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Comments on Public Lands: Title Transfer Proposals

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FOR PANEL

COMMENTS ON PUBLIC LANDS
TITLE TRANSFER PROPOSALS

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and
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CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT:
PUBLIC LANDS AND PUBLIC BENEFITS

October 11-13, 1995

Natural Resources Law Center
University of Colorado
School of Law
Boulder, Colorado

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The occasion of this Conference inspired me to look back at "One Third of the Nation's Land", the report to the President and Congress of the Public Land Law Review Commission (1970). The Preface contains the following quote:

Many Americans take great pride in the national parks, enjoy the recreational facilities in the national forests, and in large numbers tour the giant dams and reservoirs of the Reclamation Service. National pride in the possession and enjoyment of these facilities seems to be displacing the earlier views.¹

It is my impression that this pride of the federal ownership of interesting lands and water resource systems is much more important today than one would infer from the loud voices clamoring for transfers to the states and local entities.

It is now recognized that so-called "non-use" values held by many people for environmental and resource amenities not only exist but can be quite large in the aggregate. This is especially true for unique natural areas and large ecosystems.²

Non-use values don't show up on the cash registers of

¹ From the study prepared for the Commission "History of Public Land Law Development" by Paul Wallace Gates and Robert W. Swensen, 1968.

²For example, see Raymond J. Kopp and V. Kerry Smith (eds.), 1993, Valuing Natural Assets, Washington, D.C.: Resources for the Future; Robert Cameron Mitchell & Richard T. Carson, 1989, Using Surveys to Value Public Good, also RFF; and Natural Resources Journal, 34 (1) on Estimating CERCLA Damages.

businesses but must be given equal weight with incomes generated by actual visitation or extractive forms of land use.

In considering the transfer of title to federal lands, one must look at land systems consisting at a minimum of public lands, adjacent private land and migratory water and wildlife that bond lands together. The disposal of a key migratory path can destroy an entire ecosystem.

Another consideration is the irreversibility of land development. Once converted to ranchettes or private mineral holdings, the lands will never be reassembled.

These considerations suggest that individual land systems be considered on the bases of integrity, uniqueness and use plus non-use values rather than simply on state-wide or West-wide bases. Such consideration requires underlying guidelines and principles.

The Bureau of Reclamation has undertaken a major effort to identify such guidelines and principles for the possible transfer of title to Bureau projects. These guidelines and principles warrant serious consideration for purposes of land transfers. They include the following criteria:³

1. A fair return for federal assets;
2. compliance with applicable federal laws; trust responsibilities must continue to be met;
3. all interstate compacts and trust responsibilities must continue to be met;
4. public safety considerations must continue to be met;
5. transfers must be voluntary on the part of the transferee and the transferee must have the willingness and capability to manage the resources.

³ Paraphrased from Framework for the Transfer of Title, Bureau of Reclamation Projects: dated Aug. 1995.