



NATIONAL ASSOCIATION of COUNTIES

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"TRENDS IN PUBLIC LAND DEDICATIONS"

by

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President Schofield, Chairman Connaughton, Forest Counsel Glascock,
distinguished guests, and members of the Conference:

During the early decades of the 19th Century, some American leaders
viewed the West as an obscure desert wasteland. This attitude was reflected in the
eloquence of Daniel Webster when he asked the United States Senate:

"What do we want with this vast, worthless area, this region
of savages and wild beasts, of shifting sands and whirlpools of
dust, of cactus and prairie dogs?

To what use could we ever hope to put these great deserts or
those great mountain ranges, impenetrable and covered to their
base with eternal snow?"

It was as if in response to these rhetorical questions that plain,
ordinary people began their march toward our Western horizons.

This powerful, surging westward movement was to finally push our Nation's
boundaries first to the north to encompass the state of Alaska and then southward
until it came to rest in 1959 at 18° 15' North longitude in Ka Lae, Hawaii.

The public spotlight which held the public lands transfixed on the center stage for nearly a century has often been referred to as the "lure of the west."

For countless immigrants and families, the answer was simpler. For them, the availability of these lands meant homes, farms, towns, businesses of their own, and individual freedom.

The most outstanding tribute to our early public land policies was the opportunity for all citizens to obtain a clear title to their lands, without feudal encumbrances.

This was the great catalyst which encouraged the rapid settlement of "this vast, worthless area" which consisted of "shifting sands and whirlpools of dust."

This fundamental decision, now accepted as an inherent right, provided the opportunity of economic freedom for all citizens. It was accomplished through the transfer of more than one billion acres of land from public to private ownership.

A significant factor in this disposal process has been the establishment of a system of withdrawals and reservations.

By definition, a "withdrawal" or "dedication" is an action which restricts the disposition of public lands. Generally, the retention of these lands in federal ownership is insured by dedicating them to a specific public purpose. A "reservation" is a permanent withdrawal.

Conversely, a "revocation" is an action which cancels a withdrawal.

Probably the first withdrawals occurred in New England during our colonial period. Representatives of the King would cruise the forests and mark, with the broad arrow of the King's estate, those trees which were suitable for

use as ships' masts. Such trees could not legally be cut by the colonists, but were reserved as the exclusive property of the King.

The ordinance of May 20, 1785 established the basic rectangular public land survey system, as compared to the system of metes and bounds. It also marked the beginning of the general reservation of certain public lands by providing that one square mile (section 16) of every township was to be reserved for the maintenance of the public schools.

The first large-scale public land reservation was made on March 1, 1872 when the Congress set aside Yellowstone National Park. This designation placed these 2.2 million acres, and the national parks which were subsequently established, in a permanent status of public ownership.

In 1891, the withdrawal and reservation concept was further expanded with the establishment of the present National Forest system.

General statutory authority to temporarily withdraw lands from disposition under the public land laws was conferred upon the President under the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141).

This Presidential authority was further enhanced five years later when the Supreme Court ruled in the *Midwest Case* (236 U.S. 459) that the President had an implied power to withdraw public lands for a Federal use or purpose. This Presidential authority has been delegated to the Secretary of the Interior.

Thus Congress gradually established a national policy of reserving certain Federal lands for public purposes. Subsequent laws have reserved additional lands not only for their scenic and primeval values, but also for minerals, power sites, reclamation, and wildlife protection.

With a bold signature on June 28, 1934, President Franklin D. Roosevelt ended more than a half century of indecision on the proper disposition of the

public grazing lands in the West when he signed the Taylor Grazing Act.

This action was followed on November 26, 1934 by Executive Order No. 6910, which temporarily withdrew from further entry the remaining vacant, unreserved and unappropriated lands of the public domain.

Though these lands remain open to the staking of mining claims and for public fishing, hunting, camping, and other outdoor recreational pursuits, their further disposition is contingent upon a classification by the Secretary of the Interior that the lands "are more valuable or suitable for the production of agricultural products ... or more valuable and suitable for any other use than (grazing) ..."

Until recently, military agencies were able to withdraw, reserve, or restrict lands for their use simply by filling out the proper form and then applying to the Department of the Interior for as many acres as they specified were absolutely necessary for their operations.

The result was a spectacular increase in the Federal lands controlled by military agencies. From approximately 3 million acres in 1937 their control expanded to 32.6 million acres on June 30, 1961, an increase of 1,087 percent. During the 1961 fiscal year alone, the military's federal land holdings were increased by an additional 3 million acres.

As a direct result of the strong protests which were made against this rapidly emerging pattern of military ownership, P.L. 85-337 was passed on February 28, 1958.

This significant new law provides that military withdrawals of over 5,000 acres must be approved by a specific Act of Congress. It also provided that all hunting and fishing on these withdrawn lands shall be in accord with the state laws where the land is located.

Thus, seven decades into the Twentieth Century, we find that we have grown from an agricultural nation of 3.9 million people during our first census in 1790 to over 190 million persons who reside today in a complex urban-suburban-industrialized society.

We find that 48% of the total land acreage of the 11 western states is still owned by the Federal government. This percentage of Federal ownership fluctuates among these states from a high of 86.2% in Nevada to 29.4% in the state of Washington. Alaska is excluded from this consideration because of the uniqueness of their public lands problems.

We also find that most of the 4,099 public land laws were enacted to meet the dynamics of expansion, at a time when agricultural development was considered the highest use.

By way of comparison, a 1961 review by the Bureau of Land Management revealed that substantially less than 1 million acres of the 350 million acres of public domain lands in the 11 western states had even a slight potential for agricultural development.

The most dramatic impact of an urbanized society has been upon our way of life and its emphasis upon comfort. Professor Galbraith's book, The Affluent Society, vividly depicts a modern family's outing through its memorable description of:

"The family which takes its ... air-conditioned, power-steered, and power-braked automobile out for a tour and passes through cities that are badly paved, made hideous by litter, blighted buildings, billboards, and posts for wires that should long since have been put underground. They pass on into a countryside that has been rendered largely invisible by commercial art ... they picnic on exquisitely packaged food from a

portable icebox by a polluted stream and go on to spend the night at a park which is a menace to public health and morals. Just before dozing off on an air mattress, beneath a nylon tent, amid the stench of decaying refuse, they may reflect vaguely on the curious unevenness of their blessings..."

A "curious unevenness of their blessings..." is also an apt description of our federally-owned lands.

The public lands embrace most of the West's natural resource potential, are governed by obsolete and badly fragmented land laws, and are subject to contradictory standards which never squarely face the fundamental question as to whether these lands are to be managed for disposition or retention. Nonetheless, several clear-cut trends in public land dedications appear to be emerging.

First - Additional Control by Congress over Withdrawals.

Federal administrators use withdrawals to stabilize the land tenure pattern and as a "tool" to serve the broadest needs of the public, when conflicting interests arise concerning the use of federally-owned lands and its resources. During the decade of the 1950's their revocations were nearly equal in acreage to the withdrawals.

Substantial acreages of federally-owned lands are involved in the withdrawal procedures. During the 22-year period from June 6, 1938 to the end of 1960 there were a total of 248 withdrawals, covering 131 million (130,995,628) acres. Each of these 248 withdrawals exceeded 5,000 acres. Though the number of withdrawals was evenly divided between defense and nondefense purposes, the total acreage for nondefense purposes was almost four times as large as the number of acres which had been withdrawn for defense purposes.

In addition, on December 1, 1960 there were 78 applications that

exceeded 5,000 acres each, covering a total of 13 million (13,243,004) acres, which were pending in the Bureau of Land Management for nondefense withdrawals. These pending applications included one million (1,122,313) acres in California.

For a long time the withdrawal concept has had bitter enemies and in many places it is a popular, public issue.

The net result has been a genuine concern in many areas about the withdrawal process.

This concern has been evident in the changing attitude of Congress. Back in 1915, in the Midwest Case, the Supreme Court took judicial notice of the fact that the President had been making withdrawals for so long a time, and with the full knowledge of Congress, that this authority had matured into an "implied" right to make withdrawals.

From this previous attitude of Congressional disinterest, the past decade has brought several important developments which indicate the extent of this Congressional concern.

Article IV, section 3, Clause 2 of the U.S. Constitution imposes on Congress the responsibility of all Government property. Pursuant to this responsibility, the Congress passed the 1958 requirement (P.L. 85-337) that military withdrawals in excess of 5,000 acres must be reviewed and approved by a specific act of Congress.

During the past six years the House and Senate Committees on Interior and Insular affairs extended this concept by reviewing all nondefense withdrawals which exceeded 5,000 acres, under a procedure known as "legislative oversight."

The substitute version of last year's Wilderness Bill (H.R. 776) was reported out of the House Subcommittee on Public Lands with a special section which would require an act of Congress for any future withdrawals of the public

lands or national forest lands that involved more than 5,000 acres. This withdrawal provision is again pending before the Congress.

Withdrawals are also in the center of the important controversy between the Congress and the President regarding the degree of public land responsibility to be exercised by the legislative and executive branches of the Federal government.

These examples are indicative of the deep concern which has been expressed by the Congress. There are further indications that an attempt will be made to establish uniform withdrawal procedures which would be followed by all agencies and departments of the Government.

Second - An Increased Emphasis on Concurrent Multiple Uses

Several Acts of Congress in recent years have expressly recognized the value of the multiple use principle for federally-owned lands.

They include: An amendment to the Recreation Act of 1926 (P.L. 83-387); a permit to allow mining and mineral leasing on the same public land tracts (P.L. 83-585); authorization for public agencies to obtain special use permits (P.L. 83-771); an amendment to the Desert Land Entry Act of 1877 (P.L. 84-76); the Multiple Surface Use Act which pertains to mining land surfaces (P.L. 84-167); authorization for mineral and resource development on power land withdrawals (P.L. 84-357); and the Multiple Use bill for national forest lands (P.L. 86-517).

Recent "innovations" of the executive branch also endorse the multiple use concept. They have proposed the establishment of national seashores, wild rivers, and national recreation areas in an attempt to develop recreational areas which will encourage the maximum utilization of these areas by compatible uses.

It also appears clear that the people of the United States do not want their public domain to be the private realm of the grazer, the logger, the miner,

the oil and gas producer, the hunter, the recreationist, nor of any other single user group. They also seem to be endorsing a balanced program of economic development and public use.

There are caution lights which cannot be overlooked in any consideration of the multiple use concept.

Despite a widespread endorsement of the multiple use concept, the Secretary of the Interior still has no express authority to follow a multiple use principle in the management of the public lands, even though the Multiple Use Act for the National Forests was passed by the 86th Congress.

In November, 1962 the American Forest Products Industries had a nationwide public opinion survey taken by the Opinion Research Corporation. During the process of interviewing average citizens in all parts of the United States, they asked the following question:

"Have you ever heard the term 'multiple use' used in connection with forest lands?"

82% of those who were interviewed said no! Of the remaining 18%, only $\frac{1}{4}$ of them could mention 3 or more uses, such as wood, water, recreation, wildlife, grazing.

Apparently all of us have failed in our public education program.

The toughest problem confronting the public land administrators will involve the conflicts between competing uses for space which is located near urban centers of population.

If an effective job is to be done, adequate guidelines must be established to prevent the administration from overstepping his authority and at the same time being clear enough to encourage him to make and carry out those decisions which are necessary for proper multiple use management.

Third - Need for Congressional Direction

The fine silken thread which is found carefully woven throughout all aspects of the public domain is the need for a national public lands policy.

This need is particularly acute for the landlocked communities which must look to federally-owned or controlled lands as their only means of expansion.

The surrounding San Francisco metropolitan complex provides an illustration of the rapid growth which is anticipated in many parts of the West. For every San Francisco resident today, there will be four within sixty years. Marin County, which is located north of the Golden Gate Bridge will increase its population 5 times, Sonoma and Solano Counties will each increase eight-fold, and Napa County will become 10 times larger.

By 1980, two thirds of our Nation's population will be urban residents. During the interim, every single day will see California convert another 375 acres of land for their urban growth demands.

The safety valve for the future development of the West will be the public lands. It is essential that a national policy be developed now, before it is too late, which will provide broad statutory guidelines to encourage the maximum utilization and to govern the disposition of this valuable resource.

What happens if this is not done? We need only look to the twisting, tortuous path of the wilderness bill for an example.

Since Congress failed to enact general policies to govern the use of the public lands, a vacuum was created into which the federal land administrators had to move in order to manage their areas in an efficient manner.

Therefore the executive branch has gradually developed, on its own, the rules as to which areas should be preserved as wilderness, which areas should be

open for disposal, and which areas should be retained for recreational use.

We have also learned through experience that withdrawals, even temporary dedications, become almost impossible to revoke when they have been made in support of a program that has wide public acceptance.

The decisions regarding the wilderness areas have already been made. The remaining differences will eventually be resolved on the anvil of compromise.

On the other hand, the intensive pressures on the public lands are only now beginning to be felt. The Bureau of Land Management is already being strongly urged to withdraw some of their areas for preservation and to establish recreation development facilities on other units of the public domain.

If specific policy guidelines are not provided to the Bureau of Land Management, then we will have only ourselves to blame if the final result is another unnecessary battlefield such as the one on which the wilderness bill fights were fought.

The proposed Public Land Law Review Commission bill (H.R. 8070) was reported out of committee last Saturday, December 7th. It would provide the framework wherein these policy guidelines can be developed. In addition, it would modernize the voluminous, complex, disjointed, and badly out-dated body of public land laws.

For the public land states and counties, this comprehensive review of the public land laws and policies can develop into one of Congress' finest and far-reaching achievements.

James Russell Lowell may have been thinking of a similar type of a commission when he wrote:

"New times demand new measures and new men;
The world advances, and in time outgrows
The laws that in our father's day were best;
And doubtless, after us, some purer scheme
Will be shaped out by wiser men than we."

Thank you.