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Local and National Interests in Using Pub[*l*]ic Forests

Andy Kerr

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LOCAL AND NATIONAL INTERESTS IN USING PUBLIC FORESTS

Andy Kerr
Executive Director
Oregon Natural Resources Council
522 SW 5th Avenue, Suite 1050
Portland, Oregon 97204

WHO GOVERNS THE PUBLIC LANDS: WASHINGTON? THE WEST? THE
COMMUNITY?

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

September 28-30, 1994

- I. Incredibly Dumb Conference Title
 - A. Of the three possible answers, none are specific entities.
 - 1. "Washington" presumably means the Government of the United States.
 - 2. "The West" is too amorphous to define. Is it:
 - a. Los Angeles:
 - i. in the West; and
 - ii. with a hell of a lot more congressional representation, than...
 - b. The rural West, which we have historically thought of as "the West".
 - 3. "The Community" is the most vague of all.
 - a. Is it:
 - i. at least 3rd generationers (excluding Native Americans, as usual);
 - ii. someone who just moved in but dresses the part; or
 - iii. even someone who just moved in who doesn't dress the part; or
 - iv. whoever is there now (assumes only one "community")?
 - B. For discussion here we presume the "public lands" is modified by "federal".
- II. The answer is "Washington"
 - A. If you define "Washington" to be the government of the United States.
 - B. You can reach this answer deductively:
 - 1. in that the other two entities are not definable.
 - C. You can reach this answer inductively:
 - 1. The government of the United States is the *federal* government.
 - 2. The question pertains to *federal* lands.
 - D. There is no legal authority to "govern the (federal) public lands" except:
 - 1. *The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States* (Art. IV, Sec. 3, Constitution of the United States)
 - 2. Congressional directives to consult/confer with others are gratuitous.
 - a. Where such directives exist they apply to:
 - i. Indian nations;
 - ii. states; or
 - iii. local governments.
 - b. No references to "The West" or "The Community".
- III. The real title of conference is "Who *Should* Govern the Public Lands:... " (emphasis added)
 - A. Local interests can exist, but have no rights and are junior to any national interest.
 - 1. "*National*" Forests name given to most forested "(Federal) Public Lands"
 - 2. Attempts at "Custom and Culture" Laws are a joke.
 - a. The US Constitution is superior to:
 - b. State Constitutions & state law; and
 - d. County governments.
 - i. have no sovereignty.
 - ii. are mere political subdivisions for the convenience of the state.
 - e. The same arguments for preserving "custom and culture" were used by:
 - i. Slave-Owners in the American South;
 - ii. Apartheid enthusiasts in South Africa;
 - iii. Royalists in the American Revolutionary War; and
 - iv. Those who opposed a women's right to vote, own property, etc.
 - B. "Local control" has often been a euphemism for abuse.
 - 1. Segregation in the American South.
 - 2. Anti-Labor.
 - 3. The right of women to vote in the United States.
- IV. This "whole lot of bitchin' goin' on" is due to:
 - A. The public and/or the government questioning:
 - 1. the exalted position of elite special interests at the public trough;
 - 2. the wisdom of 19th Century subsidies in the (going on) 21st Century.
 - B. These elite special interests ("ESIs"), include, but are limited to:
 - 1. welfare ranchers grazing the public lands;
 - 2. subsidized public timber cutters;

3. farmers;
 - a. no longer modify "farmers" in any way, as subsidies are so pervasive.
 4. life-sucking hydropower interests;
 5. inefficient barge companies on our inland waterways;
 6. ad nauseam.
- C. "ESIs" are upset for the same reasons as:
1. a thief who get caught stealing after having done it in his family for generations;
 2. a motorist gets mad for getting a speeding ticket. It is still illegal, even though:
 - a. others are doing it; and/or
 - b. the motorist and his family have done it that way for four generations.
 3. an invited house guest, whom you try to get to leave after they have:
 - a. overstayed their welcome;
 - b. drank all your liquor;
 - c. sold your furniture (giving you nothing but \$2.50/chair; \$5/couch)
 - d. ate all your food;
 - e. crapped in your living room; and
 - f. raped your sons and daughters.
- V. In spite of the total illegitimacy of their claims;
- A. Compassion is called for.
1. We all fear change.
 2. We are all people (except corporations, in spite of what the Supreme Court says).
- B. Compensation for ESI inconvenience due to implementation changed federal policies:
1. Socially fair.
 - a. these people built their lives on a set of assumptions, now invalidated.
 - b. the "disaster" is a real as:
 - i. an earthquake;
 - ii. a hurricane; or
 - iii. a flood.
 2. Environmentally necessary.
 - a. these lands need relief now, can't wait for land abusers to die out due to:
 - i. changing economics.
 - ii. changing lifestyles.
 3. Economically efficient.
 - a. Hell, it is just money.
 - b. Public land grazing permits can be bought:
 - i. at fair market value;
 - ii. for less 4-10 years of ongoing government subsidies.
 - c. We can subsidize wheat hauling on the Columbia River by rail instead
 - i. for half the cost of money and save fish.
 4. Case Model: Clinton's Westside Forest Plan (Option 9)
 - a. 10,000 jobs attributed the plan.
 - b. Clinton (us taxpayers, really) spending \$1.2 billion.
 - c. \$120,000/dislocated worker.
 - d. Being spent on porkbarrel and suck up by the government bureaucracy.
 - e. Can't craft a plan that meets the needs of all individuals and communities.
 - f. Better to split three ways:
 - i. \$40,000 per dislocated worker for watershed restoration.
 - ii. \$40,000 for each worker to the county for economic transition.
 - iii. \$40,000 tax free (like other disasters) to the dislocated worker
 - g. Worker can:
 - i. coast into retirement;
 - ii. pay off the house;
 - iii. retrain;
 - iv. start a business;
 - v. finish high school and/or go college;
 - vi. move; or
 - vii. party one's way through denial.
- VI. Environmentalists may be hell to live with, but they make great ancestors.