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LAND PLANNING ON PUBLIC LANDS: THE PLLRC REPORT

*Ira Michael Heyman**

PLANNING in general, and land use planning in particular, is concerned, in gross terms, with describing the present situation, forecasting what will occur, determining what ought to occur, and recommending decisions and processes that will maximize the probability that what ought to occur will. Land use planning for the public lands must address a number of questions: to what uses and activities are the lands presently being put; how effective are the outcomes when measured against a variety of criteria (*e.g.*, production, environmental protection, local and regional economic health); what demographic, economic, technological and ideological changes are probable in the future that will cast new and different demands on these lands; what goals should be satisfied regarding future uses and activities; and, finally, what processes will make the satisfaction of these goals more probable.

“*One Third of the Nation’s Land*” is an important land planning document for two reasons: First, the *Report* explicitly and implicitly, sets forth a number of goal statements. Secondly, it recommends a series of processes to accomplish these goals. I will seek here to comment in some detail on both aspects of the *Report*.

At the outset, I want to stress a critical duality that runs throughout the PLLRC Report in both the “commodity” and “process” chapters. On the one hand, the Commission con-

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stantly stresses increased production of the commodity and service fruits of the public lands. On the other, however, it pays considerable attention to environmental protection. The Commission refuses to opt for any general principle that will determine the eventual conflicts between the two. Rather, it recommends a planning and management system which, in my view, will bring conflicts into the open and arm the contestants to do effective battle. The reasons for this characterization are explored in the second part of this paper.

GOALS FOR PLANNING AND MANAGEMENT OF THE PUBLIC LANDS.

Putting aside the recommendations concerning environmental protection, the PLLRC Report does not propose radical reordering of priorities for planning and management of the public lands.¹ The Commission phrases the ultimate goal for planning and management as maximization of net public benefit.² It envisages that Congress can detail the factors that define public benefit and that an efficient planning system can be devised that will transform these factors into effective allocation decisions. This seems to indicate that the Commission has left entirely to Congress the determination of the ingredients of public benefit and provides no goals itself. This is not true. The *Report* is studded with value judgments with important allocative effects.

A survey of the *Report* finds the Commission generally in favor of (a) increasing the production of resources in view of probable future demand, (b) continuing to assign the production role mainly to the private sector with production rates keyed to market considerations in regional contexts, and

1. Some might say that the Commission's opposition to wholesale disposal of the unappropriated public domain urges a fundamental change. The introduction to the Report, for instance, states that "[f]or reasons that we will detail, we urge reversal of the policy that the United States should dispose of the so-called unappropriated public domain lands." ONE THIRD OF THE NATION'S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION, (1970). [Hereinafter cited as REPORT]. But as the Report itself recognizes, the disposal policy has been rejected defacto for thirty-five years or longer (REPORT, 42-3) and only a Commission recommendation to the contrary would have been one for radical change.
2. This is also the ultimate criterion for the disposal retention decision. REPORT, 42, 46, 48.

(c) providing various systems to protect environmental values. In sum, the Commission's value judgments largely reflect both prior policies and the newly emerging public concern with environmental quality.

(a) Increasing Production

The *Report* consistently urges increased production of various commodities and services. Timber needs, it is stated, are increasing rapidly;³ the Federal Government will continue to be a dominant supplier;⁴ those lands highly productive for timber should "be classified for commercial timber production as the dominant use;"⁵ only those secondary uses compatible with timber are also to be allowed on these lands;⁶ and receipts from the sale of timber should be segregated and used only for timber-related improvements (*e.g.*, timber access roads).⁷

Mineral production is discussed similarly. "Public land mineral policy should encourage exploration, development and production. . . .";⁸ this is especially necessary for national security in order to avoid dependency on foreign sources;⁹ "mineral exploration and development should have a preference over some or all other uses on much of our public lands."¹⁰ And, finally, it is assumed that the Congressional policy expressed in the Outer Continental Shelf Act,¹¹ to provide for "the fullest recovery of the resource [*e.g.*, oil and natural gas located in the Shelf] under sound conservation practices," should be continued.¹²

Like statements attend intensive agricultural use (*e.g.*, lands in land utilization projects should be considered for disposal for intensive agricultural purposes);¹³ fish and wildlife ("greater emphasis needs to be given fish and wildlife

3. REPORT, 91.

4. *Id.*

5. Recommendation 28, *id.* at 92.

6. *Id.* at 93.

7. Recommendation 29, *id.* at 95.

8. *Id.* at 121.

9. *Id.*

10. *Id.* at 122.

11. 43 U.S.C. §§ 1331-1343 (1964).

12. REPORT, 187-8.

13. Recommendation 69, *id.* at 179-180.

values in allocating public lands to various uses in order to assure that fish and wildlife resources receive equal consideration in public land administration"¹⁴ and key "habitat zones should be identified and formally designated for such dominant use"¹⁵); and outdoor recreation.

The Commissions' chapters on grazing and water resources depart from the increased production orientation found in the others. Both appear to contemplate levels of production roughly similar to today's.

(b) The Private Sector and the Market

Throughout the *Report* the Commission urges that production of profitable resources continue to be in the hands of private enterprise. Many recommendations seek to remove present obstacles to the efficiency of private undertakings. The Commission consistently rejects control of public land resources as a basis for national economic planning and stresses that market demand (viewed normally in local and regional contexts) should be the prime determinant for production levels. Finally, and consistently, the Federal Government is viewed mainly as a proprietor of the public lands which, normally, should seek fair market value in the disposition of its resources. The Federal Government has other roles, of course, for instance undertaking research and survey beyond the conceived capabilities of the private sector, maintenance of "non-profitable" activities such as parks and fish and wildlife protection, and protection of environmental quality. But for resources that have value in the market, the Government is seen mainly as a supplier which sells rights to acquisition to private economic entities.

Examples that illustrate these policies are found throughout the *Report*. For timber, the Commission recommends a timber management system under a Federal timber corporation or division that would separately manage timber resources in areas in dominant timber use (and others).¹⁶ This separate timber system is seen as necessary to facilitate invest-

14. *Id.* at 157.

15. Recommendation 64, *id.* at 168.

16. REPORT, 93.

ment planning by timber firms, assure adequate supply and thus minimize irrational resistance to withdrawals, and assure that timber sale revenues are invested by the Federal agencies in timber-related improvements.¹⁷ Further, the Commission recommends that "dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury,"¹⁸ that "management programs will be most effective if the market for timber is generally accepted as a guide for Federal actions,"¹⁹ that "major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors,"²⁰ that industry's activities should be facilitated through simplified sale procedures²¹ and that an accelerated federally-financed program of timber access road construction be undertaken.²²

Recommendations relating to minerals are also illustrative. "The Federal Government," states the *Report*, "generally should rely on the private sector for mineral exploration, development, and production by maintaining a continuing invitation to explore for and develop minerals on the public lands."²³ While some modifications of the location-patent system for metallic or hardrock minerals are recommended, abolishment of that system and its replacement by an extended mineral leasing system²⁴ that offers greater possibilities for controlling environmental harms is rejected (over the strong dissent of four commissioners) largely because operators believe they must continue to obtain title to mineral deposits.²⁵ With respect to the Outer Continental Shelf, the Commission recommends a general continuance of the present leasing system with modifications designed

17. See also Recommendation 29; *id.* at 95.

18. Recommendation 30, *id.* at 96.

19. *Id.*

20. Recommendation 31, *id.* at 97.

21. Recommendation 32, *id.* at 98.

22. Recommendation 33, *id.* at 99.

23. *Id.* at 122.

24. The principal leasing law is the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1964) which applies to oil, gas, oil shale, phosphate, sulphur, potassium, and other minerals on public domain lands.

25. REPORT, 124.

to permit more extensive recovery at a profit²⁶ and to give industry a better opportunity to evaluate the potential of areas to be leased.²⁷ Concerning both land and off-shore areas, the Commission recommends better subsidized and more effective Federal activity in collecting and disseminating basic geological and geo-physical data.²⁸

Other sections of the *Report* also urge greater participation by the private sector with production geared to market demands. Thus, "public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth;"²⁹ the concession policies now applicable in the National Parks (that utilize private capital and expertise in operations such as hotels and restaurant management) should be made applicable to other Federal areas;³⁰ and private enterprise generally "should be encouraged to play a greater role in the development and management of intensive recreation use areas."³¹

The foregoing, to the preservationist and environmentalist, appears to be an outright capitulation to the "economic imperative"³² that motivates so much of American activity. But the *Report* also sets forth the competing set of considerations in support of environmental goals.

(c) The Protection of Environmental Values

Throughout the "commodity" chapters, and in the chapter entitled "Public Land Policy and the Environment" the Commission stresses that production activities and other uses must be carried on so as to preserve environmental values.³³ The Commission deals with two types of problems: (1) under what circumstances should areas be left relatively undeveloped (*i.e.*, preserved) and (2) when development (*e.g.*, tim-

26. Recommendation 75, *id.* at 192.

27. *Id.*

28. *Id.* at 122 and 192.

29. Recommendation 37, *id.* at 106. See also Recommendation 40, at 109, relating to better security of tenure, and Recommendation 42, at 115, urging certain tax disposals to permittees at market value.

30. REPORT, 209.

31. Recommendation 84, *id.* at 211.

32. The phrase, in context, is Roger Hansen's. See p. 147 of this volume.

33. Recommendation 16 ("Environmental goals"), *id.* at 68.

ber harvesting, mineral production, or grazing) is carried on what standards and systems of control are appropriate to preserve and enhance environmental quality.

Preservation versus Use

The first question is not addressed by any general recommendation. Scattered throughout the *Report*, however, are recommendations of relevance. The most sweeping are in the outdoor recreation chapter which, building on the ORRRC report of 1962,³⁴ assigns to Federal responsibility "the preservation of scenic areas, natural wonders, primitive areas, and historic sites of *national significance*."³⁵ The Commission calls for an immediate effort to identify such areas—mainly lands under the jurisdiction of the Forest Service and the Bureau of Land Management "that may qualify under existing standards for national parks, monuments, historic sites, wilderness areas, scenic and wild rivers, and national trails"—and, pending statutory designation, to protect them through temporary executive withdrawals.³⁶ The *Report* recognizes that there are sharp policy conflicts between complete preservation of relatively large areas and any use that disturbs the environmental status quo (for instance, intensive recreation use such as planned for Mineral King in California), but it merely calls for Congressional guidelines and offers no principles to resolve such controversies except with respect to areas already designated as national parks, monuments and historic sites where it states that non-conforming uses should be barred.³⁷ However, while calling for more refined standards that qualify an area for national park or wilderness status, the Commission indicates a preference for exclusion over inclusion by recommending that a wilderness area designation require a finding of both "wilderness" and "uniqueness."³⁸

Recommendations contained in the chapter on fish and wildlife would also eventuate in minimal development deci-

34. Outdoor Recreation Resources Review Commission.

35. *REPORT*, 197.

36. *Id.* at 198, 199.

37. *Id.* at 205.

38. *Id.* at 213, 214.

sions for some land areas. These include preferential treatment to protect rare and endangered species,³⁹ preferential support of other species for which the public lands provide a critical or significant portion of the habitat,⁴⁰ and the designation, for dominant use, of key fish and wildlife habitat zones.⁴¹

It is possible, of course, that a searching inventory of the public lands will uncover numerous areas that properly should be designated for parks, wilderness areas, and dominant fish and wildlife zones. The Commission's emphasis, however, on the necessity of finding an area "unique" to qualify as "wilderess," indicates a preference for use over preservation and will please producers more than conservation organizations.

Environmental Regulation of Development

The Commission develops in much greater detail environmental goals that should be implemented in the vast areas where development activities may be carried on. Moreover, as discussed below, the Commission sets forth a far-reaching system of planning and management for the implementation of these goals.

The goal statements of most primary general relevance are contained in Chapter 4. They include that "[e]nvironmental quality should be recognized by law as an important objective of public land management, and public land policy should be designed to enhance and maintain a high quality environment both on and off the public lands;"⁴² Federal standards should be established, although in certain instances, state standards are adequate;⁴³ Congress should state relevant environmental factors with specificity;⁴⁴ and require detail impact studies for certain uses;⁴⁵ an expanded research

39. *Id.* at 160.

40. *Id.*

41. Recommendation 64, *id.* at 168. See also the recommendation for "natural areas." Recommendation 27, *id.* at 87.

42. Recommendation 16, *id.* at 68.

43. Recommendation 17, *id.* at 70.

44. Recommendation 19, *id.* at 77.

45. Recommendation 20, *id.* at 80.

program should be undertaken;⁴⁶ public lands in need of environmental rehabilitation should be inventoried and rehabilitated;⁴⁷ and the Federal Government, to a degree should control environmental impacts that occur off the Federal lands due to activities of users of public land resources.⁴⁸

The commodity chapters include recommendations more specifically dealing with environmental threats posed by particular uses. In the timber chapter, for instance, "cruise" rather than "scale" selling is urged in part to facilitate the clearing of logs and marginal trees,⁴⁹ and three pages are devoted to expanding on the recommendation that: "Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed."⁵⁰ Like statements are made in connection with grazing,⁵¹ mineral resources,⁵² water resources,⁵³ and outdoor recreation.⁵⁴

The Conflict Between Production and Environmental Goals

The Commission recognizes that there will be some circumstances "where choices among conflicting uses cannot clearly be made after application of the system" for planning and management designed to implement its goal statements.⁵⁵ But it refuses to recommend any general criteria for resolving such conflicts. Thus, the *Report* mentions, but does not urge the adoption of, the following possible policies: a national set of particular use preferences (e.g., "mineral development, timber harvesting, and outdoor recreation," to use the Commission's own examples:)⁵⁶ a preference for those uses that contribute most to regional economic growth; the choice of non-market values over economic ones; or the prefer-

46. *Id.*

47. Recommendation 26, *id.* at 86.

48. Recommendation 23, *id.* at 81.

49. *Id.* at 98.

50. Recommendation 36, *id.* at 101-03.

51. *Id.* at 106-08.

52. *Id.* at 123, 127-190-91.

53. *Id.* at 149-51, 153-55.

54. *Id.* at 205-08.

55. *Id.* at 47.

56. *Id.*

ence for those uses that appear likely to generate the lowest degree of environmental degradation.

In my view, the goals set forth by the Commission will conflict in application on many occasions. For instance, the Commission devotes only two paragraphs to the problem of commercial development of the vast oil shale deposits in Colorado, Utah and Wyoming.⁵⁷ It recommends an experimental program of private development with Federal subsidy to support rehabilitation and the costs of minimizing environmental impacts. It is quite probable that large-scale exploitation of oil shale reserves cannot be accomplished without significant water pollution and scenic degradation.⁵⁸ This certainly will be the result unless vast sums are spent to minimize these harms. The Commission's production goals, on the one hand, and its environmental goals, on the other, will come into direct opposition. Less dramatic instances will occur regarding numerous other resources. The ways that these conflicts will be resolved will depend less on the Commission's goal statements than on the planning and management processes that it urges.

(d) Goals—Summary

The *Report* calls for increased resource production on the public lands largely through the private sector under conditions of rigorous environmental protection. Basic assumptions are that: (1) population will continue to grow as will the average material standard of living; (2) such growth will create greater market demand for public land resources; (3) these demands can be met most efficiently through private exploitation and production; (4) only those areas that have unique attributes (such as scenery) should be left undeveloped if there are competing resource demands for their use; (5) environmental quality should be protected rigorously; and (6) standards and systems of control can be devised and implemented that will protect environmental quality to a large degree without substantially hindering productive activities.

57. *Id.* at 135.

58. HEYMAN & TWISS, LEGAL AND ADMINISTRATIVE FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT OF THE PUBLIC LANDS (PLLRC Study Report, 1970).

One can quarrel with these goals and assumptions on two levels. First, one might simply disagree with respect to some or all of them. For instance, why not sacrifice some measure of material progress in favor of preservationist aims? This could be communicated by stressing, for all or a number of the resource areas, the protection of environmental qualities as the prime goal of public land policy, with production allowed only at levels consistent with such protection. Exploitation of the outer continental shelf is a good example.

The other type of criticism concerns the *Report's* failure to display a systematic analysis of both possible future changes related to demand and possible alternative goals. The *Report*, quite uncritically, appears to assume a future technology similar to today's. There is no canvassing, for instance, of potential timber substitutes or of emerging means for inducing very high yields especially of soft-woods. Similarly, there is no deep discussion of the economics and technology of meat production. Some planners today foresee animal products being produced by methods that will make grazing uneconomical in the near future.

The *Report* likewise makes no attempt to predict possible changes in ideological views that may have enormous impacts on consumption habits. The younger generation, for instance, clearly played no part in the shaping of the Commission's attitudes.

The Commission never works out what might appear to be radical alternatives to its goals. For instance, what might be the costs and benefits of a system that calls for the Government to undertake production of public land resources rather than to continue to assign that role to private industry? Why should there not be a public corporation modeled on Comsat? Once one is willing to consider various alternatives seriously a host of questions of fundamental importance appear. These are neither posed nor addressed.

Finally, the Commission's goals assume that intensive production and a high degree of environmental protection are largely compatible. I believe that this will prove to be unreal-

istic. The assumption, however, permits the Commission to avoid grappling today with the gut question of tomorrow and to eschew the statement of a general principle within which to resolve the inevitable individual conflicts.

In sum, many of the *Report's* assumptions and goals are highly market-oriented and are based on unquestioned conventional American political conceptions of the proper relationship between government and the private sector. Others, however, are strongly keyed to environmental protection—a consideration more difficult to implement when exploitation is left largely to private initiative.

PLANNING AND MANAGEMENT PROCESSES

The Commission, in my view, is quite innovative in designing decision-making and planning systems that will enable producers, other users, and environmentalists to do battle effectively in the future. The systems (much like the goals) put off, until particular controversies arise in the future, the eventual emphasis of public land management.

The most important recommended changes in the decision-making and planning processes involve (a) greater congressional involvement in policy making, (b) administrative consolidation and regional administration, (c) participation by state, local, public and private entities, and (d) a new land planning system that will aid in both the crystallization and resolution of conflicts.

(a) Congress

Congress has found it difficult to play an important role in the formulation and implementation of public land policy in the recent past with certain exceptions such as designating new national parks. Statutory directions for most of the managing agencies consist of a series of authorizations adopted over a long period of time addressed to different problems. The series establish no priorities, in sum are normally so broad as to allow anything the agency desires, are rarely directive (merely permissive), and are often conflicting. (An impor-

tant and difficult service performed by the Commission has been its comprehensive review of the morass of statutes, regulations, and policies and the intelligent ordering and clarification of their contents.) Thus, enormous discretion has been left to the agencies. For instance, the Taylor Grazing Act^{58a} literally gave the Secretary of Interior practically unreviewable authority to refuse to classify public domain land for disposal. Similarly, the Classification and Multiple Use Act of 1964⁵⁹ and the Multiple Use and Sustained Yield Act of 1960⁶⁰ have invested the Bureau of Land Management and the Forest Service, respectively, with considerable freedom to determine the uses to which lands under their jurisdictions are to be put.

The primary method of participation left to Congress has been control of appropriations. Even here, however, the opportunities for meaningful policy-making have been minimal due to the fragmentation of budget requests for public land programs throughout the executive budget,⁶¹ the fragmentation of Congressional committee jurisdiction, the isolation of some program funds from the appropriation process,⁶² and the lack of Congressional designation of the regions within which appropriated funds are to be spent.⁶³

The Commission takes up each of these problems. Consistently throughout the *Report* it calls for the passage of statutes containing more specific legislative standards to be applied by the agencies. Congress, for instance, should require a dominant use zoning system,⁶⁴ should specify the factors to be considered in determining "net public benefit,"⁶⁵ and should require that those public lands highly productive for timber be so classified and exploited.⁶⁶ There are a host of other instances where the Commission recommends Congress-

58a. 43 U.S.C. § 315 (1964).

59. 43 U.S.C. § 14411 (1964).

60. 16 U.S.C. § 528 (1964).

61. REPORT, 285.

62. *Id.*

63. *Id.* at 284-5.

64. *Id.* at 51.

65. *Id.* at 45.

66. *Id.* at 92.

sional specificity concerning matters previously left largely to unfettered agency determination.

Policy-making through the adoption of standards is to be buttressed by the consolidation into one committee in each House of all jurisdiction over public land programs involving the major public land management agencies.⁶⁷ These committees, and counterpart subcommittees of the Appropriation committees, would review a consolidated executive budget which brings together the requests of all the major land management agencies on two bases: by region and by program.⁶⁸ In addition, under the recommended changes, Congress would periodically consider regional public land programs which would be authorized by statute and would be the basis for annual budgets and appropriation.⁶⁹

The thrust of these recommendations seems salutary. They will mean that a number of the battles of the future will be fought at the legislative level. This might focus national attention on the production-environmental conflict concerning the public lands. Producers, most likely, will have strong representation on those committees most centrally concerned. But the representatives of urban and suburban constituencies—constituencies perhaps most susceptible to embracing, romantically or otherwise, environmental values—will have the power of final determination. It would not be surprising, of course, for Congress to enact some conflicting policies. For instance, Congressmen from the timber states might successfully support the creation of a federal timber management corporation directed to stimulate increased cutting, while Congress as a whole enacts environmental standards inimical to greater yields.

(b) Administrative Consolidation

Congressional consolidation would dovetail with the transfer of the Forest Service from Agriculture to a new Department of Natural Resources (largely made up of Interior bureaus and divisions). Thus, there would be accompanying

67. *Id.* at 284

68. *Id.* at 285-6.

69. *Id.* at 286.

administrative consolidation which, according to Commission recommendations, should seek to group together functionally related activities within newly defined divisions. The Commission also urges that greater emphasis be placed on regional administration of public land programs. This would be stimulated by agency consolidation⁷⁰—thus a single regional office of the Department of Natural Resources—, the creation of regional commissions,⁷¹ the transfer of land and the interchangeability of staff among existing agencies, and the presentation of regional land programs and budgets.⁷²

These suggestions are sweeping. They seem wise, although, in some cases, it is difficult to know exactly what they will mean in relation to ultimate allocations, and in others to gauge their negative impacts. For instance, would the Forest Service suffer a loss in productive esprit if merged with Interior divisions (what would happen to the Marines if the Army took them over?).⁷³ Moreover, what are the values of interagency competition and would these be lost by merger. Finally, one should know more than I about the accessibility of the Department of Agriculture to the importuning of the private resources lobbyists as compared with Interior's vulnerability before making definitive judgments. Nevertheless, the suggested changes seem wise in consolidating decision-making regarding like resources and especially in providing much greater potentialities for coordination between existing federal agencies than exist today.⁷⁴

(c) State, Local, Public and Private Participation

The *Report* repetitively urges the wisdom of increased state, local, public and private participation in the planning and management decision processes of the Federal land management agencies. Participation at present is uneven. A consultant's report concluded with respect to the Forest Service,

70. *Id.* at 284.

71. *Id.* at 64, 284.

72. *Id.* at 285-7.

73. See generally KAUFMAN, *THE FOREST RANGER: A STUDY IN ADMINISTRATIVE BEHAVIOUR* (1960).

74. There have been many instances in which different federal land management agencies with adjoining lands have failed to coordinate policies. See RUTH & ASSOCIATES, *REGIONAL AND LOCAL LAND USE PLANNING* (PLLRC Study Report, 1970).

for instance, that “[e]xcept for the informal channels which the Forest Service mainly uses to inform and advise the interested public of Forest Service plans and policies, there are few effective formal channels through which the public can operate to initiate or review proposals.”⁷⁵

Generally, the Commission’s recommended system for outside participation and advice hinges on the activities of balanced citizen advisory boards at the national and regional levels involved in the review of comprehensive land use plans, proposed administrative regulations and important public land policy determinations; public hearings for particular types of decisions such as withdrawals, proposals to open areas of the Outer Continental Shelf to leasing, adoption of land use plans, significant administrative regulations, and (at the request of a state or the Council on Environmental Quality) where particular decisions involve significant environmental considerations; increased user participation in decision-making involving grazing, various occupancy uses, and mining; heavy state and local involvement especially regarding disposals for intensive agriculture uses, fish and wildlife, outdoor recreation, and land use plans; and considerably greater Congressional control through standards and oversight.

It is difficult to determine what allocative effects increased participation will have. This will depend largely on who is consulted and how seriously the advice given is taken. There is some reason to fear that some of the recommended systems for management and advice will result in ecologically damaging decisions. For instance, the timber management corporation or division (which is given separate management control of dominant timber use areas) might well be staffed and advised by persons bent on maximizing timber production to the detriment of competing environmental values. On the other hand, the participatory mechanisms are open to conservationists as well as producers. A more accurate estimate of the potential impacts of the participation system require a review of the recommended land planning system.

75. *Id.* at III 239-40.

(d) Land Planning

The products of the land planning system recommended by the Commission are a series of zones and attendant "regulations" applied to the public lands within the various regions. Two classification systems are urged. One is "production-oriented." Under it, much of the public lands eventually would be placed in dominant use zones "keyed to the highest and best use of particular areas."⁷⁶ The second system is geared to environmental protection: lands would be classified "for environmental quality enhancement and maintenance."⁷⁷ The mesh of these two systems comprise one of the important recommended processes to resolve the basic conflict in goals posed in the Commission's *Report*.

Production-Oriented Classifications.

Use classifications are to maximize net public benefits. The following, states the *Report*, are a good starting point for Congressional specification of those factors that should be taken into account: "physical and locational suitability of the lands or resources for obvious purposes; supply of resources and demand for resource products; communities and users dependent on the public lands and resources; environmental factors; impact on state and local governments; efficiency of resource use and sustained yield of renewable resources; and regional economic growth."⁷⁸

These factors have to be brought down to the ground, so to speak, and the Commission foresees some sort of technical means that will enable planners to measure the overall primary and secondary benefits that are generated by a particular mix of uses against the primary and secondary costs—including non-economic factors. Presumably, the benefits and costs of different mixes would be compared and the most optimum chosen and translated into classification designations. The Commission, however, gives little guidance as to how this is to be done especially in bringing non-economic factors into the balancing process. At best, and probably correctly, efforts

76. REPORT at 50. The same criticism is applicable to disposals. *Id.* at 48.

77. *Id.* at 73, 78-9.

78. *Id.* at 46.

at cost-benefit analysis largely will be important in helping to clarify the consequences of alternative choices. The choices themselves, however, will remain political and bureaucratic matters.

The *Report*, in a relatively short passage,⁷⁹ recommends that all the agencies be required to formulate long range, comprehensive land use plans for each state or region that relate both to internal agency programs and to the plans and programs of other agencies. These plans are meant to contain specific findings that reveal how the factors specified by Congress (and mentioned above) were treated. The plans will provide the direction for the dominant use zoning classifications.

The *Report* urges a number of systems for coordinating the planning and classification activity with the "outside" world. Hearings should be held on the land use plans,⁸⁰ and formal citizens advisory boards should be created at appropriate levels to review them.⁸¹ Planning among Federal agencies should be systematically coordinated through such mechanisms as the use of common definitions, systems of measurement, etc., and, eventually, unified planning with regions through agency reorganization⁸² supplemented by the creation of regional commissions similar in function to present day river basin commissions.⁸³ Finally, state and local government should be given a more effective role.⁸⁴ Plans should be developed in consultation with them under procedures specified by Congress, local zoning of Federal lands should be encouraged and followed where feasible, and Congress should provide additional financial assistance to the public land states to facilitate better planning.

The core of the foregoing, and the major departure from past practice, is formal recognition of zoning for predominant use. The *Report* seems to envisage a zoning map applied to a National Forest or a BLM district that will indicate the uses

79. *Id.* at 52.

80. *Id.* at 60.

81. *Id.*

82. *Id.* at 60.

83. *Id.* at 64.

84. *Id.* at 61.

to be favored in particular sub-areas. At present, the classification system used by the Forest Service is much less precise—geophysical zones are delineated, general management directions and coordinating requirements are stated, but there is no map that specifies that X is the dominant use to which others are secondary. There is a Ranger District Multiple Use Plan, the heart of which is a map. That map records what is going on within the District and delineates management zones and units. The former are the geophysical zones indicated above; the latter isolated areas that should be treated separately for special resource or environmental reasons. But the Ranger Plan, generally, is a device to enable multiple uses to be coordinated effectively and not a planning document that indicates the uses to which the District lands should, over time, be allocated.

The predominant use approach urged by the Commission is an important departure because it sharply crystallizes allocation decisions at a point in time. Under the present Forest Service system, for instance, Regional Guides are issued but their allocation impacts are very difficult to determine and thus there is little occasion for either dispute or systematic internal determination of the uses that should be preferred. This is also true, to a lesser degree, with the separate Forest level functional plans (*e.g.*, timber; wildlife) because they are not designed to show the effects of the subject matter plans on competing uses. The Commission's recommendations, however, would require initial determination and public identification of specific areas devoted to specific uses. They would also require public hearings and consultation with advisory boards and local governments. The subject matter of these proceedings would be much clearer than at present—thus local, state and regional publics would probably have a much greater opportunity to affect agency planning and allocation decisions than at present.

Classification for Environmental Protection

The chapter of the *Report* on planning says very little about environmental quality except for the discussion of the

difficulty of considering non-economic factors in cost-benefit analysis, and the direction to take environmental factors into account in classifying lands so as to maximize net public benefits. Of course, the predominant use classification system on occasion will be geared specifically to the preservation or enhancement of a natural resource such as wildlife (*e.g.*, key habitat zones) or wilderness. But this classification system is not designed to plan in order to minimize environmental harms such as air and water pollution.

A separate classification system is recommended by the Commission to deal with environmental degradation. Roughly, Congress would require that the agencies classify (*i.e.*, zone) lands for environmental quality enhancement and maintenance.⁸⁵ Presumably, such zoning would result in another map overlay that would identify those areas important in relation to particular environmental qualities. The Commission's example includes water, biosystem, air, and quality of experience.⁸⁶ The particular qualities of importance would be identified for the particular areas (*e.g.*, water quality in relation to domestic water supply). The particular environmental attributes to be monitored and managed would be stated (*e.g.*, high to moderate levels of dissolved oxygen), and management actions would be prescribed. This system of classification would seek to determine in advance both the environmental qualities to be protected and the land areas most critical for those purposes.

The basis for the classifications would be expanded research programs,⁸⁷ detailed surveys to produce information on the composition of the environment with respect to topography, geology, soil, hydrology, vegetation, wildlife, climate and visual and spatial form,⁸⁸ and the specification in statute and regulation of the desirable levels of quality to be maintained in different areas.⁸⁹ The classifications would be implemented (and buttressed) by requiring decision makers to specify in detail "the environmental impact of, and possi-

85. *Id.* at 72.

86. *Id.* at 78-9.

87. *Id.* at 80.

88. *Id.* at 73-4.

89. *Id.* at 74.

ble alternative to all proposed" public land use plans and decisions significantly affecting the quality of the human environment,⁹⁰ the carrying out of exacting impact studies in relation to uses with potentially severe environmental effects⁹¹ and mandatory public hearings on the request of states where decisions involving significant potential environmental impacts are to be made.⁹²

(e) The Planning and Decision Processes In Action

It is difficult to predict the probable outcomes of conflicts under the processes described. But it is useful to outline how the processes might work to see the entry points for the various "publics" involved (*e.g.*, producers and environmentalists).

At the national level Congress and the agencies play the major roles. It is not improbable, as stated earlier, that Congressional policy statements will reflect the interests of both production and environmental protection. Some conflicts will be resolved at the legislative level, for instance expenditures for new parks and recreation areas and the designation of wildernesses. Most conflicts, however, will be resolved within the agencies, at both the national and local levels, within the parameters of competing legislative pronouncements.

An important agency responsibility at the national level is rule-making. The Commission recommends that formal rule-making processes, in accordance with the Administrative Procedure Act,⁹³ be used in many instances where today reliance is placed solely on internal policy determinations. The agencies (or agency, should consolidation occur) are to work in close conjunction with national citizen advisory boards which, in accordance with Commission recommendations, should represent a broad range of public interests.⁹⁴ These will include the Sierra Club as well as the American Mining Congress. Additionally, the Council on Environmental Quali-

90. *Id.* at 77.

91. *Id.* at 80.

92. *Id.* at 81.

93. 5 U.S.C. §§ 1010-1011 (1964).

94. REPORT, 252, 288-9.

ty (or a successor agency) will undoubtedly intervene in a number of instances.

At the regional and local levels, extensive opportunity is afforded for broad participation in the fashioning and adoption of land use plans and with respect to particular use and development decisions. Land use plans, as indicated, are designed to result in both production and environmental classifications. The agencies are directed to make specific findings in their plans clearly revealing the reasons for their decisions and how specified factors have been treated.⁹⁵ In addition, the plans must indicate how environmental factors were taken into account.⁹⁶ Finally, the culmination of the planning process results in two sets of competing classifications for particular areas of land which focus informed attention on conflicts as well as compatibilities.

Local citizen advisory boards, again broadly representative of the various public interests, are to be consulted throughout the planning process.⁹⁷ In the Commission's words, "[t]hey should function actively from the inception of the planning process, starting before any plans have been developed, and should have a continuing role."⁹⁸ State and local governments should also be given effective roles.⁹⁹ Finally, public hearings on land plans should be held before they are adopted and opportunity should be afforded for the receipt and deliberate consideration of counter-proposals.¹⁰⁰

The planning and classification processes are the backdrop for particular use and development decisions. Here again, the opportunities for effective participation are broad. If the determination is of an adjudicatory nature—for instance important disposals, timber or mineral leases, or occupancy permits—provision is made for widespread public notice, opportunities for third-party participation in the administrative process, and expanded judicial review at the in-

95. *Id.* at 52.

96. *Id.* at 77.

97. *Id.* at 60.

98. *Id.*

99. *Id.* at 61.

100. *Id.* at 57, 60.

stance of any participant in the administrative process.¹⁰¹ Whether or not an adjudication is involved, the Commission recommends retained impact studies for decisions with potentially severe environmental impacts such as “transmission lines, roads, dams, open-pit mining operations, timber harvesting, extensive chemical control operations, mineral operations on the Outer Continental Shelf, and high density recreational developments.”¹⁰² These should be done at an early stage, and presumably would be made public,¹⁰³ thus arming the environmentalists with considerable information. In addition, major development decisions should be discussed with state and local advisory boards and “public hearings with respect to environmental considerations should be mandatory on proposed public land projects or decisions when requested by the states or by the Council on Environmental Quality.”¹⁰⁴

How will these processes work—what interests will be preferred? A general forecast is impossible; there are too many variables. The outcomes of particular conflicts will depend on at what level they are resolved, who is chosen to sit on advisory boards, how effectively the contestants perform, what are the predilections of the agency decision-makers, and whether mass media (especially television) dramatizes environmental matters. Saying that, however, I would hazard the guess that for the near future the representatives of production and environment will be evenly balanced at the national level and that this will be true also at the local level in those public land states with large urban populations, such as California, Oregon, Washington and perhaps Colorado and Utah. Producers will probably have the upper hand, however, in the more rural states such as Wyoming, Montana and Idaho unless, as is quite possible, the proliferation of nationally effective conservation organizations continues. In sum, the sides are probably relatively even both nationally and in many local contexts.

101. *Id.* at 254-7.

102. *Id.* at 80.

103. The Commission does not explicitly recommend that impact studies be made public. Publication, however, should be required consistently with the Commission's general philosophy of providing information to all the participants in public land decisions.

104. REPORT, 81.

CONCLUSION

The Commission calls for greater Congressional involvement in policy making, more efficient agency administration through consolidation and reorganization, and the adoption of a dual planning system which will heighten the opportunities for the participation of non-federal regional and local entities in planning and decision-making involving the public lands. The dual system, production-oriented, on the one hand, and environmentally-oriented, on the other, will provide a relatively straight-forward mechanism for uncovering conflict. How the individual conflicts will be resolved is left unclear. Doubtless Congress will not provide a litmus but will issue, as does the Commission, declarations that call for both higher production and for environmental protection. The Commission believes that these policies will rarely conflict when applied on the ground. I suspect that this is wishful thinking. It has led the Commission, as indicated above, to avoid recommending any general principle for such conflict resolution. This will leave such determinations to be worked out nationally and locally as they arise. While some might see the system preferentially working to the advantage of producers at some local levels, the recommendations for environmental protection call for the publication of such detailed information that conservationists, who are given broad opportunities for participation, will find themselves well armed to rally public support in specific conflicts. In short, the Commission has set forth the broad alternative policies and has recommended a system for making particular decisions which, in my view, both provides those with differing views good opportunity to implement their purposes and provides a system of decision-making that is adaptable to changing values.