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The Natural Resource Law Center Conference on “Challenging Federal Ownership and Management Public Lands and Public Benefits”

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**THE NATURAL RESOURCE LAW CENTER
CONFERENCE ON "CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT
PUBLIC LANDS AND PUBLIC BENEFITS"**

Senator Frank H. Murkowski
Chairman, United States Senate Committee on Energy and Natural Resources
Friday October 13, 1995
University of Colorado at Boulder

At 12 noon on January the 4th, 1995 the gavel was dropped opening the 104 th session of Congress. That body came to order with "new" purpose and direction, a sense of urgency, and a dedication to begin making changes in this country that would take us into a new century----stronger, smarter, and in a position to protect our individual freedom and successfully compete within a global marketplace.

The November election left no doubt that the voting public are fed up with the snowballing federalism of the last 25 years. Past administrations, without exception, have extended the already too long arm of the federal government in the name of environmental protection. Examples from the Bush Administration are expanded federal roles in the areas of wetlands protection, endangered species, and the rewrite of the Clean Air Act. The Clinton Administration has continued this surge in federal authority in it's pursuit of "ecosystem management", a "National Biological Survey", the desire to create a new and more expansive federal mining law, and a Btu tax. The message the voters delivered at the polls has been heard in Congress, it's time to turn the tide of federal encroachment.

Make no mistake about it, we are at a crossroad. Many paths lie before us. Which will we choose? This is a time for reflection, evaluation, and reinvention. Nothing should be sacred. Protectors of the status quo are everywhere: inside entrenched government bureaucracies, institutionalized environmental lobbying organizations, and business organizations dependent on public resources. Taking these interests on is not impossible, but they are as tough to deal with as an Alaskan Grizzly with a real bad toothache. The federal public land management enterprise provides the finest examples of centralized government authority to the exclusion of local control, entrenched large and wasteful federal bureaucracies, and the displacement of market forces with government intervention and political resource allocation.

Few areas in today's Congressional debate are more controversial than public land reform. Having listened to the diverse points of view presented at this conference, you should have little doubt of that. The voices championing these positions are both passionate and dedicated; and, unfortunately, often the wellspring of a lot of "disinformation". This is extremely unfortunate because decisions about the future of our Federal lands must be based on sound science and honest debate. Nevertheless, emotional rhetoric and associated fear

generate the fundraising dollars that pay the salaries of Washington insiders who have a tight grip on public land policy for many years.

Debate surrounding the future of public lands and the purposes for which those lands were to be used is nothing new. This debate is part and parcel to the history and development of the United States. Public lands, what they are to be used for and who makes the decisions about them was a major point of contention in the creation of this country----Maryland's stubborn insistence that lands west of the Appalachians claimed by the other states be turned over to the central government was a do or die issue before they would sign the Articles of Confederation. So, from the very beginning land management has been a passionate issue with America. And I guess since many of our early settlers came from a land starved Europe, this should come as no surprise to us. Land and it's ownership is at the very heart and soul of America, as much today as it was at the birth of the nation. America, as a country, embodies this intense interest in "it's" lands.

Let me stop here for a moment and draw your attention to a point that I think is critically important in these discussions---a point that **MUST** never be overlooked. Land use policies which have evolved since the beginning of this country have not been "academic" exercises---the lives of many Americans have been, **AND ARE**, tied up in these decisions--the well being of their families--their past, their present, their futures are tied to the land. Past decisions and practices have put them there and **WE** can not, in good conscience, abandon those who provide for their livelihood off the public lands. Land management decisions directed from Washington, D.C. often lose sight of this fact.

The users of the public land want public land reform because land managers can't deliver on their priorities and the priorities of the land managers, set in Washington, D.C., do not address the needs of those who rely on the Federal lands. It is the cry of the disenfranchised public land users who for too long have found their futures in the hands of national preservation lobbies with powerful Washington, D.C. friends who have moved the public land debate before Congress. A new public land ethic is emerging which emphasizes local control and responsibility with less regulation and "red tape", or should I say "green tape".

The bureaucracy which has grown up around the management of our public lands has not been able to---or has not wanted--to embrace this new ethic. There's an old saying that goes:

"If you always do what you always did---you will always get what you always got".

I'm here to tell you---that dog just won't hunt anymore.

Bills being considered in the Congress take two basic forms----those that seek to reorganize the federal agencies into more efficient organizations (reduction of overhead and administrative costs while putting more resources on the ground)----and those which seek to move lands out of federal control and put them into either state hands or sell them outright.

Of these two philosophical approaches, the least threatening to the institutionalized public land lobby are the proposals which would direct reorganizations within the existing bureaucracies. Least this Congress be accused of radical departure from the status quo, let me assure you this is not a new idea. For years rumbles have been heard through the halls of Congress as to the creation of a Department of Natural Resources---popularity of this issue has risen and fallen with the winds of political opinion. It has never reached a level of serious debate. In this concept, all of the land management agencies (Forest Service, Bureau of Land Management, Park Service, Fish and Wildlife Service, Bureau of Reclamation) would be housed in a common Department. Though the idea has received some support, the energy necessary to carry it to serious debate has never been present. You might say that this was an idea whose time had not yet come. While there is currently no specific action directed toward the creation of a Department of Natural Resources, there is a Bill (S.929) sponsored by Senators Abraham, Dole, Faircloth, Nickles, Gramm, and Brown which would direct the creation of a Commission that would be tasked with the development of a plan to restructure government into no more than 10 agencies. The Commission would be further directed to propose methods that would reduce layers of organizational hierarchy, concentrate employees in staff and overhead functions, reduce mid-level supervisory, staff positions, administrative, and political employees. The creation of a Department of Natural Resources would seem a reasonable point of consideration for this Commission should it be formed.

In a less sweeping piece of legislation, Senators Burns and Craig are sponsoring S.1151, which would direct the creation of a Commission to take a look at merging the U.S. Forest Service and the Bureau of Land Management. The Commission would, as in the previous Commission, be charged with coming up with recommendations to merge the two multiple use agencies, reduce the cost of administration, put a larger percentage of agency resources in field offices, improve service to the public, simplify land use planning and the appeal process, restrict the process of removing land from multiple use designation, and consolidate the public laws that govern the use and management of public lands.

Without a doubt the most sweeping piece of proposed legislation currently before the Congress is H.R. 1923. The title of this proposed bill probably says it all, "To balance the budget of the United States Government by restructuring Government, reducing Federal spending, eliminating the deficit, limiting bureaucracy, and restoring federalism." Sponsored by Congressmen Solomon, Gross, Hancock, Upton, Zeliff, Neumann, and Zimmer; this bill seeks through 13 Titles and some one thousand one hundred and eighty five pages to significantly redesign the bureaucracy that manages the day-to-day operation of government in this country. As it relates specifically to public land management, the bill would limit acquisition of lands by the BLM, downsize MMS and BOR and abolish NBS, Bureau of Mines, and the U.S. Geological Survey.

As you recall, I said there were two basic ideologies at work within the Congress; reorganization and consolidation which we just talked about. The second, and by far the most controversial, is the sale of public lands to the private sector and/or transfer of public lands

to the states within which they lie.

Again, a lot of these ideas are not new. If you recall President Reagan early in his first term suggested that the public debt could be satisfied through the sale of some of the nations public lands. While this wholesale effort to sell of the public lands was short lived, it does serve to point out that current considerations have been around a long time. As a matter of record, the Congress and executive branches of government, for years, have used the appropriation process to sell and trade government assets that were considered to be better managed in the private sector. While these appropriation activities will continue, they are very limited in scope and do not get to the basic fabric of public land management. Recently there has been a great deal of alarm about selling off the public lands, but there is no pending legislation proposing such a sale. The closest thing to a Federal land sale is a proposal in the House Budget Reconciliation bill to offer mixed ownership ski areas for sale to current leaseholders; a far cry from the fire sale rhetoric you might find in a fundraising letter from the environmental lobby. Let there be no confusion on this point. Despite reports to the contrary, Yellowstone, Yosemite, or the Grand Canyon are not for sale.

Currently there are three bills that speak directly to the transferal of some portions of the public lands to the states. Two are identical pieces of legislation sponsored in the Senate (S. 1031) by Thomas, Simpson, Burns, Craig, Stevens, Kempthorne, and Helms and in the House (H.R. 2032) by Hansen, Vucanovich, Cubin, Cooley, Pombo, Doolittle, Herger, Skeen, Stump, and Allard. These bills would offer all BLM lands within a state to the Governor. The Governor would then have two choices--accept all the land, or reject all the land. If accepted; the Department of Interior would have ten years time to complete the transfer to the state. The third bill, H.R. 2413, introduced by Congressman Don Young, Chairman of the House Natural Resources Committee, proposes to offer ownership of the Tongass National Forest to the State of Alaska. The Tongass Forest is the nation's largest, at 17 million acres it covers an entire region of Alaska engulfing the state capitol and over twenty other communities.

Though I cannot tell you with any certainty the fate of these pieces of proposed legislation or the many others which, no doubt, will emerge out of the various debates yet to come, I can tell you for certain that "change" will occur. Our entire nation is changing the way it does business--the way it provides service. Public land management philosophies must and will be swept up in the debate----and---- change will occur. Public lands make a significant contribution to the economy of this country. These opportunities must be protected and enhanced. This does not mean acting foolishly and throwing open the gates to our refuges and national parks to unchecked development. But, it also does not mean being intimidated into maintaining the status quo or locking up more public lands for fear of making difficult public land policy decisions.

In the Senate Energy and Natural Resources Committee we have undertaken the first concentrated series of oversight hearings on Federal forest management since Congress passed

the National Forest Management Act 19 years ago. We are conducting a comprehensive series of hearings that will evaluate the Forest Service's land management processes, its success in achieving tangible goals and outputs, its responsiveness to the public, and its adherence to good land stewardship principles. To date we have held 12 of these oversight hearings, with more scheduled for this month.

In the course of this review, we also plan to evaluate whether the current system of federal ownership and management is still viable. At the end of these hearings, based upon the testimony we receive, we will move forward with major Federal forest management reform.

Let me explain why we believe it is essential to move forward with this effort. Earlier this year, I asked the Forest Service to assemble information on trends in performance and accomplishments over the past 10 years in response to a series of questions. I am told that these data have never been assembled in this fashion, and they tell a compelling story. I started with the Forest Service timber management program due to my familiarity with this program.

In short, it is on life support, and fading fast. Costs are way up, production is down, and performance is marginal in most regions. The forests are becoming increasingly susceptible to fire. Consider the following highlights of the status of this program.

First, in the last 10 years, the land physically and economically suitable for timber production that is still available for that purpose has declined by over 59%. It has declined from 70.6 million acres to 41.9 million acres. The only major congressional participation in this reduction occurred in the Tongass Timber Reform Act, the rest is the result of primarily administrative or court action.

Second, over the last ten years, net annual growth of trees has been steadily declining. Net annual mortality has been steadily increasing. This is one indication of a sick forest. This situation is pronounced in 7 of the 9 Forest Service regions.

Third, the Forest Service has 9.3 billion board feet (BBF) of economically operable salvage timber presently available system-wide. Nevertheless, timber sale offerings decreased from 11.5 BBF in 1985 to 3.4 BBF in 1994. In 1994, total annual mortality finally exceeded the harvest. Mortality had been exceeding harvest in Regions 1, 2, 3, 4 and 10 since 1991 or earlier.

Fourth, over the past 10 years the Agency has withdrawn lands from timber production, both through the national forest planning process, and through administrative decisions outside the NFMA process. In the latter case, public involvement has usually been after-the-fact or completely eliminated as new "policy by press release" has been established. By 1995, the difference between the allowable sale quantity established in the public, NFMA plans and the lower quantity left after new constraints were imposed had reached more than 3.5 BBF of

timber. It is fair to suggest that annual sales that would otherwise support 31,500 wood products jobs disappeared without much advance public involvement.

Fifth, even though congressional timber sale targets have been declining dramatically over the last 5 years, the Forest Service's accomplishment of the congressional target has declined more sharply. In other words, lower congressional targets have been met with progressively poorer performance. I will admit that this is mostly for reasons such as appeals and injunctions outside of the Agency's control, but it is still happening nevertheless.

Sixth, the timber sale preparation pipeline is dry. According to the data provided to us by the Agency, there is essentially no pipeline in 8 of the 9 regions. In the remaining region, the Alaska Region, the pipeline volume has been encumbered by administrative decisions and is not really available. Region 3, which includes Arizona and New Mexico, is basically out of business. California is close behind. The gravity of the situation in these regions has been masked by the volume of the decline in the Pacific Northwest.

Seventh, volume of sold timber under contract is one-sixth of what it was in 1985. It is now at an historic low of 6.8 BBF, and some of that is presently being withheld by the Forest Service in violation of contract terms. As this remaining volume is used up, most analysts expect mill closures to escalate.

Eighth, the unit costs that the Forest Service incurs to sell timber have skyrocketed in 6 of the 9 regions over the past five years. Only Alaska has reduced unit costs. In five years, costs have about doubled in the Intermountain States and California. They have increased five times (mostly in the last two years) in the Pacific Northwest. This is, so far, the only legacy of -- and a tribute to -- the President's Pacific Northwest Forest Plan. Over the past three years, the cost of field work has actually decreased. NEPA analysis, other resource support, and appeals and litigation costs have caused the increase.

We started our inquiry with the timber management program. Shortly we will be reviewing the range management program. It may be rapidly headed in the same direction. The Agency has asked us to approve a \$25 million increase in FY 1996 -- with money taken from the timber program -- to engage in a crash-course NEPA paper chase to provide NEPA documentation for grazing lease renewals.

Even if this represented a wise course of action, it is doomed to failure. It is doomed first because the Agency probably cannot complete the documents in time to avoid leaving some lessees vulnerable to termination. It is doomed twice because hastily prepared documents -- even if prepared on time -- are unlikely to withstand the court scrutiny that will inevitably follow. But more fundamentally, this is not a wise course of action. These documents are being prepared so hastily that they cannot achieve any on-the-ground management improvements.

After our Committee reviews Forest Service range management, we will hold oversight hearings on recreation management programs and facilities. I hope we will find fewer problems there. At the same time, the FY 1996 budget request sent out warning signals concerning the disrepair of many Forest Service recreation facilities.

One of the things we are finding in our review of Federal forest management is that the "multiple use" management concept combined with an explosion of NEPA law has broken the back of the Forest Service. The notion that resource managers will be able to achieve a socially optimal mix of resource outputs through an expensive and bureaucratic planning process is fundamentally flawed. The multiple use mandate leaves resource allocation decisions to politics rather than markets or science. An army of planners run expensive and time consuming plans up flag poles only to be shot down or amended by the courts or Congress as forest users battle to win resource allocation decisions through political or legal maneuvering. All this occurs at great expense to the taxpayer and the forests, and at the end of the day the best that can be said is that no one is happy. So goes the tale of "multiple use", a great central planning, egalitarian concept of the 1970's that should be left behind in the 1990's.

A better approach to management of our Federal forests might be a concept called "dominant use". Congress could make the hard political decisions first by designating the dominant use for each specific forest or, in some cases, area within a forest. Once a clear management goal was set for a particular area resource allocation conflicts would be reduced, planning costs limited, and certainty increased for forest users. In addition, land managers assigned to a particular area could be more focused and specialized. Engineers and timber management teams would not be needed in forests dedicated to wilderness uses and timber production areas would have little need for wilderness specialists.

Single or dominant use designations are not new to Congress or the Federal lands. This is exactly the idea behind Wilderness or Wild and Scenic River designations. However, departure from the "multiple use" mandate has only been considered when the goal is to exclude commodity uses from a particular area. The effect of such withdrawals has been to increasingly reduce the area within which the needs of all forest users must be met, making resource allocation decisions more difficult. Congress could reduce conflict and increase forest management efficiency by going one more step and setting aside areas for more intensive uses like developed recreation or timber production.

Once "dominant use" designations have been made for particular areas, Congress could then evaluate the appropriate role for the federal government in each area. Forest areas dedicated to commodity production such as timber, mining, or developed recreation would be good candidates for privatization. Other areas dedicated to preservation of wilderness or management of wildlife habitat may be better situated for federal or state management. Still other areas set aside for the protection and management of water supplies or similar uses might be better managed by local governments or cooperatives.

A new public land ethic is developing around the principles of reduced Federal regulation and control and increased reliance on local governments and private markets to efficiently manage land resources. It is time the Federal government stopped subsidizing resource development and got out of the business of commodity production. This could be accomplished by privatizing resources dedicated to commodity uses. Lands retained in federal ownership should be reserved for appropriate federal purposes like the preservation of valuable natural areas that are part of the heritage of all Americans. Lands more appropriately meeting state or local government needs like protection of water supplies or fish and game management should become the responsibility of state or local governments.

Let me leave you with this thought. The public lands that our forefathers walked across are no more--fires that once swept across the lands removing the old and making way for the new are now aggressively suppressed--the buffalo herds that grazed the nations grasslands are in reserves--rivers have been turned to many additional purposes beyond their natural flows. We cannot go back----we should not go back. I urge you to consider the complexities that must be factored into planning the nations land ethic for the coming century. By working together at conferences like this one, we will move toward the creation of a new land ethic--and out of this effort will emerge an enduring legacy of public land stewardship that will be the envy of the world and a precious heritage that we will be proud to pass onto our children.