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The Past, Present, and Future of Our Public Lands: Celebrating the 40th Anniversary of the Public Land Law Review Commission's Report, One Third of the Nation's Land (Martz Summer Conference, June 2-4)

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Reminiscences

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UNIVERSITY OF COLORADO SCHOOL OF LAW

MARTZ SUMMER CONFERENCE 2010

REMINISCENCES

2 June 2010

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Introduction

A conference honoring the 40th anniversary of the Report of the Public Land Law Review Commission has allocated time to reminisce to Jerry Haggard and me. My contribution relates to my recollections of the period before the 1964 legislation authorizing the Commission. I was Administrative Assistant to Senator Frank Church from 1957-61, Assistant Interior Secretary from 1961 to 1964, Under Secretary from 1965 to 1966. I was a member of the Advisory Board of PLLRC. I had a particularly close relationship with Congressman Wayne Aspinall, and worked closely with him as he constructed the legislative package that included authorization of a Public Land Law Review Commission.

The 1958 General Election and the Outdoor Recreation Resources Review Commission

I trace the story of the PLLRC as beginning in 1958, when the general election breathed new energy into the environmental movement, and when the Outdoor Recreation Resources Review Commission was authorized.

It is my opinion that the seeds of PLLRC were in ORRRC. Authorized in 1958, it was a genuinely bi-partisan effort to grapple with the issue of the federal responsibility for furnishing recreational opportunities, particularly in the public land states. Many of the key features of PLLRC were developed in the ORRRC experience.

One was the effort to include the interest groups in the structure. The chairman at the beginning was Fred Smith, Prudential Insurance Company executive who was also head of the Council of Conservationists, who was succeeded by Laurance Rockefeller. Sam Dana, head of the Univ. of Michigan Natural Resources program, Joe Penfold of the Izaak Walton League, and officials from the American Forestry Association, the Minnesota Department of Conservation, and Bernie Orell, Vice-President of Weyerhaeuser.

The members from Congress were from both parties: John Saylor of Pennsylvania, John Kyl of Iowa, Republicans, and Scoop Jackson and Clinton Anderson, Democrats.

The PLLRC structure was the same -- bicameral, bipartisan, public members appointed by the President.

It is also notable that many ORRRC members served on PLLRCE: John Saylor, John Kyl, Scoop Jackson, Clinton Anderson, and Laurance Rockefeller.

The ORRC philosophy that became the PLLRC was summarized by Laurance Rockefeller: "The commission's work demonstrated the importance of bipartisanship in achieving results. The Commission was made up of eight members of Congress, divided equally among the political parties and the House and Senate. . . . They [the Congressional members] came to meetings and participated fully. The great advantage was that when the time came to turn recommendations into legislative action, those who had served on the commission and helped shape its report were strong advocates regardless of party, There may be something to learn from this bipartisanship in approaching today's sometimes contentious environmental issues." (Sept. 8, 2009).

Congress versus the Executive -- Public Lands

This is not the place to summarize the history of the executive-legislative feud over land withdrawals. Suffice it to say that there was in Congress no more staunch advocate for Congressional position about its prerogatives under Article IV, section 3, clause 2, than Wayne Aspinall. The waning days of the Eisenhower administration (as with most final Presidential terms) were marked by executive orders withdrawing public

lands from mineral entry. President Kennedy, therefore, was advised by Secretary Udall and by me, to assure the Chairman of the House Interior Committee chairman that he recognized and understood Aspinall's position.

The President wrote such a letter, and we were off to a good start with a powerful House Chairman who had never lost a bill on the floor.

Secretary Udall had come from a very junior position on Aspinall's committee to being Interior Secretary, and I think Wayne thought at the time that Stewart needed a bit more training that he was willing to impart -- the hard way if necessary.

Among the simmering issues was whether the Bureau of Land Management had the requisite authority from the Congress for classifying land, including the authority to offer recreational opportunities in the same way the Forest Service and the Park Service Did -- in other words, Aspinall was willing to sponsor a "classification" or organic act for BLM, whether the Department agreed or not that it needed one.

I became a sort of point man for the Department in seeing that he was fully informed about proposed executive withdrawals and the like. In the process, we became very good friends. Frequently I would detour on my way to the Interior Department to pick Wayne up at the Westchester and visit with him in his office a few minutes at the Rayburn building little office he used for such meetings.

An Aspinall legacy to match the Taylor Grazing Act

Wayne Aspinall was born in Illinois in 1896. After moving to Western Colorado he was in training as an Army Air Corps pilot when World War I ended in 1918. He studied law at Westminster Law School before it merged with the University of Denver, and opened a law practice in Grand Junction. He was active in politics and was elected to several terms in the Colorado General Assembly, eventually serving as President of the State Senate before his election to the U. S. Congress in 1948.

His Congressman on the Western Slope was Edward B. Taylor. Taylor had gone to Congress after service in the Colorado legislature, where he was President of the Senate. He rose to the chairmanship of the House

Public Lands Committee and in 1934 authored and successfully managed the passage of the Taylor Grazing Act.

The Taylor Act was an enormous accomplishment, bringing peace to the public domain range in the West. It was a Colorado product. Its intellectual sire was Coloradan Farrington Carpenter, Routt County homesteader with degrees from Princeton and Harvard. Running interference for the bill in the Ickes Interior Department was Coloradan Oscar L. Chapman, Assistant Secretary. Franklin Roosevelt himself was an admirer of Carpenter.

It is not surprising, at least not to me, that Aspinall greatly admired Taylor, and that the parallel nature of their careers may have suggested to him the importance of a worthy legacy like the Taylor Act. In any event, much of his energy went to crafting a way to get a new public land commission to bring order to the tangle of laws, rules and regulations that had grown up over a century and a half of ad hoc public land legislation.

The 1964 Package

Aspinall well knew, as we all did, that many pieces of the puzzle had to be assembled for a project of this kind. For example, I think it could not have happened under a Kennedy administration; the LBJ legislative whirlwind after Kennedy's death had to catch the sails of the Aspinall dream, and that required the involvement of the Interior Department. It would have to sign-off on any bills requiring executive department action.

This wasn't much of a problem on the bill creating a commission, although the public members would be named by the President. However Interior's bureaucrats and lawyers were not enthusiastic about legislative limitations that might go with an organic act for the BLM.

The real sticking point, of course, was how to get the support of the environmental groups for a package that would satisfy the minerals interests.

Over the spring and summer of 1964 Aspinall got his package together, got it to the floor, and got it passed. The ORRRC model was a useful precedent, for it was not truly realized that the recreation study did not involve the gut-wrenching conflicts that would emerge when it came to

changing the mining laws, or water laws, or any number of other parts of the public land laws and public land law history.

The ORRRC pattern was modified to provide for an advisory council to include all the relevant public agencies, together with a Governors' council calling for a representative from every state. The niceties of getting an exactly balanced body was only breached by the almost unanimous agreement of the parties that Aspinall himself should be chairman. I recall no instance of any claim that he favored his own party.

Issues

Whatever their individual views, the commission members, both legislative and public, laid them aside in favor of the scheme Aspinall had worked out for contracting studies to the best minds available on the whole range of laws governing the public domain. However within the staff working with Aspinall a number of structural issues surfaced.

The most contentious of these was the familiar one about the best way to get the bipartisan consensus that was supposed to follow from the rigorous balancing of interests, partisan and otherwise. In a word, should the Commission go for one giant package of reformed public land law, or should it let nature take its course for incremental steps. In the end, the comprehensive label could apply only to the task of repealing "obsolete" laws.

The Contractors

I have often said that if it had accomplished nothing else, the library of its commissioned studies justifies the Commission. I think it is a treasure-trove that needs more mining.

I will mention only Frank Trelease, then Dean at Wyoming Law School, and Paul Gates, author of the History of the Public Lands. That book should be revived.

The Public Members

The Interior Department and Secretary Udall had much to do with who would be named as public members, but politics being what it is, so did the more influential Congressional leaders, not necessarily those on the Commission. I think I had a role in the naming of H. Byron Mock, who had been an attorney for the old Interior Grazing Service and was now a Salt Lake lawyer. Robert Emmet Clark, of the Arizona College of Law was a great choice. I was really impressed with Phil Hoff, the Vermont Governor, who was devoted to the project in spite of his official responsibilities. Laurance Rockefeller carried great weight.

The Congressional Members

You will no doubt divine why I single out John Kyl, the Iowa Congressman, first. I was appointed, replaced, and then reappointed, and he was the very model of bi-partisan cooperation. He and John Saylor had both served on the ORRRC.

Mo Udall, I think, earned his spurs as an environmental leader through his work on the commission.

The Chairman

In April 1968 as the news of the assassination of Martin Luther King, Jr., spread and Washington itself began to burn, the public meeting of the Public Land Law Review Commission in the Rayburn Building kept going. Almost no one was left in the building when Chairman Aspinall pounded the gavel and concluded the hearing. Such was the Commission Chairman – for the moment, at least, nothing was more important.

Byron Mock, vice-chairman, and I walked back to my office and car in the GAO building, toward the plumes of smoke and amidst the wail of sirens. It was eerie.

It was symbolic. Aspinall had his schedule and such was his presence that neither Commission member nor Commission staff or scheduled witness challenged him. He was the Chairman.

The fourteen public meetings and the private Commission sessions were presided over with scrupulous fairness and without the imposition of his views or opinions. As with his Interior Committee's meetings and hearings, he presided with impartiality. He voted last.

Getting a Commission authorized and operating was a huge accomplishment, that meant a great deal to him. In the end, of course, the unanimity of the ORRRC precedent was unattainable. There were dissenting views in the Report submitted to the President forty years ago, and by 1970 the iron discipline of the Aspinall-led hearings process had dissipated.

I hope this anniversary review will have something to say about Aspinall as an effective leader of the new ethic about public lands and their administration for the benefit, as he put it many times, of the many.