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John J. Schanz, Jr.

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ENVIRONMENT AND PUBLIC LAND LAW: ECONOMIC VIEWPOINTS

*John J. Schanz, Jr.**

AN examination of the Public Land Law Review Commission's Report reveals many recommendations that economists will probably accept as proceeding in the right direction though perhaps not as far as some might wish. Among these will be included the Commission's acceptance that the economic advantages of encouraging easy transfer of public lands to the private sector that prevailed in frontier days may no longer be as attractive now that these lands have become scarce and valuable. Now, and in the future, the returns to the national public may be greater if public land resource values are utilized in a more restrained fashion than in the past.

Certainly the recommendations of the Commission that favor retention of public control of these lands through the use of leasing mechanisms rather than granting permanent title will meet the approval of most economists, both in terms of the flexibility this will promote in the future use of the land as well as in the greater return to the general public through the Federal income derived. However, these leasing plans will have to provide the public land resource developer with an adequate measure of security and certainty if we are to encourage him to be efficient and orderly in his utilization. Provisions for security and certainty do not have to preclude requiring adequate protection of the environment on the part of the user as one of the lease provisions.

Finally, those recommendations of the Commission that require appropriate payment by the user for the public land

* Professor of Natural Resources, University of Denver; B.S., 1948, Pennsylvania State University; M.S., 1950, Pennsylvania State University; Ph.D., 1954, Pennsylvania State University.

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resource values he has obtained and those measures that will encourage rigorous competition among firms seeking to obtain public land resources for commercial exploitation will also meet with approval. So long as a competitive atmosphere is maintained, the typical economist would not be inclined to make special provisions to favor or protect the smaller operator.

It is unfortunate that there is essentially no economic analysis in the Commission's chapter on environment or in the supporting contractor reports. The quest for environmental quality has become the newest version of the "white hat syndrome". The environmentalists are the "white hats", while those who pursue so-called economic goals are the "black hats". I am not about to deny the worthiness of seeking a quality environment, but I will oppose vigorously the inference that economic goals must always be suspect and incompatible with a quality environment. Most economists feel that all who are involved in the exploitation of the public lands in their own self-interest—commercial firm, government, individual user, and environmentalist alike—should be subjected to the same economic tests and be expected to pay for value received when appropriate. Land use becomes far more disciplined when all participants must "pay to play".

Those who are inclined to think that only industry is economically motivated have the rather narrow engineering or commercial concept that "economics" is confined to the process of seeking material wealth. They seem unable to comprehend that "economics" is the application of a social science that is fully capable of accepting environmental quality as a "value" which should be included within the fabric of our national economy. I believe we will have made a major stride forward when our law students, environmentalists, and national leaders recognize that "environmental quality" and "economics" are not mutually exclusive terms.

All will certainly applaud the Commission's frequent references to their concern for the protection and enhancement of environmental quality. But, despite the Commission's apparent concern over the impact on the national economy of

their environmental recommendations in the commodity chapters, there are only a few brief referrals to the costs and economics of environmental protection in the environment chapter itself. There is no reference to the fact that in dealing with environmental problems we do frequently encounter economic limits in our derivation of acceptable solutions. The Commission identifies the economic motivation that leads to environmental damage. But it is equally important that we consider the economic costs of avoiding or repairing this damage, without this our evaluation is out of balance. The Commission in stating its goals for environmental protection did not explicitly come to grips with how we handle the costs of achieving these goals.

Speaking with the frame of reference that perhaps "economics" is broader than "profits" and "material affluence", what are a few economic perspectives that may be helpful in formulating our national goals with respect to preserving or enhancing our environment? As one hypothetical position, we might contemplate removing human inhabitants from the North American continent and putting "No Admittance" signs around the entire perimeter preserving a totally "natural" environment wherein the ecosystems could evolve without the unsettling influence of man's presence. I am sure that very few of us feel that this extreme of preservation has any merit scientifically or socially. Further, one should question whether environment without man's presence can be considered "natural" at this point in the history of the planet Earth. In the very long view, isolation of a continent or any part of our planetary surface with preservation of the environment as a goal has little real meaning since the ecosystems are transient in character. In time spans measured in millions of years, any part of the earth can become a wasteland with or without man's presence.

To hypothesize another extreme, our continent bulging at the seams with humanity is another unattractive terminal position. What may be the carrying capacity of the continent in terms of maintaining human existence without thought to the quality of that existence is unknown. However, the density of

populations in some of the world's nations would seem to indicate that given a low enough standard of existence we are not anywhere near that limit in North America.

Thus we discover that in dealing with environmental problems we are frequently seeking some acceptable intermediate position between extremes. The economist recognizes this as a trade-off between two sets of costs wherein we seek to arrive at the lowest public cost. For example, if we would set aside the entire continent as wilderness preserve, the opportunity cost of denying ourselves productive use of the entire continent for other purposes would be intolerable. I think you will agree that we would be hard put to justify an over nine million square mile wilderness preserve. At the other terminal position, we have the aggregate cost to the populace of existing in an over-populated environment at the lowest level capable of supporting life. We may not normally think of a lower quality of existence as a "cost" but it is a loss of "value" just as much as when an acre of ground that could be used to raise crops is not used or put to some lower value use.

My purpose in putting environmental quality into a cost framework is to attempt to avoid the common deception that "original" environment tends to be "good" and that everything that changes the environment tends to be "bad". All that we can really say is that man's arrival normally changes the environment from what it was prior to his arrival. The changes he makes may add or subtract from the quality of the environment depending upon the value standards employed. Within that value system, the key test is whether or not there is a net public gain when the assessment of man's use includes the accompanying change in environmental quality, be it for better or for worse.

Our basic problem in handling this situation is not in the economic concepts involved but rather in our inability to measure "value" and to analyze very complex and dynamic systems. Intuitively I accept that a continent that is all-recreation, all-wilderness, all-agricultural, all-forestland, all-industrial, all-residential, or all-anything is nonsense. But when we try to determine what proportion of the continent

should be devoted to each of these pursuits at any given moment, knowing that today's optimum land use may no longer be acceptable ten years from now, we founder. The problem becomes smaller in dimension if we face the decision of what to do with one square mile of public land but the complexity is still there. About all that one can say is that there must be one or a combination of uses that should provide the most "satisfaction" to the population of the United States in terms of its material wealth and personal well-being at this point in time.

As I read the Commission's chapter on Environment, I wonder if this particular section does not encourage the reader to fall into the trap that many uses of the public lands tend to be "bad" and that preserving the existing environment is "good". I feel that the approach of the Commission would have had more balance if there had been more discussion of the public cost of maintaining and enhancing the quality of environment. The Commission does not make clear that it recognizes that "quality at any cost" is a mirage. One would then wonder how the proposed classification system will handle the very difficult process of balancing quality against cost.

The desire for environmental preservation and enhancement is actually a canopy that spreads over a whole spectrum of goals and motives. A close inspection of the aims of the environmentalist reveals that not all of them carry equal weight in terms of the interests of the national public. The environmentalist in his public pronouncements does not necessarily draw attention to the distinction that exists between pollution, physical alteration, and the character of our surroundings. There is no clear line of demarcation between these but there are important differences.

There can be no denial of the compelling public interest that is involved in the threat to public health and safety resulting from most forms of air and water pollution. Within the framework of prohibition that must be employed to arrest this type of environmental damage, our major concern should be to determine proper quality standards and to select the most effective way of achieving them.

In the case of physical alteration or damage to the environment, the public need is not so absolute. Here the normal benefit/cost concept is generally applicable. The test must be whether or not the environmental impact on the public lands is more than matched by the benefits to be derived from that particular use. Moreover, the land user must be prepared to incorporate all or part of the costs of damage or reclamation of the land within his cost structure when this will protect the public from incurring the user's external costs. There is also the case of non-use. The environmentalist who seeks to preserve portions of the public lands because of historical, scientific, or ecological considerations should be prepared to defend this choice in the same fashion as commercial interests seeking to produce material wealth. If the rewards of such preservation are more than the potential losses involved in foregoing other uses of the land, then adequate justification for preservation has been made.

Finally, there is the consideration of the character of the environment. The environmentalist who seeks to preserve a natural or some other type of environment because he prefers that particular quality of surroundings cannot profess to speak for the public interest. Perhaps his tastes are discriminatory and reflect what a mojirty of the populace do, or should, expect of their environment. But we cannot ignore that in this case his own personal value judgments are involved ad that he should have a no greater leverage than other individual or group interests in determining how our land and resources should be employed. Since individual preferences are involved and the values are abstract or subjective the benefit/cost analysis is not readily applicable. Perhaps the only approach is to attempt to rank preferences for the type of environmental qualities sought through some weighting process based on the size of the various publics to be served. On this basis, the public land user who seeks a low density of human population in the public lands will have to share his public land allocation with those that will accept or prefer greater user-densities.

Considering the difficulty of the environmental problem, it is not surprising that the Commission's recommendations are the broadest sort of guidelines. As we attempt to develop decision-making processes which can translate these generalities into specific programs concerning environmental protection in public land use, I would hope that the following factors will be recognized.

1. Since ecosystems are going to change with or without man's presence, our concern must not be with whether or not man has an impact on the ecosystem but whether or not the resulting rate and degree of change in that particular system can be tolerated.

2. Both use and non-use of the public lands involves a cost. The goal must be to find the lowest public cost (or greatest public benefit).

3. In dealing with either the total benefits or the total costs of public land use, our measurements and analyses are still crude but we should not consider ourselves totally helpless in terms of coming close to the best solution. Even if we cannot quantify all of the values, approximate ranking of relative benefits and costs can assist us in seeking the best use through a disciplined approach rather than an emotional one.

4. Environmental quality has a "value" and can be introduced into our normal system of seeking economically-motivated goals. The problem has been that we have not attempted in the past to include it in our decision-making process.

5. Our environmental problem is frequently people not industry. Much of commerce and industry's behavior is basically a reflection of the public with which it must deal. If we too readily accept 'profit-making' industry as a convenient scapegoat, we may miss attacking some of the roots of our difficulty.

6. Since we cannot determine our "set" of national values, if they exist at all, it is difficult to establish how much environmental quality our populace is willing to pay for.

7. Beyond avoiding immediate health hazards, it is unlikely that the public will respond very strongly to measures seeking to control population, to de-emphasize consumption, to require payment for or abstention from polluting, or to change drastically our traditional pattern of public land use. In contrast, public reaction to actual scarcity or high costs in material resources may tend to be immediate and sharp leading to increased pressures on our public lands.

8. An environmental preservation case based on protecting the rights of coming generations has limited appeal. To deny present generations the use of resources that are amenable to replenishment, recycling, or technologic augmentation is a narrow social concept. This argument should be reserved for those public land uses which threaten to trigger extensive and irreversible changes to ecosystems or which entail the destruction of a "state of existence", *e.g.*, a species of life, a natural phenomena, and so forth. In this latter case we could thrust upon a future generation a cost that they might not have wished to incur. In these cases, a careful accounting of the values involved is essential, but beyond this we should be cautious of a misplaced concern for unborn generations.