Land & Water Law Review

Volume 6
Issue 1 *Symposium: An Analysis of the Public Land Law Review Commission Report*

Article 31

1970

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LAND AND WATER
LAW REVIEW

VOLUME VI 1970 NUMBER 1

THE ENVIRONMENTAL IMPLICATIONS OF THE REPORT OF THE PUBLIC LAND LAW REVIEW COMMISSION

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ENVIRONMENTALISTS have awaited the Report of the Public Land Law Review Commission fearing the worst. They knew the Commission came into existence as a vehicle to express the views of its chairman, who embodies the traditional views of the rural West. Knowing he feels that public policy has been placing too much emphasis on noncommercial concerns, they felt certain the report would consist of a forceful and coherent case for the commercial users of public lands. In short, they visualized the report as another episode in the century-old drama of conflict between the Congressional spokesman for those interests and the conservation concerns of the rest of nation.

At first blush, a reading of the Public Land Law Review Commission *Report* seems to confound those expectations. As one reads along, it is clear the draftsmen seem to be struggling with a variety of contending forces. The recommendations appear to be the product of compromise within the Commission; the text seems to be the work of many people. One is tempted to read the *Report* as the record of a series of contests: between the rural western members of the Commission and the other more conservation-minded members; between the Presidential appointees and the Congressional appointees, reflecting in turn tension between the Executive and Legislative branches; and as a contest between the chairman and the staff.

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The text is replete with evidence of internal arguments between those forces, and at times the arguments are left unsettled in a fashion that leaves the draftsmen looking peculiar for having asserted something baldly in one paragraph that is rebutted in the next.

One is almost tempted to concede that this is not a one-sided *Report*—the evidence of compromise seems to be shot through the text. But then one wonders whether this impression has been deliberately fostered. Why should the draftsmen make themselves look so frustrated by ever-present rebuttals and qualifications? The answer may simply be to convince the reader that the *Report* pursues a middle course and that all the reasonable compromises have been struck. This impression would tend to protect the *Report* from further modification.

It is then logical to ask: is the *Report* as balanced as it purports to be? If one leaves aside the language used to characterize the recommendations and looks at the essence of them and the basic pattern they assume, it becomes apparent that the *Report* is not balanced. In fact, the pattern is one of preserving maximum advantage for western commercial interests to the extent that it may still be politically feasible to do so in the closing third of the twentieth century.

One way of testing this hypothesis is to look at the basic tasks that environmentalists felt were the useful ones for the Commission to undertake and to examine the relevant responses of the Commission. Environmentalists felt the Commission could usefully have served the following functions:

1) it could recommend repeal of the backlog of obsolete disposal laws, and enunciate a clear policy for retaining nine-tenths or more of the public lands in a permanent public land reserve;

2) it could suggest some modern management authorities for the Bureau of Land Management;

3) it could recommend reform of the antiquated mining laws so as to protect environmentally sensitive areas;

4) it could suggest ways to strengthen environmental programs on public lands;

5) and it could undertake the housekeeping tasks of recommending revisions in federal laws to make them more uniform, consistent, and rational in their treatment of interested parties: users, land claimants, and local government.

COMMISSION RESPONSES

Disposal

While the Commission concedes that most of the existing disposal laws are obsolete,[1] it consciously stops short of enunciating any real policy on retaining public lands. Rather it articulates a new policy for disposing of the public domain.[2] It acknowledges that the majority of the public lands will probably be retained, but it is not clear whether the percentage retained should be closer to 51 or 95 per cent. Presumably, the figure will not be close to 95 per cent because the Commission says it is against "wholesale" retention.[3]

Curiously enough, the Commission seems to endorse the system the Bureau of Land Management is now using under the temporary Classification and Multiple Uuse Act for determining which lands should be retained,[4] and it calls for continuation of the same system.[5] Nevertheless, the Commission chastizes the BLM for classifying about 90 per cent of its lands (outside of Alaska) for retention, saying its planning was "hurried" and "inadequate,"[6] though admitting that Congress imposed a tight deadline. While calling for review of these classifications, the Commission says categorically, without citing any basis for its conclusion, that these classifications "should be changed."[7] The implication is clear that the Commission thinks too much has been earmarked for retention.

1. PUBLIC LAND LAW REVIEW COMM., ONE THIRD OF THE NATION'S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS 4 (1970). [Hereinafter cited as REPORT].
2. *Id.*
3. *Id.*, 48.
4. *Id.*, 46.
5. *Id.*, 54.
6. *Id.*, 53.
7. *Id.*

The Commission enunciates a new disposal policy which offers every commercial user, except the timber industry, a basis for acquiring pieces of the public domain which should be useful in their operations. Farmers and miners would be given an unconditional right to acquire any public lad in the national forests or under the BLM which they could feasibly use, regardless of how great competing public values might be.[8] The marginal dust-bowl lands that the Forest Service has restored in land utilization projects would be sold off again to farmers.[9] Grazing interests could get what they want of the public domain and the national forests, as long as no important public values were jeopardized—a slight concession. Utilities, irrigators, and builders could buy the sites they want for power stations, lines, canals, resort projects, and commercial buildings[10] wherever they propose heavy investments, regardless of how great competing public values might be. Wherever summer cabin sites are not needed for public recreation, these would be sold off.[11] To make things simple, all restrictions on eligible claimants would be waived; corporations, out-of-state buyers, and land speculators would all be eligible and they could get as much as might be needed to accommodate their projects.[12] The only requirement would be that they actually devote the land to the project for a short period.

Despite the fact that no suitable indemnity lands exist in some western states. the Commission recommends that state land grants be pushed through to a conclusion under antiquated expectations.[13] Regardless of the importance of outstanding natural areas in Alaska that deserve national protection, the Commission also recommenls that the state of Alaska be given priority in its state selections (for up to one-third of the state), which it plans to use for commercial purposes.[14] As a matter of accommodation, the Commission concludes by recommending that the title of illegal occupants of railroads rights-of-way be confirmed, and it recommends

8. *Id.*, 177-178, 127.
9. *Id.*, 180.
10. *Id.*, 220.
11. *Id.*, 224.
12. *Id.*, 183-184, 265.
13. *Id.*, 245.
14. *Id.*, 249.

allowing trespassers on the public domain to quiet their titles under the claim of adverse possession held in good faith (conceivably this even extends to national parks and wilderness).[15]

The Commission's only restriction on this largesse is that it suggests that Congress reserve the decision to itself in cases of exceedingly large and valuable acreages.[16]

To make sure that these disposal policies are not outflanked by active programs to acquire too much new public land, the Commission, which inveighs against "unnecessary land acquisitions," recommends curtailment of acquisition approaches. It suggests that the Forest Service should limit its acquisitions under the Weeks Act, which are largely predicated on watershed values, to "critical watersheds"[17] alone. It recomemnds that watershed land, which does not rise to this status, be open to disposal where it has already been acquired.[18] It suggests the National Park Service should place maximum reliance on acquiring less than fee interests, such as easements, in rounding out its system.[19] It recoils from employing the technique of immediate taking to prevent price escalation or the loss of a wasting asset except in "special situations," as in the case of the Redwood National Park.[20] While recognizing that it is theoretically defensible, the Commission turns down the use of federal zoning to protect its lands when they adjoin private lands, and instead suggests reliance on easements, and restrictive covenants where it has already disposed of land.[21]

The most that can be said for the Commission's recommendations on disposal is that "wholesale" disposal of the bulk of the public domain is not recommended, and that the disposal "game" would no longer be played within the thicket of all the old disposal laws. The Commission, however, would build a new and more efficient system to get rid of the public domain wherever a plausible taker can be found.

15. *Id.*, 261-262.
16. *Id.*, 265.
17. *Id.*, 153.
18. *Id.*
19. *Id.*, 268.
20. *Id.*
21. *Id.*, 266.

Management

After complaining about the way in which the BLM has classified lands for retention, the Commission does concede that the BLM needs permanent management authority, and it recommends that it be given it.[22] The Commission also endorses the general planning and management system the BLM has developed for its lands, though it expresses its impatience with the lack of guidelines for resolving land allocation conflicts, having to confess, however, its own inability to find any satisfactory ones.[23] The Commission also suggests that the BLM be given police authority to apprehend vandals and those who violate its regulations.[24] And finally, it suggests that the BLM and other land management agencies be obliged to prepare the management plans they have customarily been preparing.[25]

Up to this point, the Commission's recommendations on management are helpful, if not particularly novel. Beyond them, howevere, the Commission's management recommendations embody a steady regression away from balanced management. The regression has its genesis in the Commission's amazing inability to determine whether the national interest and the sovereign interest of the federal government should be paramount in managing federal lands.[26] It regards these interests on a par with local and regional interests and the interests of commercial users.[27] Actually, the Commission confesses in due course that it thinks "greater consideration must be given to regional and local impacts" in public land management,[28] and the Commission is at pains throughout the report to find ways of elevating the role of the states. Also, the Commission looks upon non-commercial users, such as recreationists who have no personal profit at stake, as no more disinterested and deserving of consideration than the most self-serving economic interest.[29]

22. *Id.*, 51.
23. *Id.*, 48.
24. *Id.*, 86.
25. *Id.*, 52.
26. *Id.*, 57.
27. *Id.*
28. *Id.*, 284.
29. *Id.*, 38.

The Commission states finally that it is also committed to protecting adjoining private property owners from any adverse impact from federal lands, and it calls for strong controls to prevent fire, insect, and disease outbreaks from having any such impact. (This applies to wilderness areas too, where federal managers now try to balance public and private interests in determining whether full suppression is warranted).[30]

The Commission makes it clear that it does not think there is much contest in present concepts of multiple use,[31] but it is not very clear in articulating the new concepts it suggests. Basically, the Commission seems to feel that the output of goods and services from public lands ought to be pushed to maximum limits.[32] Presumably uses would be combined and managed in the fashion that produces the greatest total output. While the Commission observes that it is not thinking just of economic output, the calculation of output does put a premium on measurability and standard units of comparison. The dollar is the only unit that is even partially useful for this purpose. Thus, the new system appears to reflect a basic bias toward maximizing economic output, and it contradicts the present stricture in the Forest Service's Multiple Use Act against necessarily favoring the "combination of uses that will give the greatest dollar return or the greatest unit output."[33] The aim of maximizing output is also not qualified by the twin goals of maintaining sustained yield and productivity of the land, as the Forest Service's Multiple Use Act also now requires.[34] This emphasis on economics is further reinforced by a suggestion that land management agencies justify their budgets in terms of benefit-cost ratios for both their commodity and noncommodity programs.[35]

The Commission joins its emphasis on maximizing output with a system for classifying lands for "dominant" use where there is a particular use which is thought to clearly represent

30. *Id.*, 82.
31. *Id.*, 45.
32. *Id.*, 42.
33. *Id.*, 45.
34. *Id.*
35. *Id.*, 56.

the highest use of the area.[36] Despite the subjectivity of such a determination, the Commission feels this approach will settle many disputes between users.[37] Land managers will select the areas to have dominant uses, just as the Forest Service did at one time. Within such dominant or primary use areas, all compatible secondary uses would be encouraged to further maximize the output of goods and services. It is implied that this should be the practice even within national parks and wilderness areas,[38] just as it is now within national recreation areas and wildlife refuges. Unlike the way the Forest Service once used the dominant-user system, however, the Commission acknowledges that not all areas will have a dominant use. Within zones lacking this designation, the Commission seems to imply that all uses which the area is physically capable of sustaining are to be accommodated.[39] Presumably this would require all trees to be cut in undesignated areas, as in small campgrounds that do not fall within dominant recreation areas.

Within areas in which timber is supposed to be the dominant value, all the emphasis is on economics. In place of emphasis on biological factors, the Commission suggests making marketing factors crucial in setting allowable cutting levels, including the rate of return on investment.[40] It feels current cutting levels should be increased based on a faster liquidation of the old growth and on shorter growing cycles.[41] It calls for an accelerated program of constructing timber access roads from appropriated funds, and it calls for a special earmarked fund from timber sale receipts to finance these and other intensive management activities in the areas dominantly valuable for timber.[42] This fund is to be set up to promote increased cutting despite the Commission's professed antipathy to earmarked funds. However, the Commission simultaneously calls for an end to Knutson-Vandenberg reforestation funding because this type of earmarking, which has accounted for

36. *Id.*, 48.
37. *Id.*, 11.
38. *Id.*, 48.
39. *Id.*, 42.
40. *Id.*, 97.
41. *Id.*
42. *Id.*, 114.

most of the reforestation done to date, is alleged to be "back door financing."[43]

Special concessions are also made to grazing interests. Despite the Commission's emphasis on receiving fair market value in selling public land or the right to use public land, the Commission recommends keeping grazing fees at less than fair market value to conciliate ranchers who bought their ranches with the value of low grazing fees for their permit reflected in the purchase price.[44] Moreover, the Commission appears to recommend that the graziers also be allowed to deduct the full value of their range improvements from their permit fees, regardless of how temporary the improvements may be.[45] This gives them a windfall in that they get both the value of the improvements and a reduction in a price that was predicated on the value of the permit without improvements.

Within the field of recreation, the Commission's changes would liberalize the rules for private resort developers by removing the 80-acre limit on term permits.[46] However, the development of recreational facilities by federal authorities would be made more difficult. The federal government would be under a mandate to sell or lease all its heavy development sites that are not nationally significant, to state or local interests unless there is some overriding resource conflict.[47] If there is no taker, the federal government would be barred in proceeding with anything but minimal protective facilities unless the state would agree to share the cost.[48] the federal government would also be under a mandate to quit just serving public demand and start justifying its recreational expenditures in economic terms.[49] Visitor counts, costs per visitor-day, impact on regional economics, and the opportunity costs of displaced commodity development would be guiding factors. To further make sure that recreationists do not benefit from a "free good," the Commission calls for imposition of a gen-

43. *Id.*, 286-87.
44. *Id.*, 118.
45. *Id.*, 114.
46. *Id.*, 222.
47. *Id.*, 199.
48. *Id.*
49. *Id.*, 214.

eral entry fee on all public lands.[50] This would be in the form of a license that would be in addition to facility fees, such as the Golden Eagle permit. Finally, to assure that excessive recreational staffs are not built up, the Commission advocates that agencies share their recreational staffs.[51]

Mining Law

While the Commission purports to retain the location-patent system of mining for the minerals presently under it, actually major changes are recommended which, in many respects, resembel a mineral leasing system. During the exploratory phase an exclusive right is conferred under rental fees. These fees, however, are to be reduced by the amount the miner invests in exploration, so that the government actually subsidizes the work.[52] During the development phase, a permit is issued which can set some terms for environmental protection and rehabilitation. And during the production phase, the arrangement is embodied in a contract that carries along the environmental restrictions and sets performance requirements. A royalty would be imposed, and while patents could still be acquired, they would ordinarily be limited to the mineral estate, would still carry a royalty with them, and would terminate on the close of production.[53] The surface estate could be patented only when heavy investments are required, and fair market value would then be asked.[54]

This system certainly provides a more orderly system for regulatory mining, and it will assure some income to the federal government. Nevertheless, unlike the mineral leasing system, under this system, mining still occurs at the option of the miner not the government. No power is given the government to stop mining from taking place in any place, no matter how great the competing values may be. In fact, the Commission articulates a new policy of giving mining a priority over "all other uses on much of our public lands."[55] While the explora-

50. *Id.*, 203.
51. *Id.*, 284.
52. *Id.*, 126.
53. *Id.*, 126-29.
54. *Id.*, 128.
55. *Id.*, 122.

tion permit and the development contract presumably give the government some bargaining power, it is also made clear that "an administrator should have no discretion to withhold a permit."[56] This lack of discretion would inevitably produce charges by miners that the government was unreasonably withholding a required permit, and can only incite endless argumet and litigation. If a true contract is being proposed, the government should have the power to withdraw whenever it feels the situation is not suitable—as any other contractor can.

Four commissioners dissented from this recommendation and called instead for general application of the simpler mineral leasing system, as have most conservationists.[57] They point out that, to avoid arbitrariness, Congress can set the criteria by which the Interior Department can determine where and when mining will be allowed.[58] In defending its recommendation, the majority of the Commission seems to acknowledge that its system will perpetuate the complications of three different systems of mineral disposal (Mining Law of 1872, Mineral Leasing Act of 1920, and Materials Act of 1964 for common stone), and this is particularly true in cases of intermixed minerals, such as dawsonite in oil shale.[59]

The Commission seems to be unwilling to embrace a mineral leasing system *per se* because of its fear that not enough land would be held open to mining. In other sections of the report, the Commission calls for severe curtailment of the executive power to make mineral withdrawals and other protective withdrawals and reservations.[60] In fact, it calls for repeal of the Antiquities Act under which many national monuments have been set aside, monuments which have served the American people well in protecting fragile resources.[61] The Commission makes it clear that it thinks "that *all* public lands should be open without charge to nonexclusive [mineral] exploration which does not require significant surface dis-

56. *Id.*, 127.
57. *Id.*, 130.
58. *Id.*, 132.
59. *Id.*, 134.
60. *Id.*, 54.
61. *Id.*

turbance."[62] It is not clear whether this would apply to national parks, but the Commission elsewhere urges that mineral surveys be made of national parks and monuments, and other natural reserves now closed to mining, to determine whether they contain developable mineral resources.[63] While the Commission does not at the present time call for mining in these areas, and in fact calls for barring mining in the four park units which are now anomalously open to it,[64] it does suggest that these mineral resources be regarded as standby reserves for use in national emergencies.[65]

Finally, the Commission suggests that application of the new location-patent system it recommends be extended to five public land states where the General Mining Law does not now operate: Minnesota, Wisconsin, Missouri, Kansas, and Nebraska.[66] These states, then, could also enjoy the problems that the other western states have with this system of mining. It should be noted, too, that the Commission calls for stepped-up mineral development of the oceans with the aim of maximizing economic return to the nation.[67] No environmental constraints are suggested, and no closures to oil drilling on the outer continental shelf are contemplated.[68]

From an environmental standpoint, the Commission's recommendations on mining can only be regarded as "two steps backward, for every step forward." While a limited system of controls would be instituted, more areas would be open to mining because of the curtailment of the withdrawal power. Parks would be threatened, and mining would be enthroned on nearly all other public lands.

Environmental Recommendations

The Commission acknowledges environmental concerns at many points in its Report, and treats them explicitly in three

62. *Id.*, 125-26.
63. *Id.*, 123.
64. *Id.*, 205.
65. *Id.*, 123.
66. *Id.*, 124.
67. *Id.*, 195.
68. *Id.*, 191.

chapters on the environment, fish and fildlife, and outdoor recreation. On their face, the recommendations in these chapters are, on the whole, useful, though many are general in nature and only potentially helpful. However, environmentalists have to be dubious about the chances that these recommendations can ever actually prevail in light of all the commercialism implicit in the commodity-oriented chapters. With commodity output to be maximized, mining made paramount, and disposals to be encouraged, environmental concerns are bound to be subordinated in fact, if not in theory. The subject matter of fine-sounding environmental planning systems will be preempted by high-speed commodity production programs.

Nevertheless, the suggestions in the *Report* deserve to be noted. First of all, the Commission recommends that environmental quality be enshrined as a purpose of public land management, along with the other multiple uses.[69] Then, it recommends that a system be developed to classify levels of environmental quality that should be maintained where these qualities are particularly important, and constraints could then be imposed on use.[70] Features such as air, water, biosystems, and the quality of human experience illustrate the kind of qualities to which the system might apply, but no specific approach is endorsed. Zoning to protect natural scenery would supplement this classification.[71] To further maintain environmental quality, the Commission suggests that conditions be attached to the terms of federal leases, permits, and product sales agreements to require compliance with relevant environmental quality standards. These standards, as the Commission sees it, should be set largely by the states, under federal supervision. The restrictions, too, would only apply in local use and processing.[72] Enforcement would probably depend on the state citing a violator. If past experience is any guide, this may not happen too often.

In the realm of general reforms, the Commission also proposes revising the National Environmental Policy Act so that

69. *Id.*, 70.
70. *Id.*, 73.
71. *Id.*, 205.
72. *Id.*, 81.

it applies to all, and not just major, federal activities which significantly affect the quality of the human environment.[73] Because of the requirement that such actions must still have a significant effect, it is not clear how much of a liberalization this amounts to, but it will undoubtedly be useful. The Commission likewise calls for making predevlopment impact studies mandatory[74] for such projects as roads, dams, open-pit mines, large resorts, power lines, and timbering. Where these projects are federal, this may already be required by the Environmental Policy Act. Finally, where past abuse has already damaged the environment, the Commission calls for research and surveys on ways of rehabilitating damaged areas.[75]

Some of the Commission's recommendations are more specific. It advocates an immediate inventory of all sites within holdings of the Bureau of Land Management and the Forest Service that potentially qualify for addition to the National Park System, the National Wilderness Preservation System, the Scenic and Wild Rivers System, and the National Trails System.[76] While limited inventories have already been done, as those who have long been awaiting Congressional action know, these additional inventories would still be useful. Most significantly, the Commission does call for temporary withdrawals of these areas pending Congressional action.[77] The Commission also calls for keeping wilderness reviews under the Wilderness Act on schedule, and for initiating surveys of de facto wilderness that Congress could consider following completion of action scheduled through 1974.[78] With respect to the National Park System, the Commission advocates phasing out nonconforming uses and acquiring inholdings.[79] And with respect both to that system and the related Wilderness System, the Commission advocates rationing use on a first-come-first-served basis to prevent overuse, which it says is destroying too much of the natural environment.[80]

73. *Id.*, 77.
74. *Id.*, 80.
75. *Id.*, 87.
76. *Id.*, 198.
77. *Id.*, 199.
78. *Id.*
79. *Id.*, 205.
80. *Id.*, 207.

Finally, the Commission calls for creation of a Natural Area System to preserve "examples of all significant types of ecosystems."[81] The Commission, however, feels that federally owned natural areas should be leased out to universities to administer them.

The Commission has a number of other specific recommendations of environmental significance: it recommends making the BLM eligible to receive Land and Water Fund monies;[82] it recommends acquiring rights-of-way to public lands where private owners have blocked access;[83] it recommends substantial curtailment of the predator control program;[84] it recommends giving a general priority over all other uses to protection of rare and endangered species;[85] it recommends extending a special preference in land management to the needs of species that are largely dependent on public lands for their habitat, such as mountain goats and moose; and it recommends giving equal attention to the needs of nongame and game species.[86]

The Commission's better recommendations are counterbalanced by some undesirable ones. While calling for completion of the Wilderness System, the Commission also calls for raising the standards for admission to the system, specifically by requiring "uniqueness" (which is not now required) as well as "wildness" to be admitted.[87] Lest the federal government acquire too much land, the Commission warns against making the Land and Water Conservation Fund permanent.[88] Also to minimize the amount of land needed for recreational sites, the Commission advocates rotating these sites to permit logging, mining, and grazing on them.[89] The Commission suggests further that thee sites should be chosen so as to minimize conflicts with commodity uses. Apparently, the Commission does not feel the environmental qualities of these sites are very

81. *Id.*, 87.
82. *Id.*, 215.
83. *Id.*, 214.
84. *Id.*, 168.
85. *Id.*, 160.
86. *Id.*
87. *Id.*, 214.
88. *Id.*, 216.
89. *Id.*, 206.

important nor deserve to be perpetuated. The Commission also wants the federal government to pay for the water needed for national parks, wildlife refuges, and forests despite the fact that the Supreme Court has confirmed federal rights to the needed water under the implied reservation doctrine.[90]

Finally, the Commission recommends severe curtailment of the rights of environmentalists to seek judicial review. Expressing apprehension about the dilatory effects of the extensive environmental litigation that has unfolded in the past year, the Commission suggests that only those who have been a party to the administrating action being reviewed ought to be able to seek judicial redress.[91] This curtailment would make it impossible to bring "private attorney general" type actions, in that it is in the nature of these actions that the plaintiffs have not been a party to the transaction that is alleged to be illegal. Lawsuits involving timber sales, such as the Sierra Club and others have brought in Alaska and Colorado, and suits challenging resort permits, such as the Sierra Club has underway with respect to Mineral King in the Sierra, would be impossible if this restriction were adopted.

If all the Commission's acceptable environmental recommendations were to be adopted, environmentalists would feel far less apprehensive about the import of the rest of the Commission's recommendations. However, in light of the fact that most of these environmental proposals are far from new, and in many cases have been languishing before Congress for some time, it is hard to believe that they will become realities in time to counter-balance the rest of the report.

Housekeeping Tasks

Of its various functions the Commission probably best performed its housekeeping tasks of finding ways to make public land laws more logical and consistent. Among its best recommendations are: reform of administrative procedures to provide greater opportunity for public participation, including more frequent hearings (though, these would be man-

90. *Id.*, 149.
91. *Id.*, 257.

datory only on the call of state government or the Council on Environmental Quality);[92] in lieu-tax payments on public lands under a sliding scale in place of revenue sharig which puts a premium on commodity output;[93] and general adherence to fair market value in pricing goods and services from public lands,[94] (though graziers and miners would get discounts for the value of improvements of primary value to them). Fair market value, however, would not be required in the case of nonconsumptive uses of public lands.[95] The Commission also provides a salutory clarification of the role of the federal government with respect to jurisdiction over resident wildlife,[96] and it suggests ways to modernize exchange and appraisal procedures.

On the questionable side, the Commission suggests that the federal government retrocede to the states its exclusive legislative jurisdiction over certain public lands, mainly some 11 million acres of national parks. While it is asserted that this is necessary to allow modern state civil codes to be made applicable to national parks, there is no discussion of the size of permanent residential populations in the parks needing such codes, and, more to the point, whether such populations should be permitted to develop at all. It is also asserted that the supremacy clause adequately shields park administrators from state interference, but employment of this shield required the federal government to adopt a defensive legal posture.[97]

CONCLUSION

Under the recommendations of the Public Land Law Review Commission, a majority of the public lands would be retained, but an old set of disposal laws would be replaced by a new set; and most prospective takers would be indulged if they will pay fair market value. The administration of public lands

92. *Id.*, 81.
93. *Id.*, 238.
94. *Id.*, 287.
95. *Id.*, 3.
96. *Id.*, 158, 271-272.
97. *Id.*, 279.

would be tidied up to some extent, but management would put a premium on product output. The miners would have to operate under somewhat more restrictive rules, but more areas would be open to them. Supposedly, conservationists would get their choice areas protected, but nothing is promised beyond inventories and short-term withdrawals. Conservationists could also try to perfect environmental classification systems, but intensified commodity programs would go into operation at once.

The balance is not one to inspire much hope. Environmentalists will be looking for a better blueprint for the future of public lands.