New Orleans' meeting, however, it appears that the Commission will now receive user's recommendations. Suggestions and recommendations pertaining to outer continental shelf lands were presented at the meeting in New Orleans and it is the author's understanding that the Rocky Mountain Oil and Gas Association will submit recommendations at the Billings meeting. Although the Commission's position on seeking the viewpoint of the using industries remains somewhat ambiguous, these recent developments are encouraging.

Regional meetings are also tentatively scheduled for an unannounced site in the Pacific Northwest on September 1 and 2 and for Milwaukee, Wisconsin, in early October. The September meeting will be a formal Advisory Council meeting as well as a public meeting.

An information memorandum issued by the Commission on December 9, 1966, indicated that as of that date 250 individuals had been heard at the several public meetings. As might be expected, the viewpoints expressed were many and diverse and, in a number of instances, totally antagonistic to one another. Complete transcripts of the meetings are available for review at the offices of the Commission.

To an outside observer, it would appear that the public meetings have now served their initial purpose of identifying study areas. It is, of course, possible that a few problem areas may be raised that are unique to regions not yet visited, but these are apt to be at a minimum. The limited remaining life of the Commission does not lend itself to a search for problem areas of indefinite duration. Several additional functions may be served by a continuation of these meetings, however. In an image conscious nation, it is not unlikely that the meetings serve a definite public relations function. More importantly and from a pragmatic viewpoint, specific complaints and suggestions may be of substantial help in the preparation of scheduled studies; this function is contemplated by the Commission's program. At a later date, hearings or public meetings may be useful in developing the Commission's recommendations.

#### BLUEPRINT FOR COMPLETION

On June 1, 1966, Milton A. Pearl, the Staff Director of the Commission, submitted a program paper<sup>12</sup> to the House Committee on Interior and Insular Affairs. This paper was entitled "Objective, Functions, and Operations of the Public Land Law Review Commission" and, according to Mr. Pearl's letter of submittal, the paper "has been adopted as a blueprint of all the tasks assigned to the Commission." Although

12. STAFF OF PUBLIC LAND LAW REVIEW COMMISSION, 89TH CONG., 2D SESS., OBJECTIVE, FUNCTIONS AND OPERATIONS OF THE PUBLIC LAND LAW REVIEW COMMISSION (Comm. Print No. 21, 1966) [Hereinafter cited as Comm. Print No. 21].



some modification is contemplated, the paper attempts to set out the Commission's program for its remaining statutory life. Among other matters, it covers the Commission's objective, the actions needed to accomplish this objective, the procedures to be followed and the sequence of operations. Familiarity with the major points of the paper is essential to a continued understanding of the Commission's work.

### *Objective of the Commission*

The Commission's stated objective is drawn from two statutory provisions<sup>13</sup> and is as follows:

*Report to the President and the Congress with recommendations of those actions, administrative or legislative, which should be taken to assure 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>14</sup>

### *Actions Needed to Accomplish the Objective*

The program sets out three categories of requirements—overall requirements that the Commission must fulfill before formulating its recommendations, specific actions required to be taken in carrying out the overall mandate, and actions “necessary for the comprehensive review essential for the foundation on which the Commission's conclusions and recommendations will be based.” In outline form, these requirements are summarized as follows:

#### I. Overall Requirements.<sup>15</sup>

- A. All of the public land laws now in existence must be reviewed and the relationship of each law to the others must be reviewed.
- B. In reviewing these laws, a determination must be made of their adequacy to meet the current and future needs of the American people in light of the statutory policy that the public lands shall be retained and managed or disposed of in a manner to provide maximum benefit for the general public.

13. 78 Stat. 982, 983 (1964), 43 U.S.C. §§ 1391, 1394(a) (iv) (1964).

14. Comm. Print No. 21, *supra* note 12, at 2.

15. Comm. Print No. 21, *supra* note 12, at 3-4.

- C. The division of the administration of the public lands and the laws relating thereto among the various departments and agencies of the federal government must be identified and evaluated.
- D. Based upon the contemplated studies, there must be a determination of whether and to what extent revisions are necessary in the public land laws and the rules and regulations promulgated thereunder.

## II. Specific Actions Required.<sup>16</sup>

- A. A comprehensive review of the laws, rules and regulations applicable to the public lands, as that term is defined by the act.<sup>17</sup>
- B. A compilation of the 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.
- C. An evaluation of the capacity of the public lands to determine in what circumstances those lands "provide the maximum benefit for the general public" when retained and managed under federal ownership and in what circumstances they provide such maximum benefit in non-federal ownership.

## III. Actions Necessary for Comprehensive Review.<sup>18</sup>

- A. A review of the authorities exercised by the legislative and executive branches of government pertaining to the subject public lands.
- B. Collection of definitive data relative to the public lands.

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16. Comm. Print No. 21, *supra* note 12, at 4-5.

17. The term "public lands" is said to include:

(a) the 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 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 forests, (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.

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

18. Comm. Print No. 21, *supra* note 12, at 5-7.

- C. A review of the management practices and the utilization of federally owned lands and aspects of the Outer Continental Shelf not within the statutory scope of the review but which have characteristics similar to or are managed in conjunction with the lands to be covered by the Commission's review.
- D. A review of the laws, rules, regulations, practices, and procedures for the acquisition by the federal government of land and interests in land.

### *Procedure*

The program contemplates a concerted effort to identify all significant subject areas for study so as to "fulfill the Commission's objective and to carry out the required and necessary actions."<sup>19</sup> The procedures followed to date in this identification process—obtaining views and suggestions from members of the Commission, the Advisory Council, the governors' representatives, the Commission staff, and from interested individuals and groups through regional meetings and other such contacts—will be continued.

Upon the identification of subject areas for study, study plans must be developed in light of the Commission's objective. In some cases, these plans will be designed to encompass both legal and nonlegal aspects; in the other studies, the plans will be designed to provide for complementary legal and nonlegal studies, unless there has been an affirmative decision that a complementary study is not required. In all cases, an effort will be made to judge whether specific uses or actions pertaining to the public lands provide the maximum benefit for the general public.

Further meetings or hearings will be held to obtain information on "specific matters that have presented bothersome or troublesome situations to the users or prospective users of the public lands."<sup>20</sup>

Detailed case studies will be made of instances in which individuals or groups have been granted or denied interests or privileges sought on the public lands.

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19. Comm. Print No. 21, *supra* note 12, at 7.

20. Comm. Print No. 21, *supra* note 12, at 8.

*Sequence of Operations*

Performance of the Commission's functions is divided into five phases by the program.<sup>21</sup>

The current phase, *Phase 1*, covers the design and completion of the basic studies to determine the state of the law, facts concerning the resources, and all factors relating to the land and resources that are necessary to a full understanding of the facts. The study plans are prepared by the staff with the assistance of the Advisory Council and governors' representatives. For the most part, the studies will be accomplished pursuant to contracts with research groups, consultants and experts. Hearings and meetings will be held to obtain information on specific problem areas and detailed case studies will be performed by the staff.

*Phase 2* is to be initiated before completion of *Phase 1*. The objective in this period is the evaluation of the material obtained in the first phase. Although the evaluation process will be the primary responsibility of the staff, outside consultants may be used as well as the Advisory Council and governors' representatives.

During *Phase 3* the Commission will attempt to establish the general direction of the policy guidelines to be recommended based upon the information obtained in the earlier phases.

Specialized studies may be required in *Phase 4* to obtain additional information. These studies will be directed toward the means of accomplishing the policy guidelines established by the Commission and will be developed and performed by the staff.

In *Phase 5*, the Commission, after consultation with the Advisory Council and governors' representatives, will formulate its recommendations and final report.

#### PHASE 1—THE BASIC STUDIES

The Commission and its "official family" have devoted a great deal of time and effort to desirable organizational and planning work. Now that the Commission is in the sec-

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21. Comm. Print No. 21, *supra* note 12, at 8-9.

ond half of its statutory life, however, its emphasis must be switched from the mechanics of operation to solid accomplishments. With less than two years remaining, none of the five scheduled phases of its work have yet been completed. Phase 1—the development and completion of the basic studies—is to provide the foundation for the balance of the Commission's work. Consequently, critical inquiry must be directed to the status of this phase.

On January 4, 1967, Staff Director Pearl submitted a progress report to the Commission, Advisory Council and governors' representatives and therein set out the study areas and special analyses selected to that date and the status of each. No new study areas or special analyses have been added since this report was submitted, but the status of the several selected studies has substantially changed.

Twenty-two study areas have been selected. According to a news release of November 10, 1966, Representative Aspinall has said that these basic studies "are designed to cover every important issue connected with Federal public lands in the 50 states." The study areas and their status are as follows:

### *History of Public Land Law Development*

The intent of this study, initiated in June of 1966, is to provide a definitive history of public land policy development in the context of the social, economic and political aspects of the United States. Dr. Paul Wallace Gates, Professor of History at Cornell University, was retained to perform this study. Although not originally limited to nonmineral laws, it is the author's understanding that the various mineral laws have now been eliminated from the scope of this study. The delivery of the first manuscript is projected for late summer of 1967.

### *Revenue Sharing and Payments in Lieu of Taxes*

This study was designed to determine the need for compensation by the federal government to state and local governments as the result of substantial federally-owned lands within their jurisdictions. A draft of the study plan was transmitted to the Commission, Advisory Council and gover-

nors' representatives in September of 1966, and was discussed at the Denver meeting of the Advisory Council. A revised draft was completed in November and reviewed by a panel of consultants. Subsequently, two consulting firms were retained for further advice on the study. A request for proposals was submitted to fifteen prospective contractors in February of 1967 and, on May 17, 1967, the Commission announced that a study contract had been signed with EBS Management Consultants, Inc., of New York City and Washington, D.C. Cost of the study will be \$297,254; the contractor's study report is to be submitted by April 15, 1968.

### *Digest of Public Land Laws*

It is estimated that from 5,000 to 15,000 federal statutes have been enacted that apply to the public lands, as that term was defined for the purpose of this review. The purpose of this study is to produce a catalog and descriptive word index covering all existing statutes applicable to the retention, management or disposition of the public lands, together with a brief synopsis of the content of each statute and a complete legal citation, including all amendments. A draft of the study plan went to the Commission, Advisory Council, governors' representatives and potential contractors for the study in November of 1966. On March 1, 1967, the Commission announced that it had entered into a contract with Shepard's Citations, Inc., of Colorado Springs, Colorado, for the preparation of the digest and that, under the contract, the digest is to be completed within eight months.

### *Administrative Rule-Making and Adjudication*

As proposed, this study would constitute a complete review of the laws, practices and procedures of the federal agencies with public land responsibilities relating to the preparation and promulgation of regulations, initial adjudication of rights and privileges, hearings, appeals, decisions, informal disposition of disputed issues, and judicial review of administrative decisions. Further, the extent to which such agencies use advisory citizen's groups and the way this is done would also be reviewed.

After the study plan had been submitted to the Commission, Advisory Council and governors' representatives for comment, the Department of Justice filed a letter of protest with the Commission contending that this study should not be made by the Commission and was not necessary. This protest was debated at some length at the February, 1967, meetings in California and it was determined that the Commission should go ahead with this study. Requests for proposals have been submitted to potential contractors and the Commission is now reviewing the study proposals.

### *Forage*

A study plan has been approved providing for the review of existing laws, regulations, policies and practices governing the use of the forage and browse resource of the public lands, the collection of information describing the resource, and a review of the effects of current use. Data will be compiled to describe the relationships of the use of public grazing lands to the livestock industry, dependent ranchers, national, state, local and regional economies, and the use of public lands for other purposes. Effects of the present system and of alternative systems of using this resource will be described. A request for proposals on this study is now in the final review stage.

### *Land Exchanges and Acquisitions*

This study is designed to (a) provide information for an examination of the criteria used in land acquisition as it pertains to the public lands within the scope of the Commission's review, and (b) provide information for an examination of the procedures used in land exchanges and the usefulness of land exchange as a policy tool. The study will ascertain the purposes for and conditions under which lands are acquired and the extent to which acquired public lands are meeting the purposes for which they were acquired. Similarly, there will be a determination of the situations where exchanges are used, the procedures followed, including the method of determining values, and information will be collected to define the effects, in terms of flexibility and meeting acquisition objectives, of both current and alternative

exchange policies. The study plan was submitted to the Commission, Advisory Council and governors' representatives for comment. This plan has now been approved and a request for proposals is near completion.

### *Withdrawals and Reservations*

This study plan relates to the existing laws, policies and regulations pertaining to the withdrawal and reservation of public land for particular uses. The procedures followed in reviewing withdrawals and reservations and the extent to which interested parties are involved in such reviews will be considered. Information as to the scope of current withdrawals and reservations and their effect on other resource uses will be obtained. Case studies will be made to ascertain the procedures presently used to determine the effect of proposed withdrawals on resource uses and values and the manner in which these uses and values are considered in relation to the purpose for which withdrawals are made. A request for proposal was mailed to prospective contractors on May 19, 1967; proposals were to be submitted on or before June 8.

### *Alaska*

This study is limited to a review of the land laws and policies applicable only to Alaska and the portions of those laws that treat public lands in Alaska separately. Further, information will be collected as to all of the major commodities within these public lands and their use, particularly as related to the economic development of the state. The relationship between the present public land base and state selection of lands will also be considered. The contract for this study is in the final stages of negotiation.

### *Projection of Future National and Regional Demands for Commodities Producing from Public Lands*

The stated purpose of this study is to obtain projections of basic population, economic, commodity consumption and production factors for use as a framework within which the effects of continuing the present or adopting alternative public land policies may be tested and evaluated. Pro-



posals for the performance of this study are now being evaluated.

### *Timber*

The purpose of this study is to review the following: timber management planning; allowable cut determinations; appraisal practices; sale procedures and contracts; access road construction policy in the agencies concerned, such as the Forest Service and Bureau of Land Management; conflicts of timber policy and practice with other timber land values; economic and social effects of the present system; effect of this system on the using industry; and, the effect of possible alternative systems on the economy and on other resource values. The study will include an inventory of the resource and data on its use on a national, regional, state and local basis. A request for proposals pertaining to this study is near completion.

### *Nonfuel Minerals*

A review of the policies under which these resources, whether leased or patented, are made available for use and a determination of the effects of these policies and alternative policies is contemplated. Existing laws, together with their administration and interpretation, will be studied. Other matters to be considered are: effects of the changing relative availability of minerals on the public lands; effects of the changing technology on the discovery and development of minerals on the public lands; relationship between the use of mineral and other resource values and the extent of present and possible future conflicts; and, the relationship between the development requirements of the minerals as these relate to the methods by which they are made available. The request for proposals covering the legal aspects of this study is in the final review stage. The "resources" aspect of the study is covered by a separate study plan which is presently being prepared.

### *Energy Fuels*

This study contemplates an analysis of the manner in

which the energy fuels, such as oil, gas, coal, oil shale, uranium, thorium and geothermal steam, are made available for use and the effects of these methods as compared with possible alternatives. The present laws and policies and the administration thereof will be studied. Information as to the effects of making these fuels available on the related industries, on local and regional economies, on society in general, and on the use of the public lands for other purposes under current and prospectively available technology will be sought. Particular attention will be directed to the effects of making oil shale reserves available for use under alternative policies and also to an analysis of the effects of making these energy materials available by leasing and by location systems. The request for proposals covering the legal aspects of this study is in the final review stage. The "resources" aspect of the study is covered by a separate study plan which is presently being prepared.

### *Regional and Local Land Use Planning*

The principles and methods of land classification that can be used in comprehensive land use planning and zoning and an evaluation of the methods used to obtain communication and coordination between federal agencies and state and local governments are to be the subject of this study. A request for proposals on the performance of this study is near completion.

### *Land Grants to States*

This study will provide a review of the congressional practice of granting public lands to the several states for various purposes to determine the intent of and conditions attached to such grants. An examination of the management and disposition of these lands by the states will be made to determine the current effects of the conditions to the grants. This study will be performed by the Commission staff. The final study plan is being prepared.

### *Water*

Federal laws and policies relating to the use and management of water originating on or flowing across public lands

for both federal and nonfederal uses will be studied, with particular attention being given to the implied reservation doctrine of federal water rights resulting from withdrawals and reservations of public lands. The study also includes an analysis of the relationship of land and resource management programs on the public lands to water yields and water quality to determine their effectiveness in providing for water uses on public lands and for local and regional water needs. The request for proposals covering this study is near completion.

### *Outdoor Recreation*

The purpose of this study is to review the existing system of laws, policies and practices relating to the development and use of the public lands for all forms of outdoor recreation and to collect information showing the effects of this system in terms of use, relationship of use to local economies and the recreation services industry, the satisfaction of need for different forms of recreation, and the impact of recreation use on other resource values. Comments on this study plan have been received from the Commission, Advisory Council and governors' representatives, and a request for proposals is now being prepared.

### *Criteria for Judging Facts to Determine What Constitutes "Maximum Benefit for the General Public"*

As noted earlier, this topic was the subject of discussion at the Denver meeting of the Advisory Council. Unlike most of the basic studies, this study will be made by the Commission staff. Its purpose is to develop criteria to act as standards or guidelines for the Commission in formulating its recommendations. The current status of this study is not known to the author.

### *Use and Occupancy of Public Lands*

This study will review the laws concerning the use of the public lands for such matters as military uses, rights of way, residential, commercial and industrial uses, and municipal uses, and the administration of those laws. The extent of such

occupancy and the effects of different kinds of use on the production and value of other resources will be considered, as will the conditions under which such use is permitted and the control retained by the federal government. This study plan has been submitted to the Commission, Advisory Council and governors' representatives for comment.

### *Fish and Wildlife*

The purposes of this study are to review the legal responsibilities of the states and federal government over wildlife and fish and the habitat management functions of the federal agencies on public lands. The relationship between fish and wildlife production on public lands and management of other resources will be examined. Comments on the study plan have been received and a request for proposals is being prepared.

### *Intensive Agriculture*

This study will be limited to uses of the public lands for nongrazing agricultural purposes. The several agricultural settlement laws will be reviewed and data collected as to their recent use and prospective use. Agricultural uses and the resulting demand for water supplies, especially in arid and semi-arid regions, will be given particular attention. The request for proposals covering this study is in the final review stage.

### *Outer Continental Shelf*

Resources within the continental shelf area, laws providing for their development and the administration of those laws will be the subject of this study. Known resource potentials will be inventoried, current uses ascertained, and economic, technological and other kinds of information pertaining to the exploration for and production of these resources will be obtained. A study plan covering this topic has been prepared and is now undergoing final review.

### *Organization, Administration and Budgeting*

The main thrust of this study will be to obtain information that can be used in evaluating the characteristics of the federal organizational and administrative structure as these

affect public lands policies and their execution. Operations of the various federal agencies dealing with the public lands will be studied and the policies and practices followed by these agencies in budgeting and administration will be reviewed. No current information on the status of this study has been received.

The Commission staff has determined that at least three special analyses based upon the foregoing studies will be necessary. They are as follows:

- (1) Impact of public ownership on local and regional economies.
- (2) Noneconomic aspects and implications of public land ownership in local and regional areas.
- (3) User fees and charges.

Commencement of these analyses must be deferred until the basic studies upon which they depend are completed, but the Commission schedule provides for the completion of design work during the summer of 1967 so that specific analytical requirements will be known before the basic studies are completed.

### CONCLUSION

At this stage of the Commission's life, there are several aspects of the Commission and its operations that may give rise to justified concern.

The Commission's report and recommendations must be submitted to the President and the Congress no later than December 31, 1968. Several factors exist that may tend to make the report and recommendations the product of the Commission's staff rather than that of the Commission itself. First, the membership of the Commission, Advisory Council and governors' representatives is made up of individuals who must necessarily give only a limited part of their time to the Commission's work. Second, approximately two-thirds of the members of the Commission come from the House of Representatives and the Senate. The changes to date in the House

appointees make it apparent that the uncertainties of political life may create a lack of continuity within the Commission. The Commission's report is due immediately after the 1968 elections. Third, unless virtually all of the basic studies have been completed by the end of this year, the Commission will face a serious problem in attempting to complete the remaining phases of its work in the limited available time. It is not objectionable per se if, in fact, the staff ultimately prepares the report and formulates the recommendations. As a practical matter, the staff would have the responsibility of accomplishing much of this work in the best of circumstances. It would be objectionable, however, if the Commission, Advisory Council and governors' representatives were unable to thoroughly analyze and modify the work of the staff due to a lack of time and a full understanding of the tentative recommendations.

Also, it is not at all clear that the Commission intends to seek the advice and viewpoints of interested parties before it formulates its recommendations for legislative and administrative action. Unless definite steps are taken soon to set up procedures for participation, the only way in which the recommendations of users of public lands will be heard will be through the Advisory Council and governors' representatives. This type of participation may be considerably less than satisfactory if there are diverse viewpoints within a given user group since only one viewpoint may be presented.

It is certainly possible that the Commission may be hard pressed to fully accomplish its objective. The scope and depth of the review are so extensive that the formulation of a final report and recommendations may prove to be an extremely formidable task. Nevertheless, even if the final report and recommendations should prove to be inadequate or impossible to translate into action, the work of the Commission will be of lasting value. The projected studies are well conceived and comprehensive. If these studies are completed in a scholarly manner, this, by itself, will represent a major accomplishment. The value of the studies as a definitive statement of the present status of our public land laws, their evolution, and as a starting point for future legislation will be substantial.