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The Challenge of the Public Land Law Review Commission Report

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THE CHALLENGE OF THE PUBLIC LAND LAW REVIEW COMMISSION REPORT

*H. Byron Mock**

THE Public Land Law Review Commission presented its report to the President and to the Congress on June 23, 1970.

The implementation which the Congress and the President may see fit to make of the Commission recommendations will determine what direct impact the report will have on individuals and companies, and on industries and special cause groups and their associations, and on all levels of government. Also there will be an indirect impact from the use, and perhaps misuse, of what the report says and what it does *not* say to support or oppose positions on various matters.

At the time of consideration, whatever is the "public interest" to be given principal emphasis will determine the manner and degree to which implementation of the Commission recommendations allows, denies, or changes any future use of or existing dependency on the public lands.

Presently our national and local laws and individuals and groups are requiring action on environmental problems. The highest priority is given such matters. In the name of environmental goals and methods, some have attacked the energy and extractive industries as no longer being necessary contributors

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to the national public benefit. That such attack may be acceptable, and will expand, is shown by the effectiveness of environmentalists.

By use of the courts and by inciting administrative action and inaction, and by other avenues of protest, the Alaska pipeline, and even the preparation for it, has been delayed; the utility line past Harper's Ferry and the Battlefield of Antietam was reevaluated; the Scenic Hudson power plant certification by the Federal Power Commission was set aside; and pilot leasing of federal oil shale deposits in Colorado, Utah, and Wyoming has again been postponed. Action on applications for federal leases for coal, oil and gas, and for other resources has been slowed down by fear of criticism over possible environmental conflicts.

These are great victories; they show that defining the "public interest" is too important to be entrusted to public officials alone. The danger is that other indispensable elements of the "public interest" may suffer. The public interest in adequate energy supply and in receiving a fair market return from federally owned resources may also be affected.

The issuance of federal leases for oil and gas, coal, and other energy sources has been slowed down to the extent, that some predict a coming shortage from such energy sources. Oil shale reserves, dominated by federal ownership, are neither producing rental or royalty funds, nor taxable income for the federal treasury, because administrators elect not to make such reserves available for private effort to develop.

With such impact from environmental considerations under present laws and regulations, we must expect dominance of such considerations in proposals to implement the Commission recommendations. If it were not environmental concerns, it could be concern for some other then predominant public interest. Such emphases tend to exclude or over-ride other essential public concerns. State and local efforts to develop new industry is an example, emphasizing the new at the expense of the established. A few years ago it was the highway

engineer and his chosen route and design; twenty years ago it was our national need for uranium. War frenzy is an awesome destroyer of liberties and established values. Tomorrow the emphasis may be on regaining industrial might.

Subordination of all activities and uses of public and private lands to environmental considerations may be desirable, but the exclusion of other public interests in such lands is not. Adoption of methods of control that destroy private incentive to use such lands or that deny security of investment to those who use or seek to develop such lands should be evaluated. It can be questioned whether adoption of procedures that terminates individual economic or emotional dependency on public land without giving recognition to either is in the public interest. Another question is: does the public interest require consideration of the economic stability of a livestock operation in allotting federal range privileges or should such stability be ignored in favor of high fees from competitive bidding? Also, is the public interest benefitted by encouraging the search for and development of resources under a system of mining location and non-competitive leases?

An answer lies in affirmatively identifying and demanding attention to each segment of our public interest in which a party is concerned, economically or otherwise. The best leadership must be given to such segments of the public interest as economic welfare, and the maintenance of standards of living which are dependent on processed resources. Also, the government should be required to avoid the waste from non-use of federally owned resources. Denial of the security of investment to those who pioneer or extend development of such resources is also against public interest. Commercial and private outdoor recreation, livestock operations, oil and gas, mining, and other public benefits from use of federal lands could be unnecessarily retarded or lost through unbalanced emphasis on other no less important considerations.

The balancing of all elements of our national welfare is the obvious goal. The Commission Report is known to have sought such balance, and commissioners who signed the full

report will defend it because of its interdependent nature. As in any report many premises were assumed to be so fundamental as not to require statement. Nevertheless some will be treated as denied because not stated fully or strongly. The *Report* speaks for itself. Nevertheless there will be many who will justify their proposals for public land administration by assuming to say what the Commission meant. The validity of such testimony should be clearly invalid, in the absence of full knowledge of what the Commission did and did not consider and what it considered without including in the report. Only the very limited number who participated fully in all the Commission deliberations can explain what the Commission meant, and day by day their views will increasingly diverge.

The key problems are simple to state—How shall public land, and even the total national land, resources of the nation be rationed between competing or parallel uses; how shall priorities be fixed between applicants when all cannot be satisfied; who shall decide; what standards shall be fixed and followed; how can those who decide be checked to be sure that treatment is fair and equitable?

Let me preface my final statements with two new items of the recent passing parade, one a newspaper story from California, the other a television news item in the District of Columbia.

In California, an organization called GOO, "Get Oil Out", has been demanding termination of the federal oil and gas leases off Santa Barbara. The President proposed to Congress that such leases be terminated by legislation and provision for compensation to the lessees be provided. Did this satisfy GOO? It did not, according to the new item. The dedicated hear of the group protested long and loudly against any payments to those who lost their leases.

The other instance was the recent breaking into the Welfare Building in the District of Columbia. One of the leaders, a woman, said, "This building belongs to us because we are on welfare. It is illegal to lock us out." When asked, "Don't

you think it is illegal to destroy property?" she responded with the crusher, "Women and children are more important than property."

In the next several days the recommendations of the *Report* will be reviewed by many diversely qualified men. The arguments will turn on what laws say, probably more than on what they should say. The announced reasons for various positions will be sincerely varied, but we must examine ourselves to see how much is dedication to principle and how much is worship of method. Are our proposals embraced to advance a just cause of friend, client, or stranger, or are they to give him an "edge" by denying a competitor his opportunities in public lands? Are we seeking equity when uses are to be ended or "budgetry evasion" for agencies? Are we, like the welfare lady, saying that because our goals are just our methods cannot be bad, and you cannot question them even if they affect you? Are we, perhaps, less interested in stopping the oil leasing off Santa Barbara than in labeling the lease holders "sinners" who must be punished by denying them return of money paid?

The drafting of the laws and the learned interpretations are indispensable foundation blocks, but there is only one place of judgment. How does the law operate and affect the American citizen?

Were I to summarize the goals we seek to find for the laws to be written and interpreted and applied, the summary would be general, but it would be this:

First, we must see that the laws making the resources of our public lands available for enjoyment and use are fair and equitable as between individual citizens and fair and equitable between various types of use and fair and equitable to the people in each local, state, or regional area, and fair and equitable to this generation as well as the next.

Second, we must see that the discretionary actions of those government officials entrusted with administering the re-

tained public lands and their resources in trust for all the individual people are subject to checks and balances that help those officials to preserve and protect those lands, to secure a fair return into the trust, and to assure that the assets are not wasted by being withheld from wise use.

Third, we must have procedures that allow no group or government to usurp and monopolize the power to determine what is the "public interest" without accountability to the individual citizen and groups of citizens and their elected representatives.

These are stated goals for public land administration, but public lands are not in a vacuum isolated from our total national economic, political, sociological, and, I suppose, ecological complex. I suggest that the goals very nearly state the basis for much of the teeming turmoil of today.

If the implementing legislation achieves these goals, the American genius for getting the job done can work and will be able to work, without demanding or allowing any of the elements of our national interest to be subordinated to minority interest.

If the implementing legislation does not achieve these goals, then I predict that the unrest and revolt and searching effort of current generations must soon turn attention to these problems of property and resources and exercise their responsibility here as they now are in other fields.