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Financial Aspects of the PLLRC Report

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FINANCIAL ASPECTS OF THE PLLRC REPORT

*J. Fred Schneider**

THE Colorado State Association of County Commissioners is in its 63rd year, and the Interstate Association is in its 31st year.

The CSACC was founded on the basis that the state and its local governments are engaged in a vast partnership enterprise involving numerous financial and executive relationships***the scope and possibly the cost of local government services are on a par with those of the state itself. The success of both depends upon the fairness and competence with which both plan and discharge their partnership responsibilities and programs.¹

The Interstate Association of Public Land Counties was formed 30 years ago to promote the interests of the public Land Counties of the eleven Western States.²

The Public Land Law Review Commission was created under Public Law 88-606³ and provided for 6 members to be chosen by the Speaker of the House of Representatives, 6 appointed by the President of the Senate, equally divided between the two major parties, and 6 appointed by the President

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1. See Resolution Pamphlet of Nov. 21, 1969, sent to the Governor and 48th General Assembly of Colorado, at 92, App. A, Proceedings (1969).

2. See CONST. OF I.A.P.L. COUNTIES: "To perpetuate and maintain the County Unit of Government. . . . To secure legislation compensating local government for the financial loss sustained by the exemption of public owned land from taxation and to promote efficient administration of such lands."

3. 43 U.S.C. §§ 1391-1400 (1964), as amended, 43 U.S.C. §§ 1394, 1398, 1399 (Supp. IV, 1967).

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of the United States; and the eighteen so chosen chose as their chairman Congressman Wayne N. Aspinall.⁴

The Act establishing the Commission provides for an Advisory Council consisting of Federal liaison officers from departments and agencies having an interest in or responsibility for the retention, management, or disposition of the public lands, and 25 other members representative of various major citizen groups interested in problems relating to the retention, management, and disposition of the public lands.⁵

Thereafter, in response to the invitation by the chairman of the Commission, each of the Governors of the fifty states designated a representative to work with the Commission, its staff, and the Advisory Council.⁶

Section 10 of the Act defines the lands concerning which the Commission was charged with responsibility for making recommendations:

“Public lands” includes

- (a) the public domain of the United States
- (b) reservations, other than Indian reservations, created from the public domain
- (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws, including the mining laws
- (d) outstanding interests of the United States in patented, conveyed in fee or otherwise, under the public land laws
- (e) national forests
- (f) wildlife refuges and ranges
- (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf

4. See Letter from Wayne N. Aspinwall, Chairman to the President, June 20, 1970, printed in PUBLIC LAND LAW REVIEW COMM., ONE THIRD OF THE NATION'S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS, at iii (1970). [Hereinafter cited as REPORT].

5. *Id.* at VI.

6. *Id.*, app. C.

Of the 2.2 billion acres of land in the United States, the Federal Government owns 755.3 million acres, of which 724.4 million acres are specifically within the responsibility of the PLLRC for recommendations.⁷

The *Report* of the PLLRC marks the culmination of almost five years of concentrated effort to bring order to the legal and administrative jungle involving public lands that has grown up over a period of approximately 175 years.

The Commission in its *Report* urged that control of all federal land—one-third of the nation—be concentrated. In Chapter 20, Recommendation 131 suggests a department of Natural Resources and to merge the Forest Service with the Department of the Interior, and 132 recommends a greater emphasis on regional administration of public land programs, and 133 recommends a standing committee in each house of Congress.

The PLLRC recommended that virtually the entire body of law governing public lands be rewritten, with guidelines set by Congress to insure that each area is dedicated to its highest and best use, and Congress should provide for judicial review of public land adjudications.

Chapter Six deals with range resources and it is recommended that all users of federal land should pay for that use on the basis of "fair market value".

Contrary to what Daniel Webster said in one of the Webster-Hayne debates, the Commission wants the government to reverse its policy of long standing, possibly 160 years, to get the public lands on the tax rolls; they now want to hang on to them, or most of them. See Chapter Eighteen, Recommendations 117 and 118. It is the belief of the undersigned that Recommendation No. 121 would permit the Federal Government to speculate in lands and might make sterile a person's holdings.

We in Colorado are vitally interested because of the 661½ million acres of land area, Uncle Sam owns more than 24 mil-

7. *Id.*, app. F.

lion or about 37% ; and a system of payments in lieu of taxes would go a long way towards helping finance local government.

Recommendation 101 holds that the burden of the public lands should be borne by the entire United States. Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands, and 102 suggests that payments in lieu of taxes should be made. This is brought about by reason of the sovereignty of the United States, and federally owned lands cannot be taxed by state or local governments. This is particularly felt in the eleven western states where most public lands are concentrated. However, there are some eastern states that have public lands, such as New Hampshire with some 600,000 acres, Vermont with over 240,000 acres, and some others. We want it known that such things as Post Offices, etc., do not pose a problem ; but when an entire area is by a stroke of pen of a president taken off the tax rolls by the creation of a monument, as was done in Arizona a few years ago, and huge reclamation projects remove property from our tax rolls, these do pose problems. While payments under the Mineral Leasing Act (shared revenues) do help a great deal, even this was somewhat discriminatory, as Colorado receives only 37½%, while Alaska gets 90% under the Mineral Leasing Act.⁸ The legislative history of the acts providing for the sharing of receipts from such things as forest products, oil and gas, as well as other minerals, clearly reflects that payments to states and local governments were intended as compensation for the fact that the lands in question would no longer be available for private ownership and property taxation. The general concept seems to be, and advisedly so, that the public lands belong to all the citizens ; and assuming for purposes of discussion that they do, this is no reason for people not living in public land states to attempt to impose their decisions on those who live in the areas. That's why our public lands should be carefully handled and should not be set up on a purely money-making basis, because the traits that make them unique and valuable become eroded and may disappear.

8. Mineral Leasing Act, 30 U.S.C. § 191 (1964).