

Land & Water Law Review

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

Article 37

1970

General Discussion, Observations, and Criticisms

Symposium

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Recommended Citation

Symposium (1970) "General Discussion, Observations, and Criticisms," *Land & Water Law Review*. Vol. 6 :
Iss. 1 , pp. 433 - 457.

Available at: https://scholarship.law.uwyo.edu/land_water/vol6/iss1/37

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LAND AND WATER LAW REVIEW

VOLUME VI

1970

NUMBER 1

GENERAL DISCUSSION OBSERVATIONS, AND CRITICISMS

Discussion and debate concerning the proper use and allocation of the public lands to and among various competing uses and demands.

Need for impact studies on the public lands in order to facilitate planning.

Observations and criticisms of the value of the Report and its recommendations. The role the Report will play concerning implementation of public land law legislation.

MR. TRELEASE: In presenting his paper, Jerry Muys said that Wyoming would "take it on the chin" if the revenue sharing recommendations of the Commission were adopted, and the impact of that recommendation would be felt throughout the State. I think that is a considerable understatement. The payment of something equivalent to taxes does not recompense a state for the loss of industry and the loss of revenues to the private sector that the retention of public lands imposes upon a state. I think that something more is needed to put public land states on an equal footing with the others, though I do not believe that the present system of revenue sharing is the perfect answer.

The Public Land Law Review Commission made a special study of the land laws applicable in Alaska. That State has received very special and very favorable treatment in the public land laws, on the basis of Alaska's unique characteristics and needs. In a review of that study, I tried to find out what the differences are and why Alaska was chosen for special treatment. These seemed to be that Alaska has a small population and a low degree of industrialization. It has a low tax base for the support of government services and also has a large proportion of federal ownership. It is largely

dependent on extractive industries. It has very expensive transportation, and a native population that seems to be out of the mainstream of the economy. Now, if you try to look at the similarities, instead of the differences, you find that several of the western public land states have been described by this description. I am not saying that the United States has an obligation to give economic support to the public land states, but only that if such support is felt desirable, the land laws do offer a means of accomplishing it.

Alaska has received especially favorable treatment in oil production. The State of Alaska receives 90% of the revenues from oil production from federal lands. The history of how this came about is rather interesting. Frank Barrett, the Senator of Wyoming when Alaska was admitted to statehood, was trying to get a bill providing this treatment for all of the western public land states. He was responsible for the Alaska 90% provision, hoping to establish a precedent which could be followed elsewhere .

In Wyoming, as in the other contiguous western states, the oil revenues are split 37½ to the state, 52½ into the Reclamation Fund. The Reclamation Fund is then spent in the region, but this is not the same as the revenues being spent in the state. To a very large extent what this has meant to Wyoming is that aver one-half of the mineral wealth that is taken out of this state is then spent in California for Reclamation projects. I am not convinced that this is an entirely equitable distribution of wealth. To some extent Wyoming and some other western states dependent on extractive industries, find themselves in the position of the host countries in the Middle East, South America and other areas of the world where wealth depends on minerals that are consumed elsewhere. This is the real worry in those countries, and in the mineral producing public land states; namely, that their wealth is being depleted, is being taken away, and that something ought to be left behind on which to build a permanent economic base.

MR. MOCK: (*addressing Mr. Trelease*)—Are you suggesting that perhaps the solution to this problem of revenue sharing might be to change the allocation of those funds from

the present system which allocates 52½% to the Reclamation Fund, which is spent in Wyoming and California, and instead call the fund an "environmental poverty fund" and allow this money to be spent in New Jersey?

MR. TRELEASE: I hope I didn't say that. I am not making a suggestion for a specific improvement. I am saying that this particular loss of revenue sharing will have a very severe impact on the State of Wyoming and on several of the other western states. If it is felt that the Reclamation Fund is not the place for it, the rest of it could be earmarked in a way that would return something permanent to Wyoming and the other states which are being drained. The form this takes may be immaterial, but something permanent should be provided.

MR. HANSEN: I would like to make a comment concerning the impact of public land on local and regional economies, other than on the removal of the local tax base. I do not know what the study on local economies says about this or how it analyzes this. So I am basing this on a visceral reaction rather than on the data. There is constant discussion on the great economic detriments to local and regional economies due to the public lands in depriving the local economies of the various benefits that would accrue from industrial developments. There is always the constant inference that if only this land were not on the public domain, it would be immediately available for all sorts of economic activity and use. It is made to look as if people were standing in line to purchase this land to bring about more productive purposes. This came up, certainly, in the meetings in Albuquerque. A lot of testimony was given particularly by the grazing industry. I've never been capable of understanding the logic that it drew upon to reach its conclusions. Many of these operations, for example grazing, are so marginal that if the ranchers had to pay local taxes, they could very well be out of business. In talking about the landscape of this area in which we are now I cannot tell what the animal unit monthly rate is. It is maybe 10 that would be 120 acres to feed one animal for a year. We have only to look at the marginal operation of the timber industry for another example. They maintain that any increased

cost from any source, tax for example, would put them out of business. I fail to see what great productive opportunities are being shut off by having these lands remain public. I cannot foresee what new economic doors will suddenly be opened for anyone but Texas oil men, who want private hunting reserves. The question really becomes who will buy all of this land and make it pay economically.

MR. SCHANZ: I certainly think that you have an excellent point. Especially when you start to think of the total lands available. Obviously, when large tracts become available there just is not productive need. So much of this is a latent potential that no one knows for sure how much realization will come out of it.

MR. TRELEASE: I would certainly agree. Much of the public land of Wyoming, as of 1934, was not worth taking up, although it was still at that time subject to disposition.

MR. MOCK: We stop a little bit short on this discussion. We have identified that there are some areas wherein there might be somebody with sufficient money and interest who would buy up the public land and set it aside for his own private reserve. What is the big difference, for example, in having all of those private ranches around Jackson in private ownership rather than in public ownership. When we start to face up to the realities of that we will have a better understanding of what we are talking about here. Obviously you have uses in private ownership, but they are limited to the use that the owner makes of them. Such land would provide tax revenue but it would deny access to that land by different users of our society. All of it might be set up as a dude ranch or as an access to public recreation under a commercial type operation. That brings us very quickly to the question of what we really want. Who runs the control room? What is going to be done with the public land that puts it off limits to all of those who do not adopt the philosophy of a particular group? It might be I or someone else who takes control of a little group to manage the public land. We might follow the policies which we favor and put it off limits to everyone else. This puts it off limits to all of those who do not adopt the particular

policy of our group. It might be Mr. McCloskey and I organizing a little group here to take over the control room of the public land management. We would follow the policies that we agreed should be followed; and we would follow them from here on out. We would put it off limits to everyone else.

I am bringing this public land incident down to the hard questions we tried to tackle on the Commission. How do you set up any system which provides a method of meeting the changing times and conditions and which considers the factors of including protection against certain changes that also allow the flexibility in the system and in the management? Who might have the propensity to pursue their own changes, their own type of concept? For example, there are some civil liberties programs and youth programs that are going on that I do not quite approve of, but when I analyze them I wonder why I do not.

MR. SCHNEIDER: Didn't the Commission effectively stop the acquisition by recommendation in the *Report* of such things as Mr. Hansen just mentioned? In other words, if it is public land, these rich Texans are not going to be in a position to buy them if the Commission's recommendation is accepted.

MR. MOCK: Our Commission's *Report* is going to have to speak for itself as from that point on we turned it loose. It will itself have to explain as to what it did and what it did not do. The *Report* is in the public domain and everyone else will have equal standing to explain it. The thing that we are doing now is just starting to see how these basic ideas, those things that we have identified in the basic program, are going to fit into the operation and whether we can define a practical system of implementation.

Fritz, I am going to have to back up to answer your question. We have heard a lot of discussion for five years. I have read much about it, about the fact that we should stop any future disposal, but that we should keep that land free in order to acquire additional land for these federal programs. Obviously it led us to the practical solution that nobody is

saying that we should acquire all of the lands of the United States and put them into federal ownership just because the programs on federal lands are good programs. It followed that we had to analyze this and ascertain what additional lands should be in federal ownership. Should there be lands that are in federal ownership now or in the future that might sometime be disposed of? The answer was obviously "yes." Then we went to work on the details of it. We have in our *Report* a proposal that provides when lands are solely valuable for grazing that they should be available for disposition to the ranchers. I think that is probably one of the most meaningless recommendations that we have made. Joe Geraud said that he did not think there were a thousand acres in Fremont County that would come under that classification. I would give you odds that you cannot find a thousand acres in the western United States that would come under that classification.

We are starting to come to grips with the system of balances here which I tried to point out the first day. Our problem is there is not enough land for a use to which any person or group of persons will be so dedicated that land should be set aside solely for that use. Maybe it could be ranching that we are phasing out as we pass a law. It could be environmental control, but at that time you have to talk about taking over all of the lands of the United States, if that is the program which you are going to use to keep the environment under control. What you have to say is that when lands are needed for a particular use, there has to be some way of allocating them for that particular use. This gets back into our national problem: what are we going to give priorities to? Regardless of whether the land is in a federal ownership or private ownership or whether it has been specifically designated for a use that would be given priority or just left to see what will happen, there will be multiple application and competing interests for the use. You are going to have to find a way for fixing priorities between them. This is what we are arguing about; specifically, who holds the control as to who gets the priority of the types of use and who holds the control of deciding which applications of the totally equally entitled

people are going to be allowed and which are going to be denied. We have not involved ourselves very much with that here, partly because we would not have time to find an answer to it. Can we adopt a "one man—one right—all keep—attitude" and still have a program in which you allocate the lands between people?

MR. GERAUD: I would like to comment about Roger Hansen's remarks. I do not think that you would find the grazing industry making any case for the fact that they want to buy all of the public grazing land. On the other hand you do get situations where some land is desired. A specific example is a small ranch in the Saratoga Valley, one of the few that is not owned by a Texas millionaire as a hobby. It is a working ranch that has gone through two generations. Because of change there is a little water available in a small creek that is sufficient to do a little irrigating and to raise a little hay to increase cattle production. This water was not available before. In order for the rancher to accomplish these improvements he must have the right to go out and run the water onto his land. Fine, this is no problem. Here is a good old Desert Land Entry Act which was directed at this very situation. We are talking here about a quantity totalling 187 acres. Now do you have any objections to this guy obtaining 187 acres? This tie-in of the water right would make him a better operator, increase his self-sufficiency. But here is what happens. Someone says you cannot do that. It is a hunting area. The public uses this to hunt deer. Well, you can look at the land which is sagebrush now, it is about five miles from the forest and nobody lives who there has ever seen a deer on that land, but this type of objection kills the project. Well, the rancher does not get it. It is still public land. Is that the best use of that land? The rancher could have used it. We are not talking about large areas of land, but there are pockets and isolated incidents of these good potential uses that are shut off because of some overriding interest that no one can demonstrate as to that land. Who is going to make that decision? This is what Hal Bloomenthal is talking about. The local land manager makes the decision. But he bases the decision not on the reali-

ties but on a fear of change. He feels that giving away that land is as big as "Tea Pot Dome."

MR. HANSEN: Let me respond to that. We have talked about this repeatedly. In Denver a year ago we had a meeting on criteria by which to judge the facts submitted to the general public. I will raise the point that I raised then. It is here that we look at the first part of the *Report* that categorizes all of these publics. Each of them had a great big knife and wanted a slice of the pie of the public lands. We tried to weigh all factors as to who was going to use his knife first and how big a slice they were going to get. This is part of the great American political process. This is the decision-making that we daily have to make. There can be no better system than making the decision on the basis of weighing the interests of these groups. My contention is that we are not just dealing with the people. We are dealing with the landscape, the habitat on which those people depend for their very survival. We ask the people how they are going to cut their pie. We never ask the land. If this sounds too anthropomorphic, I am talking about the land in terms of its scientific ability to accommodate certain uses of the land. Take your ranch. I immediately think if an irrigated meadow as an additional prospective winter range, which from the wildlife standpoint is our most critical factor in the West. This is what we are losing more and more of all the time. We should look at the ability of the land to accommodate this new type of use and the effects this will have on the total ecological system.

We talk about environmental values just as though we were talking about aesthetics or petunias or beautiful mountain views. I am not talking about those types of environmental values. I am talking about an intricately balanced ecological system. We have to make these decisions not just on the basis of various pressure groups, including conservationists, but on the basis of what the carrying capacity of the land is. This is in terms of its animal uses, of its ability to accommodate highways, reservoirs, airports, certain types of grazing practices, logging or whatever it is we do. This is why I can-

not buy the political process of weighing the various people-pressure groups as the predominant basic decision-making process.

MR. MOCK: Let me bring another element into this thing because we sometimes get away from people, although I do not think we ever can or that we ever should. Here is an outdoorsman publication released in July, 1970. I think that it is published in Ogden, Utah. Its headline reads: "Wyoming Stockmen Asking for Payments of Game Fee." Here is a problem where the management program on public lands is simply being identified as a burden on private lands primarily because we find the curtailment of livestock on the public domain as coexistent with the efforts to increase wildlife. Now I think that is probably good, but I do not think that we can ignore the fact that when you do that you are putting the wildlife burden on the private land of that man in the area. So this is the proposal by the Wyoming people. Incidentally this is not new. It originated in Utah by directly asking the State Fish and Game to pay a rancher down there for the wildlife that was staying on private lands during the off season. It turned into quite a fiasco because everyone argued over it for the wrong reasons. I am just identifying the other side of how this thing works when we start to put in a public interest program. No matter how much you advocate or ignore the impact on other segments of our society and private operation, the question is how far do we go and when do we stop? In your case, Joe Geraud, why don't we start thinking in terms of the hunting easement on that land or a wildlife easement on that land in order to keep it available even if it goes into private ownership? Thereby we would face the realities of what we doing is in this time and period, and that private property is no longer as sanctified as it used to be. It is a divided interest between many people.

MR. GERAUD: The decision is made not because of this or that but just because of a fear of change. I mean if we change, one group or another is going to be mad at us. To me this is really the overriding consideration.

MR. MOCK: You are indicating the challenge that we have had from the very beginning of the Public Land Law Review Commission study: how do you provide for change?

MR. GERAUD: This offer was made to the agency if that is what you are concerned about. We are going to have meadow here to support more wildlife. If the deer want to come down here that is fine. You can have an easement, but the point is that only the fear of change prevented the disposition of this 187 acres.

MR. CARMICHAEL: Mr. Mock has hinted about self-initiated right. I think that this is a very challenging concept. I think it goes off in several different directions. Some of them are legitimate and some of them give me a fair bit of concern. One of the uses, of course, was that of getting an agency, which may have its own entity concept with regard to permanent management programs or perhaps active uses of certain tracts of land. This is, I suppose, the same sort of citizen participation in the private sector prodding toward certain uses in which the environmentalists have been involved in court. I think there that it is very useful. My concern is that the self-initiation of rights or at least the request for rights, on private land, may have an entirely different and varied impact in point of the length to which the land is going to be devoted to the use granted. The malady of it, insofar as self-initiation is used to acquire a permanent right, is that it thereafter precludes other rights, although quite clearly you could grant the rancher the desert land entry and reserve a hunting easement. It should be noted that more exploration is required in this area. Insofar as the grant of the self-initiated right thereafter fixes that land permanently toward certain uses and removes flexibility of the system, I have considerable reservation about it. A concern which I expressed yesterday on which I did not agree with Mike Heyman is that there will typically be a relatively demonstratable, short-term pocket-book advantage for self-initiated right, certainly perhaps over retention of federal ownership of the land, especially if the benefits in that retention are long term.

I am afraid that impact studies and that sort of thing are a ways off in the future. I think Mike Heyman has seen a different generation than the ones that I have encountered in some of the management agencies in the Denver region. Those are apt to be very pro forma boiler plate sorts of studies. I do not think the methodology is available. I think partly you need mandatory requirements and a good many additional personnel so that these sort of impact studies are done on a very wide-spread basis throughout the management agencies. So I do have a very real concern about the self-initiated permanent right heard on a relatively ad hoc approach: "This present generation, immediate cash benefit, keep the ranch, expand the ranch slightly." I am afraid that the environmental planning studies may be construed as a waste of time. However, it can be done and it can be done quite well. If you finally come into it, I think that you will have a base level established for avoidable environmental impact. Perhaps thereafter an identification of some areas which should be preserved in a variety of respects or a quality which should not be graded past permissible limits can be made. I do not think that this scheme of management, which I think is probably going to be competitive with commodity production orientation, ever will swallow up commodity production. I think it will probably remain peripheral over a good bit of the public land other than at a fairly low level of avoidable impact thinking that identifies some areas which due to uniqueness or high quality, however defined, deserve protection. I do not quite foresee the future for it that Mike Heyman does.

MR. HEYMAN: One is colored in his predictions by what he sees. I have seen some very good examples in the California region of the Forest Service which is really the major part of my experience. Generally I agree with Don Carmichael. I would sort of like to go along, at present, until these systems start to build up. I presume one of the things, from the point of view of conservation-oriented people, that has been good about this extraordinary morass of public land law has been its maintenance of the status quo for a long period of time. This is so because it is very confusing and there are all kinds of obstacles, an example of which Joe

Geraud mentioned. I guess I would not like to find radical change in the very near future. However, I really do not think there will be radical change in the very near future on either side of this equation. I actually think that the environmental side is going to build up. Practically, when I think about what is going to happen in Congress, the hearings and the variety of interests, it is going to take a period of time before I see a push on the environment protection side with respect to processes that are now going on. By the time all this crystallizes into a management system, the sides are going to be pretty well balanced.

MR. McCLOSKEY: Returning to the discussion that Don Carmichael and Mike Heyman have had about these two planning systems, I am trying to sort out my own feelings. I am moved to express a certain skepticism about the significance of these two systems. One of the things that I hearken back to is that which has actually been happening in the Forest Service's planning. I think that it is a little more varied than Mike Heyman suggests. Maybe they have had a sort of a topographical map coding system of crest zones, of intermediate zones, and foothill zones that are descriptive of the nature of the country. The management descriptions are keyed to maps with goose eggs on them that in a narrative section describe various uses allowed at various levels, how they are reconciled and just exactly what the specific balance is in a certain part of a drainage, for instance. The Pacific Northwest in the early years of the sixties had a period of experimentation in developing and planning Forest Service systems. They did have a key use system. I specifically remember the color code. Generally, the crest of the cascade would be orange for recreation and the lower levels would be green for timber, and water influence zones would be blue and so on. So, we went through that type of experience in the Northwest. This key use system was abandoned because the Forest Service felt, and I think that this is a pretty legitimate criticism, that it was oversimplified. All land was allocated to one key use or another. When you had a lot of land where the decisions were kind of mixed, it was hard to determine into which zone the land was included. You had to make arbitrary decisions. I think that

the Commission's recommendation solves that problem. Still, even within the areas that are allocated, there is a certain over-simplification in saying one use is dominant throughout the whole area. There are a lot of variations even within the zones that we might accept on both sides. It is much more complicated than the system was, and the Commissioners realize that the map drawing system just did not do it. You had to work out a narrative system of all the complexities, so I wonder again whether we are not perpetuating this. It certainly does tend to satisfy different user groups if they have their area. From the recreational point of view we would certainly like to have it, but it is a great deal more complicated than just shading in a goose egg on a map. I think that in many instances this really does lead to some unrealistic expectations.

Another reason that I think the Forest Service got away from the system was because of public relations. They found that putting these dominant use designations was a red flag for the other groups. Whoever got it, liked it, and those who did not get it, did not like it. A battle immediately developed over where the line went, and this got into a boundary setting problem, which is, of course, classic of wilderness areas and others. Currently the boundaries involve all interest groups and you just have a lot more battle lines drawn.

I think the shifting to these systems might tend to make conflicts clearer, but not make alternative choices clearer. I also think it is going to escalate the level of conflict. The system may be a bit too ideological and we may just see our interest threatened and go into battle every time a goose egg appears.

Environmental zoning would be a good system if you could work it out. I do not think that we are entirely void of that now in the Forest Service's present approach. Here and there some of these environmental zoning approaches are recommended. The landscape management system has a lot of the quality of experience factors written in. We do not think they are enough, but they do represent an approach.

Water quality standards are generally set, so water is taken care of to a degree. Although we have a lot of argument about how adequate the water standards are, at least there is a system for it. Air quality is not adequate, but at least there is concern about how to approach it. Biological systems and wildlife management get into it to a degree. I think that a lot of these are already written into the management descriptions for these goose eggs that just have code numbers and do not say whom the areas are for. Therefore, I think that we are into all of this to a considerable extent. Just by reshuffling and putting on new labels, and maybe organizing the conflict a little clearer, I am not sure that we are moving radically into a different phase. What does concern me is that we are, to a degree, pouring old wine into new bottles. There is also the concern that I expressed yesterday for providing bigger bottles for the commodity users while saying that we are all going to participate in the pouring process.

MR. RAGSDALE: I have sat here for two and a half days and listened to many criticisms of this *Report*. Yet in reading over the *Report* and getting a general impression of it, I think it has done precisely what the legislation setting up the Commission had in mind. The Commission has presented us with many, many recommendations. I am sure that we could find someone somewhere who would disagree with a particular recommendation. The *Report* has attempted, it seems to me—and I am now guilty in adding more interpretation to a report that speaks for itself, but then statutes speak for themselves too, and we always have to interpret them—the Commission has set forth recommendations to clarify the whole process of allocation of resources. It has given and proposed a system whereby those who are interested and who believe that their particular position is one that should be considered and should be overriding, have an opportunity through the process established by the Commission to prevail. It seems to me that that is all anyone can do. The primary objections that we have heard seem to me to be because a particular interest group did not get everything that it wanted. But it is given the opportunity to get what it wants through the process proposed. I think that is what the Commission was designed to do. I think

that is what it has done and I think that it has done a good job. I think that we should start pushing for adoption of the Commission's *Report* because it will give us a system.

FROM THE AUDIENCE: If properly interpreted.

MR. RAGSDALE: Agreed, yes, if properly interpreted from my point of view. I think we should implement the *Report* to obtain a process whereby we could make these decisions on what I think will be a more rational basis than what has been done in the past.

MR. CORKER: The Commission did do a very good job in performing the instructions which Congress gave it in the statute. I think the point that is being made is that the statute should have been written. If this would have been done, at this period of time we would have been half way through the process. I feel this very critically because of my participation in the contract study on the reservation doctrine water plan. I was finished on April 1969 and heard nothing from anybody until this broke upon a waiting world. I think that chapter resembles a little bit the camel everyone knows is a horse which was planned by the Committee. I think those things could and should be approved. That is water over the dam.

The significant thing that I would like to ask about is a recommendation that I think should have appeared here. The recommendation is that the evaluation function, which the Commission performed, should be a continuing responsibility for some identified body, perhaps a rather broad constituency agency, perhaps not unlike the Commission in composition, charged with the duty to find out how public land laws are working. The great fact in life is that the public land laws are laws that have been built like alluvial plains, layer upon layer. Some of the laws work, some of them do not, and some of them are completely ignored. This is a period of time in which history is moving very fast. The major recommendation, I would suppose, ought to be a responsibility for continual evaluation; that is, not of the laws that exist in the statute books, but the laws that exist in fact and the action of

the public land laws as these problems evolve through accelerating periods of time.

MR. PEARL: I would like to comment about a particular point that Roger Hansen made about these six interests, that have been identified as standing ready to carve the land up without any regard to the land. This is not so. We explicitly say that the national public is interested in the very things that you are talking about: the carrying capacity of the land, the need to have a reserve, and etc. All of these things are matters of interest to the national public. If you apply the public interest test process that is recommended, they are taken into consideration. If you do not overlook that, I think that you will find that it is not left to the imagination.

I would like to ask Mike McCloskey a question. Everything he said yesterday was, I believe, favorable. I do not think anyone on the Commission or anyone else quarrels with his aspirations or objectives. I think that the Commission had the same objectives. But did I gather that you said that the United States should go back on its contracts with the states and not satisfy the land grant promises made to the states in the statehood acts ?

MR. McCLOSKEY: I did not say that. I did say that I was surprised that there did not seem to be any recognition of the problems of finding indemnity land. I did say that the states cannot just find them without running into environmental conflicts. I thought this was a problem that should have been faced squarely. I am not sure what the answer is but I wish that it would have been addressed.

MR. PEARL: Well, it is. I am sorry that I misunderstood you. The form in which it is laid out will permit all of us to take it into consideration. So, that indicates 100% agreement.

I would like to add a footnote or two on what Jerry Muys had to say. It also fits into the couple of other things that were said here. Wayne Aspinall has expressed the view that the Commission's recommendation on payments in lieu of taxes would probably be the most difficult to implement in

the legislative mill. He expects that it will take six, eight, or maybe ten years, but the minimum of three Congresses, six years, to implement it, and not necessarily in the manner which the Commission has recommended. To implement the Commission's *Report* and obtain a meaningful revision of the public land laws is all part of a long range program.

Don Carmichael says that he does not expect these things to happen immediately. Well, neither does the Commission. These are long range objectives. Nothing is going to happen overnight. I tried to make this point the other day. If you have these impact studies, they are going to bring these things out. As you improve the art, they will, of course be more refined and sophisticated.

Jerry Muys said that the impact on the O. and C. counties in Oregon would be just as great as it would be on Wyoming and New Mexico. My own belief is that the Commission's recommendations do not deal with the O. and C. question. The O. and C. question must be looked at separately. This is clear in the legislative history of the act creating the Commission. The question of the O. and C. lands is something that the Commission did not look into. The Commission never did make any studies of the history of O. and C., what it intended to do and what it accomplished, or whether the formula that was adopted should be changed. We have repeatedly said that the general recommendations should be applied to all types of lands. But if there are exceptions, the parties can come and show why there should be exceptions. O. and C. is an exception from the start. It is my own belief that there would have to be a separate review in the Committees, probably of Congress, as to whether the general policy should be applicable to O. and C.

Fritz Schneider said that revenue sharing was designed to compensate the states and local government because the land would not go on the tax roll. I think that Frank Trelease implied the same thing. Just for the record, Clarence Hinkle of New Mexico, a member of the advisory council, presented to the Commission his view, in a brief legal approach, that this was not the basis for the sharing of oil and gas revenues. He

maintained that the resources, the oil and the gas, belong to the states in which these natural resources were located, and the revenue sharing principle should be continued.

MR. MARTZ: I would like to add one footnote to what Charley Corker said. By the very nature of this type of meeting, we are all examining the material critically. We have all found things that we might have changed or done differently. In balance, however, I think that most of us conclude that the Commission did a remarkably good job, particularly if you test it by asking whether you, individually, could have done better with the material assembled. In the light of this, the thing that concerns me is that if all of these papers are published as a critical evaluation of the *Report*, without some balance on the positive side, it could be construed as a rejection of the *Report* by the group. I would suggest that if 10 percent of the ideas of the *Report* lead to legislation, whether or not it is precisely in the form indicated by the *Report*, it would have been worth the investment.

I would like to ask two things. First, is there anything in the plan of presentation of the materials to the public that will make it clear that this group, as a whole, while they have criticized nits here and there, support the substance of the report and that they compliment the Commission for the work done? Second, is there any way in which the kind of ideas that have been developed here—some of which are good—can be continued to be evaluated by the Commission or some other group, so that the good of this meeting could improve upon the *Report* or get to any legislative group?

MR. HANSEN: The Commission has done a commendable job on an impossible task. The fact that we even have a report, and the fact that the studies were even accomplished, is amazing. It is particularly miraculous that the deadline was met. I think, however, there is a distinction between making the deadline and commending the recommendations of the report. Many of us here have constituencies too. I could not lend my name to a resolution for commendation of the Commission's recommendations, although I certainly would lend

my name to a resolution or commendation of the workmanship of the study.

MR. MARTZ: Could you say that it was a valuable *Report* and much of it was useful?

MR. TRELEASE: I really do not think that this is a resolving group.

MR. MARTZ: I am searching for language that we could all agree on, language that would permit differences in substance for (a) commending the Commission for completing its task and (b) for producing a useful and valuable report (c) Although there may be differences in respect to the substance of the recommendations, the Commission has prepared a report that will provide guidelines for administrative and legislative change.

MR. McCLOSKEY: I think the latter part of that is disputable.

MR. MARTZ: If I got a report of all of these papers criticizing the *Report* en masse from a carefully selected group brought together to evaluate the *Report*, I think the impact would be negative. I, for one, do not want the impact to be negative.

MR. HEYMAN: I think that this report is the best written government report that I have ever read. I do not think any one has publicly said this in the conference.

MR. MUYS: I did not find that Mike McCloskey's paper and some of the other conservation groups scored the *Report*, or rated it, quite as highly as I hoped they would. I would like to put into the proceedings a statement of the Natural Resources Council, which is comprised of 15 of the leading conservationist organizations of America. This statement was sent to the Commission and carefully considered by it. The statement listed 26 points which these groups felt were essential for a satisfactory Commission effort. Without comment, I think that I would like to have the public evaluate the *Report* against those 26 points. I personally think that the Commission has satisfied at least 21 of these points,

leaving aside the fact that the Commission did not repeal or suggest a repeal of the mining law. It has made recommendations which I think achieve all of the objectives of a leasing system. Only four points that the council made might be questionable. I think it would be useful to the readers to evaluate the *Report* in light of those principles.

Editors Note:

Mr. Muys, as the preceding paragraph indicates, requested that the following memorandum be inserted into the record. The following statements were included in a letter addressed to Wayne Aspinall, Chairman of the Public Land Law Review Commission, dated November 18, 1969. It was sent by C. R. Gutermuth, Vice-President of the Wildlife Management Institute. The letter in substance states that the following statements were prepared by the signatory organizations. It further states, "While some important points may have been overlooked and others given inadequate emphasis because of the need for brevity, there is widespread support for these basic positions."

MEMORANDUM

To Public Land Law Review Commission:

*Basic Positions Supported By The Undersigned
National Conservation Organizations*

1. As the primary principle, retain ownership of federal lands, specifically including lands chiefly valuable for timber production and grazing, to provide for present and future human needs, since these lands belong to all of the people.
2. Retain and complete the National Forest System and provide accelerated acquisition of in-holdings for improved management.
3. Dispose of federal lands only when demonstrated public needs indicate a higher public service will be achieved.
4. Provide an organic act for the Bureau of Land Management containing authority to manage the lands on a permanent basis, and retaining the major provi-

sions of the Classification and Multiple Use Act of 1964.

5. Repeal the Homestead, Desert Land, and other acts inconsistent with the organic act for the Bureau of Land Management.
6. Make BLM lands eligible for classification under the National Wilderness Act.
7. Provide BLM with adequate acquisition and exchange authority to facilitate consolidation of federal land ownership.
8. Make BLM eligible to participate in such programs as the Land and Water Conservation Fund.
9. Provide sufficient funds, manpower and authority to manage the public lands, assure public access, and control trespass, vandalism and other unauthorized use.
10. Give high priority to surveying and marking boundaries of federal lands.
11. Reaffirm the principle of the Multiple-Use Acts that the best use or combination of uses of public lands is not to be decided on the basis of the greatest dollar return or the maximum production of a single commodity.
12. Use a comprehensive planning and coordinating approach, including public participation, in developing and administering federal programs.
13. Give quality of the environment overriding consideration in deciding uses and combinations of uses on public lands.
14. Give fish, wildlife, recreation and aesthetics full consideration with other values in the use of public lands.
15. Support and encourage state and federal efforts to protect and preserve natural areas and rare and endangered species.
16. Require that more attention be given to the perpetuation of nongame species of fish and wildlife on public lands in full cooperation with state fish and wildlife agencies.

17. Provide for improved administration, including expanded research and the application of strict environmental controls, of the resources of the Outer Continental Shelf.
18. Replace the antiquated mining law of 1872 with a Mineral Leasing System.
19. Assure that the United States receives fair-market value for resources and services from the public lands where collection is economically feasible, specifically including those marketed for private profit.
20. Require use of competitive bidding wherever possible as the means of establishing fair-market value for public land resources.
21. Charges should be made for recreational uses of public lands only where substantial developments have been provided and regular maintenance and supervision are required.
22. Base all federal land revenue -sharing with state and local government on property tax equivalents, adjusted by impartial evaluation of benefits and burdens attributable to federal lands within state and local jurisdictions.
23. Affirm the principle that federal land permittees are not entitled to any equity or right to reimbursement at the expiration of their term permits.
24. Enforce the principle that the user of any federal land resource does not attain any "right" to the use of or interest in the land.
25. Assure that judicial review of appeals from local decisions relative to the protection of public land values should occur only after full use of existing administrative appeal procedures.
26. Grant no additional waiver of the sovereign immunity of the United States in litigation of private claims.

AMERICAN FISHERIES SOCIETY, C. J. D. Brown,
President

AMERICAN FORESTRY ASSOCIATION, William E.
Towell, Executive Vice President

BOONE AND CROCKETT CLUB, John E. Rhea, President
THE CONSERVATION FOUNDATION, Sydney Howe,
President

IZAACK WALTON LEAGUE OF AMERICA, Joseph W.
Penfold, Conservation Director

NATIONAL AUDOBON SOCIETY, Charles H. Callison,
Executive Vice President

NATIONAL RECREATION & PARK ASSOCIATION,
Sal J. Prezioso, President

NATIONAL RIFLE ASSOCIATION, Franklin L. Orth,
Executive Vice President

NATIONAL WILDLIFE FEDERATION, Thomas L. Kim-
ball, Executive Director

THE NATURE CONSERVANCY, Thomas W. Richards,
President

SIERRA CLUB, W. Lloyd Tupling, Washington Represen-
tative

SPORT FISHING INSTITUTE, Richard H. Stroud,
Executive Vice President

TROUT UNLIMITED, Ray A. Kotrla, Washington
Representative

THE WILDERNESS SOCIETY, Stewart M. Brandborg,
Executive Director

WILDLIFE MANAGEMENT INSTITUTE, Ira N. Gab-
rielson, President

MR. GUYTON: I think that the Commission did fulfill its charge from Congress. I feel in some instances we may feel that the Commission's recommendations may not be suited to our own represented interests; however, I think if we look beneath that surface we might find that they are.

MR. PEARL: Clyde Martz wanted to know my reaction. I have no fears or apprehensions. The *Report* stands by itself, and the comments of various people stand by themselves. People who will read these proceedings will understand the critical approach that has been utilized by this conference. I feel that the *Report* stands by itself. In a meeting of this type

it is important to point out what is not in the *Report*. In the six months, the time in which the Commission's *Report* will be officially presented, and the time that the next Congress meets, we have got to get these things out in the open. We have to find out what is legitimate and what is not legitimate in the Commission's *Report*. If the Commission's recommendations cannot stand the type of scrutiny that they will get in a series of meetings, such as this, they will certainly not survive the legislative process. So, why waste the time of going into the legislative process?

MR. MOCK: What I am going to say is my reaction to what I have heard in these discussions. First, I certainly identify everyone here is an environmentalist in his own way. Throughout the proceedings I heard the question of how can we prevent irremedial damage or irreplaceable losses, and turn the uses and the non-uses of our resources into enhancement and not the detriment of our planet.

The second thing that I heard throughout the proceedings was how can we provide for a change in land resources and users, including the public lands. All the way through this was the theme: How can we prevent any special group, no matter how just its cause, from locking us in against change by control of public lands? How can we provide a system which provides periodic review?

The third question, which I think we raised at all times is: How can we bring these things into our public land policies and be fair to those who have depended on the public land? In other words, what method should be utilized? I think that our *Report* has been identified by your discussion in this way.

I think that it is a tribute to Milton Pearl and the staff, and more indirectly to the Commission, that this *Report*, laid the foundations that make you look across the table at whom you are affecting when you do something. It does not reduce to any extent the difference which you may have with what we recommended in your particular field. The recommendations merely make you responsible for considering the impact on other parts of our public, instead of brushing it aside or

righteously ignoring it. That is about all I can say that we have done.

Now where do we go? This *Report* is a foundation for proper consideration and sound determination. It is probably not going to be implemented in any specific detail or in exactly the form that we put it up. It would have been a waste of time for us to try to reduce it down to any specific language or recommendation adaptable to legislation, although many of us would have liked to have tried.

We talk about how the Commission did this or the Commission did that. However, we were individuals just like this group is. What a commission does is no more the precise language or action of any one person, including our chairman, than a group like this is. It is a commission trying to find recommendations on which to build a foundation for the final implementation of these details, and to give us the guidance. Now we are going to go that next step. From this point on it is out of our hands. It is now in the hands of those who must implement it in the practical hard-headed world of inter-relating human beings. I hope that we have laid the foundation. I think that we have.

