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The Public Lands and the National Heritage

Charles F. Wilkinson^o

The fundamental question in public land law and policy always has been, and always will be as long as we have them, whether the federal lands ought to remain in United States ownership. For nearly the whole of the nation's first century, we were clear about the answer. The lands and their many resources could best serve the national interest through their transfer. In addition to providing a modest but steady flow of needed income, land transfers could unite the country geographically, both as a magnet for westward-yearning homesteaders and as a reward to the rail companies that would bind the coasts. A bountiful inducement was, we should remember, surely needed: Lincoln's dream in 1862 of a transcontinental rail line was no less daunting than Kennedy's, a century later, of a moon landing. Lincoln knew, too, how the free national gold and silver from the fields in California, Nevada, and elsewhere had made the United States a world economic force. The Great Barbeque of the nineteenth century might have been a national giveaway, but it was also a national investment.

Our premises began to expand when Hayden's report, Jackson's photographs, and Moran's paintings made their way back east, verifying every last word Jim Bridger had said. We quickly set aside the magical high plateau at Yellowstone with its geysers and its habitat. No nation had ever done such a thing before, yet for a generation Yellowstone was an isolated act: the truer reflection of our view toward the national lands in 1872 was the passage of the General Mining Law.

Then, in 1890, with John Muir's fervid pleading making a movement out of scattered drawing-room conversations, Congress declared a national park, the world's second, in the Sierra. Just a year later, presidents began employing a miscellaneous congressional rider as an extraordinary lever for conservation of forests and watersheds. By the time Roosevelt and Pinchot were finished, in 1907, nearly ten percent of the whole country had been withdrawn from transfer and put under aggressive federal management as national forests.

On one level, the parks movement—and the related wildlife refuge initiative sparked by Roosevelt—headed off in a different direction than the more utilitarian national forests. It certainly seemed that way to Muir. But on another, ultimately deeper level, the parks, forests, refuges, and by 1934, the public domain lands, all worked on exactly the same premise: the nation ought to hold large blocks of land.

Of course, the fact that we have a national land estate owes plenty to serendipity and accident. In the case of the public domain lands, private default played a greater role than public decision. And the national park idea started out as a state park idea and might have stayed that way. Congress's first park, after all, was a state park, created in

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1864 when the national legislature gave Yosemite Valley to California.

But we continue to have a public land system today for reasons as well as vagaries. The justifications have been tested many times, as recently as the 1940s and the late 1970s, but those efforts were rejected because in the last analysis the arguments for a sell-off seemed preposterous to the people. The fact that today we have another debate over public-land ownership doesn't diminish the idea. We are still debating due process and civil rights also. Each new generation has to reaffirm our nation's core ideals and, in a democracy, reaffirmation usually blooms from the loam of a good, vigorous fight.

I'd like to make it clear what I am not fighting about. Public land policy needs reform. We need to involve local citizens and governments better by working more extensively and collaboratively in formulating public lands decisions. Although we can't always spare so much of our top officials' time, the consensus efforts of Betsy Rieke at the Bay-Delta and Bruce Babbitt with the Colorado grazing meetings, not top-down directions, are the right approach. Local people have knowledge, expertise, and a lot at stake. The federal agencies are fraught with inefficiencies and bad incentives. Private landowners need more certainty when they sign off on an endangered species plan. In these and other areas, changes ought to be fundamental, not cosmetic. A rough working model, the framework for the Babbitt and Rieke efforts, might be substantial federal standards implemented through deep community participation and tailored to reflect local conditions.

But give away or sell off the public lands in this generation's fight? Not on your life. We'd lose far too much: too much openness, too much freedom, too much protection against the thunder heads that lie thick above our children's heads, and the even darker ones that lie above our grandchildren's.

I don't trust the bills that we're seeing pushed so hard. You can learn about a bill from its text but you find out even more from the people who are pushing it. By and large, the pressure is not coming from the stickers—the ranchers who have made up their minds to protect the riparian zones, the family timber operations who are grooming the stands for their grandchildren, the local miners who are determined to protect the streams from erosion and acid mine drainage, or the business people who know that the big sky and the open terrain are their communities' best assets.

The stickers take the long view, more so now than ever. That doesn't mean they aren't mad. Many

of them are, and some have signed up with the Wise Use Movement. But they want reform, not demolition. They know that most family ranches can't outbid the subdividers for the valley floors, that the streams and the elk herds may not remain open to the public, and that the odds go way up for pits and slashes on the ridges above town that go from summer green to autumn gold to winter silver.

However you characterize their motives, the people behind these bills favor sharply increased extraction. They claim to be for efficiency and they are—a sharp-edged, straight-ahead, short-term efficiency, a sword's thrust. There is precious little concern for community stability, for the environment, or for social equity.

Take the notable omission of Indian tribal governments from the reform proposals. Remember that these are supposedly proposals to "return" the land to the states as a matter of equity and to allow local governments—close to the ground, close to the people—to make decisions.

If so, why exclude the tribes? Tribal governments possess one of the three sources of sovereignty, along with the United States and the states, in our constitutional framework. There can be, of course, no "return" of public lands to the states, which never owned them. But the tribes did own them, as a matter of historical fact and American real property law. In aboriginal times, before the treaties, they owned all of it in a shared estate with the federal government. Chief Justice Marshall made that clear in 1823 in *Johnson v. McIntosh*. The tribes ceded much of that aboriginal land to the United States, but reserved large holdings in the treaties or other transactions. Most of the treaty land—theirs forever, so we said—was then taken by various devices ranging from wars to land rushes to fine print. In all, the treaty land, fee simple land, probably amounted to 200 million acres, more than the national forest system. Indian land holdings today total about 55 million acres.

Ask the Klamaths about their lost treaty reservation, once 1.1 million acres that until 1961 ran from just north of Klamath Falls nearly all the way to Chemult, more than sixty miles: ponderosa pine country, some of the best there is; Klamath Marsh, where tribal members hunted for duck and otter and gathered the wocus plant; the Sycan and Williamson Rivers, spring-fed streams full of food; open meadows where the Interstate Deer Herd wintered. Ask the Sioux about the Black Hills, the Sun Dance places, the vision quest sites, the deer, and the quarter of a billion dollars held today in a federal trust account that the Sioux Nation staunchly refuses to accept as payment for the old land. Ask

the Utes of Colorado about the solemn treaty of 1868 that Ouray and Nicagaat so carefully negotiated and that reserved to the tribe twenty percent of Colorado, most of the Western Slope; about how the whole San Juan range was torn off in 1874 in the name of gold; and about how the reservation was obliterated in 1880 after what we once dared to call the Meeker Massacre but now have begun to understand was the Battle of Milk Creek, a clash between two governments across a canyon of cultural differences. Ask the Santa Clara, Sandia, and the other New Mexico pueblos about the corrupt Pueblo Lands Act of 1924 and the land that should still be theirs.

Are these land-transfer bills really about history or equity or local government?



It may be useful to look at the individual public land systems to see some of the reasons we have a national land estate and how we would wound the people and our future by selling those lands to the states, the companies, or the companies via the states.

The national parks, as surely as the Statue of Liberty or the Stars and Stripes, stand for what we believe in as a people, as a national society. The national park idea is one of our country's best cultural inventions, now emulated the world over.

The high, jagged, lonesome granite that helped cut our myths and our character is on grand display in many of them. You know their names, names for all time. The deepest canyon holds more exposed geology than anywhere else. It is the world's university of geology. The earth's finest remaining geyser fields—almost all of the others have been drawn down—lie beneath the lodgepole pine stands in the Northern Rockies. The millennia of our deep human history, and our growing appreciation of it, is honored in the park near the Four Corners.

The Hansen bill would just study the parks for closure. Its proponents express surprise, shock, at the idea that the great parks would be sold off. But then, we should ask, why study the whole system for closure? Of course, there are a handful of parks that don't speak to our national heritage, that don't inspire our pride and wonder. Such a study of those few and small parks, with recommendations to Congress, can be done administratively, with little time or money. But don't indulge the subtext of this bill, which is a raid on our dowry of history, science, refuge, and inspiration.

I imagine that everyone who cares about the public lands is a critic of the Forest Service. I know I am. The agency has all manner of faults: it extracts

too much, it extracts too little, it moves too fast, it moves too slow, it is too distant, it is too co-opted by locals. Yet where else in this country, where on earth, is a large land base run so well for so many competing purposes?

With all its warts, the Forest Service has a tradition of excellence rare in public offices. Pinchot's views, because they are so formidable, are debated yet today, but his standards of quality are unimpeachable. The Forest Service still gets the best young blood out of the natural resources schools. Forest Service research serves our resources well. A large and diverse land system furthers that work. The contest in the Pacific Northwest has focused on the national forests precisely because, in spite of the overcutting since the 1960s, the national forests have been the most conservatively managed lands and hold almost all of the old growth outside of the national parks.

The national forest system, which Senators Burns and Murkowski want to study for disposal, well serves us and our future. The forests are the watershed for the West. The range is in good condition. The national forests are key habitat for wildlife. It is a fact, not a slap at the states, to say that the states have no institutions in place comparable to the deeper and more broad-gauged Forest Service. A number of western states, believing that state trust lands must be dedicated solely to extractive uses, refuse to allow, or sharply curtail, non-revenue-producing multiple uses, including recreation. Arizona, New Mexico, Wyoming, Colorado, Utah, and Montana all lack forest practices acts. In those states that have acted on forest practices, the statutes fall well short of federal legislation.

The BLM lands and the wildlife refuges have long been undersupported. The agencies haven't had the time or opportunity to build the personnel or esprit that characterize the Forest Service. Yet both are rapidly improving offices, growing more professional each year.

The Hansen disposal bill would transfer all BLM lands to the states, without payment. It provides no compensation for the coal under Kaiparowits, one of the world's premier deposits, or for the fine O&C and Coos Bay Wagon Road timber lands in western Oregon. Why would someone propose this? Is it for long-term sustainability? Or would we see a second, quick-draw transfer, also for a song, but this time to the big private interests?

Is it sensible abruptly to jettison the knowledge and practices that have built up over the years in the federal land agencies? Granted, while there is creativity and quality, there is also inefficiency and wrongheadedness. Yes, the federal agencies have

yet finally to learn that they should be citizen convenors—collaborators, not masters. But how many years, if it ever happened at all, would it take a western state in these budget-tight times to build a comparable ability to manage tens of millions of new acres?

And then there is wilderness, which we have managed to preserve only as a whole nation. Now, we learn, even the BLM lands have wondrous wild backcountry.

Kaiparowits, the interior of the Colorado Plateau, itself the interior of the nation, is not just for coal. Few people come to this southern Utah plateau because modern conveniences are so distant, traditional beauty so scarce, normal recreational opportunities so limited. Precipitation measures ten to twelve inches a year. There are just two or three perennial streams, and they carry little water. One dirt road, usable by passenger cars, runs up to Escalante. Otherwise, it is all jeep trails. Piñon-juniper stands offer almost no cover from the sun. Cross-country backpacking is for experts only. You have to scour the topographic maps, plan your trip with care (being sure to hit the springs), and stick to your plan. Even a short hike is a challenge. From a distance, Kaiparowits looks flat on top but in fact it is up-and-down, chopped-up, confusing. You can get lost, snakebit, or otherwise injured. There's no one to call.

Kaiparowits is, in a word, wild—"wilderness," as Raymond Wheeler put it, "right down to its burning core." Eagles, hawks, and peregrines are in there, especially in the wind currents near the cliffs, and so are bighorn sheep, trophy elk, and deer. Archaeologists have recorded some 400 sites but there are many more. There has been little surveying, except near some of the mine sites. From Kaiparowits you are given startling Plateau vistas in all directions: vivid view of more than 200 miles if the winds have cleared out the haze; views as encompassing as those from the southern tip of Cedar Mesa, the east flank of Boulder Mountain, the high LaSals, Dead Horse Point; long, stretching expanses of sacred country. If you climb the rocky promontories on top of Kaiparowits you can see off to Boulder Mountain, the Henrys, Black Mesa, Navajo Mountain, the Kaibab Plateau, the Vermilion Cliffs.

The languid stillness of Kaiparowits turns your mind gently and slowly to wondering about time, to trying to comprehend the long, deep time all of this took, from Cretaceous, from back before Cretaceous, and to comprehend, since Lake Powell and the seventy-story stacks of Navajo Generating Station also now play part of the vista, how it is that

our culture has so much might and how it is that we choose to exert it so frantically, with so little regard of the time that you can see, actually see, from here. Perhaps somehow by taking some moments now, here in this stark piñon-juniper rockland place, here in this farthest-away place, a person can nurture some of the fibers of constancy and constraint that our people possess in addition to the might. The silence is stunning, the solitude deep and textured.

Kaiparowits makes you decide on the value of wildness and remoteness. Kaiparowits is where the dreams for the West collide. Coal, jobs, growth. Long vistas, places to get lost in, places to find yourself in.

The BLM wild lands teach us, also, about the people who once lived and worked and loved and worshipped for such a long time in what has been called BLM land for such a short time.

Last year, my son Seth, then twenty, and I took a long, home-from-college trip to the canyon country. We hiked most of one day up to our calves in a creek that over the course of some seven million years has cut a thousand feet down through the fiery, aeolian Wingate Sandstone and the layers of rock above it.

In a rare wide spot in the canyon, behind a cluster of junipers, we found a panel of pictographs on the Wingate. The artisan painted this row of red and white images—supernatural and life-size—two thousand years ago, perhaps more. The three stolid figures had wide shoulders, narrow waists. We could see straight through the round staring eyes, and the eyes could see through us. We called it "Dream Panel."

It would be so contemptuous of time to deal away Kaiparowits and Dream Panel. Perhaps the states would protect these and other wild places of national worth as well as they are protected now. But do we want to risk it?



The debate over holding the public lands is magnified in these times. Today, far more so than during the 1940s or even the 1970s, the pressures on the lands and communities are different and greater, the reasons for retention more and stronger. And the difference between now and then is one of kind, not just scale.

For a century and a half, the American West has hitched its destiny to rapid population growth. And most people would agree that wide-open boosterism had its place and time. The West, after all, was the nation's last place to be settled, and civic infra-

structures—whole economies, really—had to be built out of rock, sand, and stingy rivers.

But now, for the first time in history, westerners are directly questioning growth—its high price tag and the way it is remaking communities and the land itself. You hear these concerns all across the region, from Denver to Reno and from Phoenix to Seattle. You hear them, too, in the cattle, farm, and tourist towns.

It is no wonder. In just two generations, since World War II, the West has industrialized and urbanized in a way perhaps unparalleled in world history. Contrary to the popular impression, the key period for settling the West was not the westward expansion of the nineteenth century. The most recent era, the one we are still in, has become the decisive time for peopling the region.

It has come on so fast. Civic leaders had always wanted much, much more population and wealth, and beginning in 1945 they got it. The Cold War was a bonanza for the West, which had the open land required for military installations. The soil, when irrigated, could grow any crop from alfalfa to pecans. The land was magnificent, perfect for locating subdivisions and companies.

Perfect also were the post-War politics. Washington, D.C. picked up the bill, building the military installations, subsidizing water projects, and underwriting the interstate highways. Federal largesse carried few strings: there was minimal oversight of health, environmental, or budgetary matters.

In 1945 the West's population stood at 15 million. Today it is 56 million. The Southwest has been transformed from a backwater of 8 million people to a powerhouse of 30 million today. Nearly all of the growth has come in the cities. The Denver area has boomed from 475,000 to 2.1 million. Phoenix, a dirt-road settlement of 5,500 people in 1900, grew to a metropolitan area of 250,000 by 1945. Today the Valley of the Sun is pushing 2.5 million. Las Vegas could not even qualify for the census, which required 2,500 people, until 1930. At the end of the War, the Las Vegas area had about 40,000 people. This year it reached 1 million.

The benefits—economic, civic, and cultural—have been many; but they seemed mostly unalloyed in 1975. Since then, the costs of explosive growth and consumption have become ever more evident.

Our sense of society has been stressed and torn. Overcrowded schools. Soaring health bills. Dangerous, sometimes deadly, streets. More prisons to build. Smog, traffic congestion, and industrial pollution. Bursting federal, state, and municipal budgets. All of these are growth-caused or growth-

related. So is the increase in loss of life and property from natural disasters. We are building too close to the fault lines, rivers, and tinder-dry forests, and we are paying the price.

Though the population is urban, the post-War boom has taken a heavy toll on the rural West. The resources couldn't come from the cities themselves. They had already exhausted their own water supplies. Coal-fired power plants near the cities would make the smog—a word invented in post-War Los Angeles—even worse.

So the cities reached into the public and Indian lands of the interior West. For the southwestern urban areas, the main target was the Colorado Plateau, the Four Corners Area, the spectacular redrock canyon country, home to the nation's most traditional Indian people. The Plateau's deep canyons would make superb reservoirs. The ages had laid down some of the best coal, oil, gas, and uranium deposits on earth.

Almost before anyone knew it, the Colorado Plateau was laced with dams and reservoirs up to 200 miles long, power plants with stacks 70 stories tall, 500- and 345-KV powerlines spanning hundreds of miles, and uranium operations that required mining, milling, and, almost as an afterthought, waste disposal.

In all, this big build-up of the Colorado Plateau—its heyday ran from 1955 through 1975—was one of the most prodigious peacetime exercises of industrial might in human history. Among the few competitors was the furious build-up of hydroelectric and nuclear energy in the Columbia River Basin, also in the post-War era. On the Plateau we mourn the loss of mystical canyons, fabulous archaeological sites, and 200-mile vistas; on the Columbia we grieve for once-free rivers and the quick, strong, silvery Pacific salmon.

We also face an intangible cost: we are losing the West, both the slowmoving, uncluttered way of life and the spirituality that lies thick and sweet over every river, every high divide, every big expanse of open sagebrush range.

We have not yet lost the West. But a question now looms over the land: Suppose we do for the next 50 years, or even the next 25, what we have done since World War II? If we do that, will we still have the West?

Coming to grips with population growth and consumption and achieving sustainability is almost incomprehensibly difficult. We must operate on all levels, from conserving and recycling at home, to local and state planning, to global population. There are staggering problems of economics, technology, and social equity. It will take decades of

diverse and diffuse strategies, and a fundamental shift in our ethics so that we will voluntarily stabilize population, to reach an equilibrium.

But mark it down, too, that westerners now have actively begun the discussion about the scale of this unprecedented growth and about how, almost incredibly, it continues apace. That discussion is the first step: discussion breeds civic resolve, which in turn spurs action.

In that setting, what better buffer, what better storehouse, what better endowment, could there be than the fact of the public lands? Where else can we find the kind of wide-open space we cherish so, that so defines the West, its history, and its possibilities? What better hope is there for healthy lands and waters? Are we not singularly blessed in these times by the blend of vagary, courage, and blinding insight that has left us this estate?

So the public lands are inexorably tied to the future of the West, just as they have been bonded with its past. With all the imperfections, the American public lands constitute our planet's best laboratory for sustainability, broadly writ. Our every experience and intuition ought to tell us we must not jeopardize that future by a transfer of the federal lands. Their sale directly raises another specter: we may lose the West. And that would be a loss for us, but a far greater one for our grandchildren, and those beyond them, faceless but real people who would be left to wonder why their ancestors once so freely and easily called the American West a sacred place.