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## Recreation, Fish, Wildlife and the Public Land Law Review Commission

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# LAND AND WATER LAW REVIEW

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## RECREATION, FISH, WILDLIFE AND THE PUBLIC LAND LAW REVIEW COMMISSION

*Ralph W. Johnson\**

SCANNING the entire *Report* of the PLLRC<sup>1</sup> will make a back country hiker swallow twice, call his congressman to quash the *Report*, and head for the hinterland for one last look before the loggers, miners, golfers, farmers, and house builders arrive. Although the *Report* does not say so in so many words it ends up as a kind of potpourri, where everyone gets something. It attempts to say all things to all people, to suggest that everyone will be gainers—that everyone will be better off than before; but as in any major reshuffling of policy there are bound to be losers. One group of losers in this case are the people who want to preserve the federal domain in a wild state. They lose because the *Report* says the federal domain is to be classified, divvied up, and turned to greater profit than in the past. It's a big land pie and everyone wants a piece; the *Report* allows as how that is a good idea.

To a back-country hiker, who needs back country and lots of it to enjoy his sport, the *Report* is bad; he will see more people, more roads, more trucks, more buildings, and more "civilization" than ever before. The pace of man's invasion of these lands will now step up. The invasion will, however, be more orderly, be better planned, and be more rational than ever before. And it will, in some ways, give greater and more

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1. PUBLIC LAND LAW REVIEW COMM., ONE THIRD OF THE NATION'S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS, 198 (1970). [Hereinafter cited as REPORT].

specific attention to the needs of recreation and fish and wild-life habitat than ever before.

The recreationists who are gainers are those who enjoy more campsites, more immediate access to the mountains, and more "facilities." They will find more of these located in a wider variety of places than ever before.

In my analysis of this *Report* I will not try to make final judgments about whether the ultimate goals adopted by the PLLRC are good, *i.e.*, whether the Commission should have catered more to hikers than to builders, more to fishermen than to miners, or such. That is a forbidding task, and one that the people of this country must now debate and decide. Instead my main purpose will be to identify as best I can who would be affected by the recommendations of the *Report* and how they would be affected.

I shall also attempt to analyze the soundness of the arguments supporting the various recommendations. Criticism of these arguments may, at times, imply criticism of the recommendation itself. At other times, however, it may only imply that the Commission's arguments have not been well thought-out or adequately stated.

As for the *Report*, internal structure and analysis, pertaining to recreation, fish and wildlife, considerable criticism can be levelled. It is busy at times with inconsistent facts, contradictory policy recommendations, and specious arguments—where it contains arguments to support its recommendations—which it often does not. It consistently recommends that careful standards, guidelines and reasons be worked out by Congress to control federal land policy, but almost as consistently fails to suggest appropriate standards, guidelines, or reasons for Congress to look to for guidance.

The background study was done by Herman D. Ruth and Associates of Berkeley, California. In general it is a good job, presenting data understandably and responsibly, and setting forth a variety of alternatives, and reasons for each, for

the Commission to choose from.<sup>2</sup> The Commission Report, by comparison is highly prescriptive, with little argument to support its pronouncements, despite its considerable size. Unless the decision makers have complete faith in the PLLRC, they might better read the Ruth study and have a menu of choices with arguments for and against each choice.

Now to particular recommendations:

Chapter 12, on Recreation, urges an immediate effort to identify and protect those "unique areas of national significance that exist on public lands."<sup>3</sup> These would be placed in national Parks, wilderness areas and the like. On the other hand for "public lands of less than national significance" the *Report* says recreation policies and programs "should be designed to meet needs identified by statewide recreation plans."<sup>4</sup> It further recommends that if they are intended to satisfy state or local intensive recreation needs they should be leased or transferred to the state or local government for that purpose.<sup>5</sup> These recommendations sound fine as a happy, pappy generalization, but what do they mean? No adequate standard is stated or even seriously suggested for determining when land is a "unique area of national significance" or is "of less than national significance." Lands fall within this latter class when they are designed "primarily to meet state and local needs."<sup>6</sup> But what is a state and local need? Should the Federal government spin off to the State of Washington Mt. Rainier National Park because 80% of its visitors come from Washington State?<sup>7</sup> Certainly the *Report* could have spelled out more carefully the criteria to be used in deciding whether the facility meets a 'state and local need' or is a "unique area of national significance." The ambiguity in this section is heightened by an apparent inconsistency between these recommendations and the recommendation in the fish and wildlife chapter exhorting greater federal control

2. See also the discussion in RUTH & ASSOCIATES, 1 OUTDOOR RECREATION USE OF THE PUBLIC LANDS, at X-35 to X-83 (PLLRC Study Report, 1969).

3. REPORT, Recommendation 78 at 199.

4. *Id.*, Recommendation 79 at 199.

5. *Id.*

6. *Id.*

7. See BEYER, AN ECONOMIC IMPACT STUDY OF MT. RANIER AND OLYMPIC NATIONAL PARKS, (prepared for the National Park Service, 1970).

over wildlife management and game harvests, and suggesting, contrary to the philosophy suggested above, that "we can see no rationale for transferring such lands (key fish and wildlife habitat) from federal ownership to state and local governments or to private owners."<sup>8</sup>

I am disturbed, too, by the Commission's intention to turn over decision making for public land recreational policies and programs to the states, without stating explicitly that these should be guarantees (1) that state plans meet at least minimum standards of competence, or (2) that state plans give recreation adequate status in the state priority hierarchy, or (3) that state plans fit within a well-designed national recreational plan.<sup>9</sup> The confusion about delegation of responsibility is heightened by statements in the Report that where the states "demonstrate an unwillingness to cooperate"<sup>10</sup> in installing facilities for state and local needs, then the federal government can go ahead itself and install them. But this puzzles me. If a state has final, non-reviewable responsibility for the recreational plan, then by what standard can it be accused of "unwillingness to cooperate?" Does this mean unwillingness to cooperate with its own plan? Such an event seems most unlikely. Does it mean unwillingness to cooperate with some unnamed, un-specified, and hidden federal standard? I would hope not. We are all aware of numerous disagreements between the state and the federal governments on water planning. The response of the states under the various water pollution control acts, demonstrates a great diversity as to both the states' willingness and competence to adopt and carry out water quality control programs. Some states were busy with other matters and gave no priority to water quality control—until required to do so by federal standards and deadlines. This same diversity can be expected in recreation, especially

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8. REPORT, 168.

9. During the discussion of this subject at the conference, staff members of the Commission responded that the BOR [Bureau of Reclamation] already reviews statewide recreation plans. However, it is a well known fact that the BOR has had great difficulty coming up with a sound national recreational plan, or with well designed guidelines for evaluating state plans. It is, in any event, unfortunate, that the REPORT does not explicitly set out criteria, or the need for the criteria, essential for approval of statewide recreational plans.

10. REPORT, 199.

where it involves state planning, development, and management of recreation on federal, rather than state lands. What happens when such conflicts occur? Apparently the Commission ignored this possibility, or thought it too inconsequential to bother with. In any event it failed to provide us with guidelines for handling such conflicts.

The general intent of the *Report*, as I sense it, is to move recreation responsibility on federally owned lands into state, local and private sources wherever possible. It is hard to tell, however, whether this policy was based on the view by the Commission that this job was already being well done by the private sector—on p. 197 the Commission says that “individual initiative and private enterprise should continue to be the most important force in outdoor recreation”—or on the view that the private sector has generally failed here and should now be given a bigger chance—on p. 198 the Commission notes that “private landowners have not generally made their lands available for public outdoor recreation purposes, and government has continued to act as the major supplier.” I find the statements are inconsistent, and tend to believe the latter more than the former. I wonder which one the Commission based its judgments on?

One of the major recommendations of the recreation chapter concerns pricing. Recommendation 81 says that the government should charge a general recreation land-use fee, collected through sale of annual permits, much like a hunting license or duck stamp, so that if I bought such an annual permit I would have access to all available public lands in the nation.<sup>11</sup> I would have to pay, in addition, a fee for each use of a federally constructed facility, such as campsites. The general use fee is recommended to be “minimal” at \$1.00 to \$3.00 at the “outset” to “assure that it is not discriminatory and to simplify administration.”<sup>12</sup> Chapter 9 recommends still another fee for hunting and fishing on federal lands. I don’t believe I am opposed to charges of some kind for use of public lands and facilities, but I have many questions about the amount of these

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11. *Id.*, Recommendation 81 at 203.

12. *Id.*, 203.

charges, and on whom they are imposed. Unfortunately these questions are not answered by the PLLRC.

In its attempt to gain acceptance for the idea of a general use fee the Commission both mis-stated and overstated what such a fee would accomplish. Four reasons for charging such a fee are suggested. First, it would "help defray" the costs of building and maintaining roads, trails, sanitation systems, etc.; with this I have no quarrel, assuming the fee were set high enough to provide revenues which would more than cover costs of administration. The second reason is, however, less tenable. It is "to assure equitable treatment among all those having access to the public lands."<sup>13</sup> The "minimal" fee recommended will not do this. Under Recommendation 136<sup>14</sup> the fee charged a cattleman for using the public land is to be determined by the fair market value of the land, as under the normal operation of market forces; and if this is so then the cattleman is not being treated equitably with recreationists who are not being charged according to the rule of fair market value. The cattlemen are being discriminated against.

The third goal to be achieved by the general use fee is to cause users to "recognize the stake they have in the protection of the areas and make greater efforts, not only to take better care themselves, but also to make certain that others are more careful in their visits to the areas and their use of facilities."<sup>15</sup> This statement seems to reflect the widely held notion that paying for something assures that the thing paid for will be carefully treated and respected. Such a notion has validity where damage to the thing purchased causes significant loss to the buyer. But this argument does not apply here. The value paid (\$1—\$3) is so nominal as to be of little significance in this respect. Furthermore once having paid the price the purchaser is free to use any part of the public lands, not just a single facility. He may just as well decide to abuse one area or another for he does not, after all, have to return to that one. Also his expectation for services due from the government may be increased. Thus he may resent the fact that the

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13. *Id.*

14. *Id.*, 287.

15. *Id.*, 203.

managing agency, having been paid, refuses to maintain better trails, fix latrines, or provide tamer bears, and he may feel less obliged himself to help maintain trails, repair latrines, or tame bears. The Commission's arguments on this point do not seem sound.

The last reason given for the general use fee is that it will "assure equity to the operators of any competing private outdoor recreation area".<sup>16</sup> This it will not do. The trouble is that private landowners generally charge specific fees for each use of land whereas the general use fee is an annual charge for use of any part of the public lands; it is not a fee charged for a particular service. Having paid the cost to me of entering a public land area on July 4, or any other day, is, in fact zero. I will always choose the zero priced facility of competitive quality over one with a positive charge on a given date if I am a sensible man.

The Commission also recommends that some type of rationing system be imposed to stop over-use of national parks, wilderness areas and the like. However, it recommends that "pricing not be employed as a rationing method because that type of pricing would exclude all those unable to pay high fees."<sup>17</sup> I would personally agree that some type of rationing system is essential, else we shall destroy the resource we all want to enjoy.<sup>18</sup> Instead of pricing, the Commission prefers a "first come, first serve reservation system administered by mail."<sup>19</sup> This has the ring of egalitarianism. What is not done, however, is to analyze who will in fact be excluded by this technique. Surely it is obvious from other similar experiments that some classes of people will tend to operate well with this system and some will not. It will be interesting to analyze in a few years if this system is adopted, which groups that now use these areas, will not have used them in future.

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16. *Id.*

17. *Id.*, 207.

18. *Id.*, Motorbikes are a particular bane in the wilderness. But, it is said, many people like to ride motorbikes on mountain trails. This led me to invite a number of friends to fill in the blank in the following sentence: Because people like to ride motorbikes on mountain trails they should be allowed to do so, is like saying that because they like to \_\_\_\_\_ on mountain trails they should be allowed to do so. Unfortunately, none of the entries were printable.

19. REPORT, 207.



As for the use of pricing as a rationing device, my colleague, Gardner Brown reminds us that price is an exceptionally simple device to perform this rationing service even though it may have drawbacks. He says, "Simply raise the price until the proper balance is achieved between the ecosystem and the number of people using it. In some instances the price might have to be large by present standards, as for example, in the case of a fairly scarce big game species in heavy demand. Such a price policy, in addition to rationing efficiently would give an accurate dollar measure of the value of using public lands for particular types of recreation experiences. A subsidiary consequence would be the revenues provided. Using price to ration is rejected by the PLLRC because it would be inequitable. The poor would be excluded. I'll accept this as a typical consequence although it does not logically follow.<sup>20</sup> The important fact is that very few poor now engage in these kinds of recreation activities. Even hunting and fishing, activities more popular among less well-to-do people is pretty much an elitist activity. The average income of sport salmon fishermen in the State of Washington and duck hunters in the Pacific flyway was over \$10,000 a few years ago. There were hunters and fishermen under the federally defined poverty level, to be sure, but they were very few in number. If the study is worried about excluding the minority poor there surely are policy alternatives other than abandoning the pricing system. We do not allocate food on a first-come first serve reservation system, a policy recommended for rationing open space by this study.<sup>21</sup> Rather we let the market mechanism operate and give food stamps to those whom we define as needy. I am not arguing that effective rationing prices ought to be used. I am arguing that the reasons for abandoning it given in the *Report* are unsatisfactory.

The Commission makes several other notable recommendations in the Recreation Chapter. It would like to see the federal role expanded in providing public accommodations

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20. The poor still can have some public recreation, at high prices, if they value this experience more than other costly activities. High prices mean only that they purchase less than they would at low prices. They hunt, fish, and camp less frequently. Most of us don't own reservoirs but some do pay to see them for an afternoon.

21. REPORT, 207.

in areas of "national significance".<sup>22</sup> On areas of less than national significance it would encourage greater participation by private concessioners by extending to these lands the security of investment afforded National Park Service Concessioners under the Concessioner Act of 1965.<sup>23</sup> On those lands not designated for concessioners development, private enterprise is encouraged to play a greater role in the development and management of intensive recreation areas.<sup>24</sup>

Congress is told it should provide guidelines for outdoor recreation use of all public lands;<sup>25</sup> and the BOR should submit to Congress within two years standards for evaluating public lands and determining how much of a federal investment should be made in outdoor recreation development on those lands.<sup>26</sup>

The *Report* complains that the pace of development in the past has not been determined by any real plan, but has been a simple reaction to "projected demands", and that since recreation on public lands has been treated as a "free good" the demand for it has tended to expand indefinitely as more developments are provided.<sup>27</sup> This is not, the *Report* says, a good basis for allocating scarce tax dollars to alternative uses of public lands. This part of the *Report* leaves this author somewhat mystified. The Commission clearly implies that recreation has in the past received too high a priority in the allocation of public lands and has received too large a share of the "scarce tax dollars" in this sector, and is now to be cut back. Also the language criticizes the treatment of recreation as a "free good" leaving the implication that it should now pay its own way in free market terms—implying that charges should be set at least high enough to pay the cost of recreational use. Taken literally such a statement would mean land would not be used for recreation unless that use would return to the government greater rent than could be obtained from any other use, such as logging, mining, grazing, and the like.

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22. *Id.*, Recommendation 83 at 208.

23. *Id.*, 209, 210.

24. *Id.*, Recommendation 84 at 211.

25. *Id.*, Recommendation 85 at 213.

26. *Id.*, 214.

27. *Id.*

The use of such language is, I believe, unfortunate in creating such impressions for they clearly are not consistent with the recommendations on pricing in other parts of the *Report*. Also, I question whether any politically acceptable pricing system would actually slow the rate of growth of the demand for recreation—or whether such a goal would, indeed, be desirable.

The *Report* says Congress should authorize acquisition of reasonable rights of way across private lands, to provide better access for outdoor recreation and other uses of public lands.<sup>28</sup> Direct federal acquisition of land for recreation purposes should, however, be limited to areas of unique national significance, or to inholdings.<sup>29</sup> The Land and Water Conservation Fund Act should be amended to improve financing of public outdoor recreation programs.<sup>30</sup>

Chapter 9, on Fish and Wildlife urges greater emphasis in the management of public lands on fish and wildlife values. This chapter attempts to span the interests of both animal watchers, hunters and fishermen. The difference in tone and approach between this chapter and chapter 12 on Recreation is interesting. In Chapter 12 the Commission expressed a strong bias for state and local control of recreation, even urging leasing or transferring public lands to state and local governments in furtherance of state recreation plans; an opposite orientation is apparent in the fish and wildlife chapter where the Commission urges greater federal responsibility in fish and wildlife management. I can think of reasons why such a difference in approach might have been taken, but I cannot find those reasons, or any others, stated in the *Report*. I can surmise that the Commission believed state and local governments are good at developing and managing camp grounds and other specific recreational facilities, but are spotty at managing wildlife habitat and game harvests. But I must guess as to the actual reasons for this apparent inconsistency between the approach of the two chapters for they are not stated in the *Report*. This is a bit surprising in view of

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28. *Id.*, Recommendation 86 at 214.

29. *Id.*, Recommendation 87 at 215.

30. *Id.*, Recommendation 88 at 215.

the obvious care with which the Commission sorts out the federal and state responsibilities in managing fish and game on public lands.<sup>31</sup>

Chapter 9 is one of the places in the *Report* where the Commission tackles head on the jurisdictional conflict between Congressional Committees, arguing that fish and wildlife values of public land management too often fall between the chairs because of divided jurisdiction among these Committees.<sup>32</sup> Recommendation 133<sup>33</sup> recommends consolidation of such Committee jurisdiction so that a single Committee will handle nearly all public land matters.

Federal officials should have final authority over fish and wildlife land use decisions according to the Commission.<sup>34</sup> Recognizing that a "major controversy"<sup>35</sup> has arisen because of the lack of clear statutory guidelines defining state and federal responsibilities the Commission reflects a distrust of state and local game management practices. Taking an approach counter to that expressed in Chapter 12 where the states' responsibilities are to be increased, the Commission recommends here that federal agencies should have the final word on a whole range of public land wildlife decisions, including the establishment of more restrictive (than states) harvest regulations, regulation of hunter density, determining how to direct harvest pressures, modification of habitat, manipulation of game populations, and the harvesting of excess fish and game.<sup>36</sup> One interesting and unexplained assumption underlying this portion of the *Report* appears to be that a sustained yield management program is good. It would have been helpful to have some comment as to why this level of yield was deemed best.

To assure better state-federal coordination on wildlife management the *Report* recommends what sounds like a good idea—that formal state-wide cooperation agreements be en-

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31. *See id.*, 159.

32. *Id.*, 157.

33. *Id.*, 284.

34. *Id.*, Recommendation 60 at 158.

35. *Id.*, 159.

36. *Id.*

tered<sup>37</sup> and that permanent federal-state fish and wildlife coordinating committees be established in each state, composed of federal land agency representatives, and representatives of the Governor or interested state agencies.<sup>38</sup> These committees would encourage coordination concerning habitat and population planning, developing of plans for special seasons on federal lands, development of uniform standards for wildlife habitat classification, and the conducting of public hearings on significant fish and wildlife actions contemplated for federal lands with the state.

The *Report* decries the lack of statutory guidelines for fish and wildlife objectives on public lands.<sup>39</sup> The Commission expresses special concern for rare and endangered species and recommends that federal land programs give hunting, fishing, birdwatching and the like equal consideration with other uses of public lands.<sup>40</sup> One result of this would be the opening of all available federal lands to hunting and fishing. Some military reservations have in the past been open only to military personnel for hunting and fishing; they would now be open to the public unless military considerations required otherwise.<sup>41</sup>

Another result of the upgrading of fish and wildlife values would be the adoption, by statute, of a habitat condition standard.<sup>42</sup> The standard recommended by the Commission is one of "no avoidable deterioration".<sup>43</sup> Standing alone this standard does not tell us much, because we don't know how avoidable "avoidable" is. Reading on, the Commission talks about minimizing the impact of development and use "as far as practicable", and leaving the habitat unchanged "to the extent possible".<sup>44</sup> Obviously further work must be done later to establish more particularized standards. The Commission does, however, say that where "key" wildlife habitat is modified or destroyed it "should be replaced in kind or with substi-

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37. *Id.*, Recommendation 61 at 159.

38. *Id.*, 159.

39. *Id.*, 160.

40. *Id.*

41. *Id.*, 164.

42. *Id.*, 165.

43. *Id.*

44. *Id.*

tute resource equivalents".<sup>45</sup> This sounds like a good idea to me, although I see problems in identifying real resource equivalents—every tract of land has a unique ecological structure. But certainly the habitat for certain animals can be replaced. As noted earlier, an unexplained assumption in this Recommendation is that the current level, and mixture, of wildlife is somehow the one we should maintain. Maybe this is so and maybe it isn't. No explanation is given in the *Report*.

While recognizing on one hand the decline in certain wildlife species, the Commission also noted that certain species have become at times too abundant to survive on the available habitat.<sup>46</sup> The Commission apparently concluded that the states have done a bad job in handling these situations, as, for example, in failing to create special deer seasons to reduce deer populations so large they cannot be supported by the available food supply. I know of one case in a western state in recent years where the deer population was allowed to get too large and a severe winter killed over 90% of the animals. If 50% of the deer had been harvested in the fall, the other 50% probably could have survived on the available food supply. Recognizing this problem the Commission recommends that where the states decline to keep such a balance, federal personnel reduce the animal populations to the proper numbers.<sup>47</sup> Also, in recognition that the population of some species such as deer now exceed the capacity of their habitat the Commission believes that predator control programs should be eliminated or reduced on public lands.<sup>48</sup>

A hunting and fishing use fee should be charged on all public lands open for such purposes.<sup>49</sup> As indicated earlier, this would be in addition to the general use fee charged to hikers and campers, and in addition to the special facilities fee that would be charged for campsites, etc. The Commission recommends in one place that the hunting and fishing fee be "nominal"<sup>50</sup> and at another place "reasonable".<sup>51</sup> I found

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45. *Id.*, 168.

46. *Id.*, 164.

47. *Id.*

48. *Id.*, 168.

49. *Id.*, Recommendation 65, at 168.

50. *Id.*, 172.

51. *Id.*

no very sound explanation as to why such a fee should be charged, other than that such a charge is "particularly appropriate".<sup>52</sup> As to the amount of the fee the *Report* gives even less guidance. Apparently the Commission felt well enough informed to recommend a fee of \$1 to \$3 in Chapter 12 for campers and hikers—the general use fee, but not well enough informed to recommend a specific amount for hunters and fishermen. At one place,<sup>53</sup> the *Report* notes that federal tax dollars have been spent for numerous projects and improvements on public lands which benefit hunters and fishermen. This might imply that the fees charged should cover these costs, but later I found the *Report* saying the fees should only provide "partial support"<sup>54</sup> for these costs. The *Report* suggests that fees could be varied to recognize differences in hunting and fishing opportunities<sup>55</sup>—thus tending toward a free market approach—the better the product the greater the demand and the higher the price. But the Commission said it favors, instead, "on an experimental basis, an initial system of uniform fees with variations for the types of fish and game".<sup>56</sup> No rationale whatsoever is given for this recommendation except to note that it is "similar to the variable price of fishing, small game, and big game licenses used by nearly all the states". Whether such a variable pricing system is wise, or whether it is appropriate for federal lands is not indicated. Nor does the *Report* say why this system should be treated as "experimental".

The Commission recommends that the state and federal governments should share on an equitable basis in financing fish and wildlife programs on public lands<sup>57</sup> noting the diversity of present cost sharing practices between different states and different federal agencies.

Lastly Recommendation 67<sup>58</sup> is most interesting; it urges the withholding of federal financial support to state wildlife

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52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

56. *Id.*

57. *Id.*, Recommendation 66 at 173.

58. *Id.*, 174.

programs in states that impose on "out of state" sportsmen unreasonably discriminatory license fees. This Recommendation arises out of a frustrating problem. U. S. Supreme Court cases, construing the federal constitution, ban unreasonable discrimination in license fees to residents of other states. Some differential is justified, of course, considering additional costs of enforcement and rescue problems posed by out of staters. However, the differences between resident and non-resident fees run as much as \$24 for small game permits to \$100 for big game permits and are frequently so high that they are obviously intended as a rationing device, to discourage many non-residents from hunting or fishing within the state. In addition, special tags and permits for particular species are often required of non-residents, and guides are sometimes required, making the cost of hunting for the non-resident truly prohibitive. The Commission argues that "no one should be granted a cost advantage to hunt and fish on the public lands due solely to his place of residence".<sup>59</sup> If the Commission's recommendations are implemented there will have to be significant changes in the charges made in many states. The Commission notes that the courts might one day strike down the unreasonable fees charged to out of staters but observes that court tests are often slow and costly; in the meantime the federal government can help by conditioning federal financial support programs on removal of discriminatory fee structures.

The interesting thing about this discriminating fee structure is that there is apparently a widely held notion in the public "mind", in spite of well-established constitutional principles to the contrary, that the residents of a given state should have priority on scarce game, and that the charging of high fees for non-residents is a perfectly proper means of rationing scarce game opportunities. This is especially so in some good hunting states that lie next to more urban and densely populated neighbors. Nonetheless the Commission felt strongly enough about this problem to make a special recommendation about how to handle it. I wonder, sometimes, how this conflict

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59. *Id.*



between public perception and constitutional principle (and Commission recommendation) should best be handled.

In summary I continue to find myself intrigued by the difference in tone between the fish and wildlife chapter and the recreation chapter. It seems that hunting, fishing and preservation of wildlife habitat were looked on with greater favor than camping and hiking. This may be something of an oversimplification, but it does point up a difference in approach that is more apparent than explained.

As I look over the whole report I have a pervasive concern that recreational uses of the public lands were somehow downgraded; that the *Report* reflects irritation with Sierra Club type claims for preserving the public lands for camping, hiking, mountain climbing and the like. In divvying up the public lands among miners, cattlemen, loggers, farmers, and recreationists, the last group may, in fact, get less consideration.

Also, I am concerned with the lack of standards by which federal recreational responsibilities, and even federal lands, are to be turned over to state and local governments for recreational administration. I can draw no clear picture from the *Report* as to the conditions under which this transfer is to occur. Without such a picture I remain less than sanguine about the ability and intention, of each and every state to effectuate well-planned recreational programs on federal lands.

Lastly, I cannot help but be disturbed at the unevenness of the *Report*, and at the number of internal inconsistencies and ambiguities apparent throughout. Lest this study end on an entirely negative note, I can see the PLLRC Report starting a bona fide public discussion about national, state, and local recreational goals and ways to achieve them. It contains some useful ideas, as for example the notion of federal-state wildlife coordinating committees, as well as the idea of charging fees for the use of the public domain. Some of these ideas, such as the former can be put into practice promptly. Others, such as fee charging should be given a great deal more study before being put into effect.