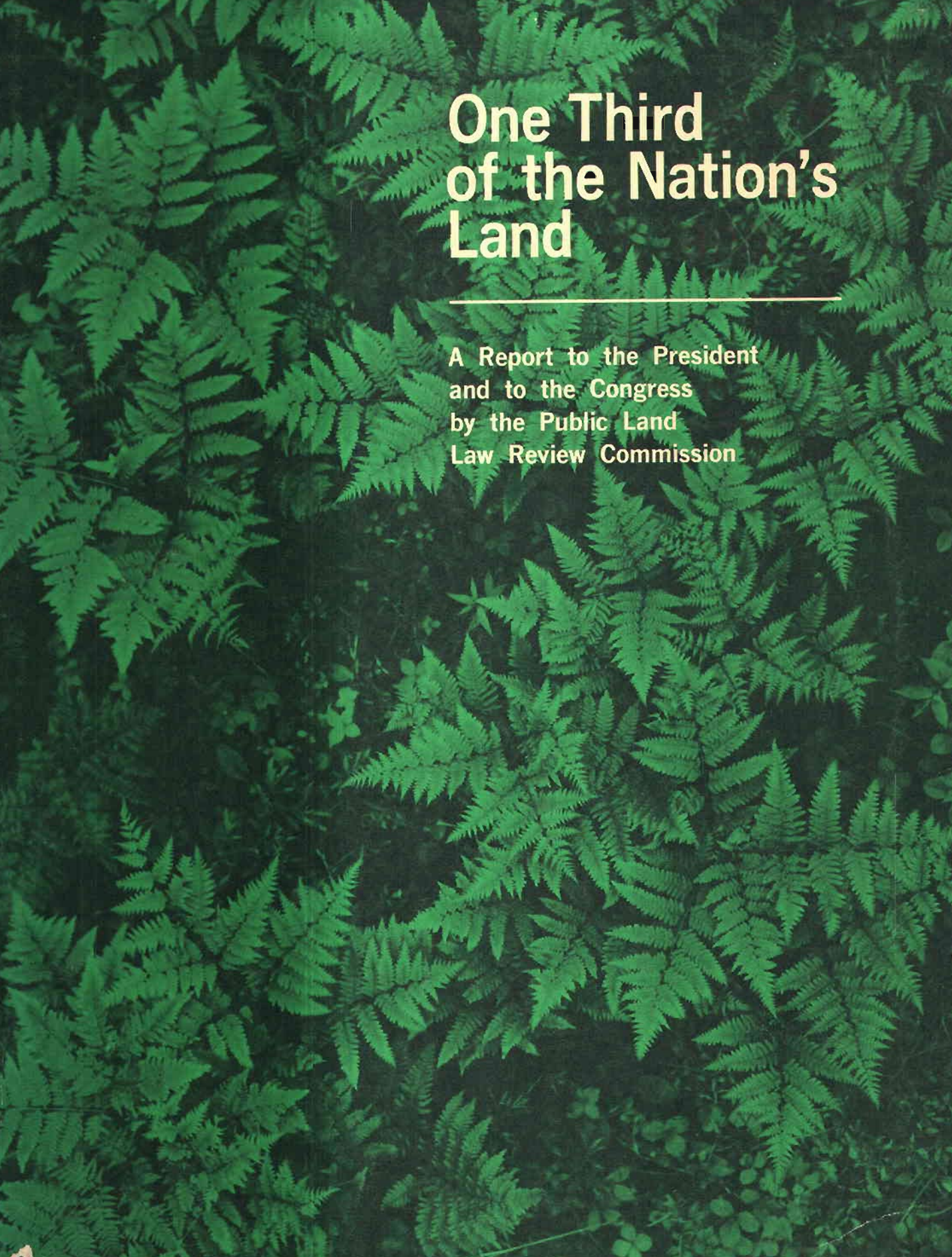

One Third of the Nation's Land

A Report to the President and to the Congress by the Public Land Law Review Commission

One Third of the Nation's Land

A Report to the President and to the Congress by the Public Land Law Review Commission

WASHINGTON, D.C.
June 1970

IDENTICAL LETTERS TO:
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PUBLIC LAND LAW REVIEW COMMISSION

1730 K STREET, N.W.

WASHINGTON, D. C. 20006

June 20, 1970

The President
The White House
Washington, D.C.

Dear Mr. President:

We submit with pride the report of the Public Land Law Review Commission with our recommendations for policy guidelines for the retention and management or disposition of Federal lands that equal one-third of the area of our Nation.

The report is responsive to the provisions of Public Law 88–606 which established this Commission and charged us with specific responsibilities that are detailed in the Preface.

Our recommendations represent a broad consensus on both basic underlying principles and recommendations to carry them out. Although we represent diverse views and backgrounds, we were able to adjust our ideas, objectively consider the problems, and achieve this general agreement. In a few instances, individual members have set forth their separate views. Because this is a consensus report, however, the absence of a member's separate views does not necessarily indicate that there is unanimity on the details.

The Commission's recommendations will support early implementation through Executive and legislative action to assure equitable treatment of our citizens and make the public land laws of the United States and their administration simpler, more effective, and, in accordance with the criterion of the policy objective set forth in the Commission's Organic Act, truly for the maximum benefit for the general public.

Respectfully,

Wayne N. Aspinall
Chairman

Gordon Allott

Paul J. Fannin

H. Byron Mock
Vice Chairman

Clinton P. Anderson

Maurice K. Goddard

Laurance S. Rockefeller

Walter S. Baring

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John P. Saylor

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Rockefeller Brothers Fund
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Nancy E. Smith
Supervisor, Fifth District
County of San Bernardino
San Bernardino, California

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* Served from inception until January 1965; reappointed in January 1967.

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Listed above is the professional staff as constituted in August 1969, when reduction of that staff was initiated, together with the subprofessional and stenographic and clerical personnel on the staff at the time this report was completed.

Harry L. Moffett served as Assistant Director (Administration) from October 1966 to July 1969, and Leland O. Graham, Arthur D. Smith, and Max M. Tharp made significant contributions as members of the staff prior to August 1969.

The Act establishing the Commission provides for an Advisory Council consisting of Federal liaison officers from departments and agencies having an interest in or responsibility for the retention, management, or disposition of the public lands and 25 other members representative of various major citizen groups interested in problems relating to the retention, management, and disposition of the public lands. The following persons are either now on the Advisory Council or served on it previously.

Federal Liaison Members

Department of Defense
William H. Point
Director
Real Property Management

Department of Justice
Shiro Kashiwa
Assistant Attorney General
Land and Natural Resources

Department of the Interior
Mitchell Melich
Solicitor

Department of Agriculture
T. K. Cowden
Assistant Secretary

Department of Commerce
L. Ralph Mecham
Federal Cochairman
Four Corners Regional Commission

Department of Housing and Urban Development
Samuel C. Jackson
Assistant Secretary for Metropolitan Development

Atomic Energy Commission
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Federal Power Commission
John A. Carver, Jr.*
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General Services Administration
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Portland, Oregon

John A. Biggs
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State of Washington
Olympia, Washington

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California Western University
San Diego, California

Orlo E. Childs
President
Colorado School of Mines
Golden, Colorado

Bert L. Cole
Commissioner of Public Lands
State of Washington
Olympia, Washington

A. B. Curtis
Mayor of Orofino and Chief Fire Warden
Clearwater & Potlatch Timber Protective Associations
Orofino, Idaho

E. K. Davis
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Sacramento Municipal Utility District
Sacramento, California

Gene Etchart
Rancher
Glasgow, Montana

Sherry R. Fisher
Vice President
Central National Bank and Trust Company
Des Moines, Iowa

Charles H. W. Foster
Needham, Massachusetts

* Former Under Secretary of the Interior. Acted as Liaison Member of Council representing Department of the Interior.

W. Howard Gray
Chairman
Public Lands Committee
American Mining Congress
Reno, Nevada

C. R. Gutermuth
Vice President
Wildlife Management Institute
Washington, D. C.

Lloyd E. Haight
Vice President and General Counsel
J. R. Simplot Company
Boise, Idaho

Robert E. Lee Hall
Senior Vice President
National Coal Association
Washington, D. C.

Clarence E. Hinkle
Practicing Attorney
Roswell, New Mexico

Samuel S. Johnson
President
Jefferson Plywood Company
Redmond, Oregon

Thomas G. Kelliher
Vice President and General Manager
Southern Division
Getty Oil Company
Houston, Texas

Frederic L. Kirgis
Practicing Attorney
Denver, Colorado

Clifford G. McIntire
Director
Natural Resources Department
American Farm Bureau Federation
Washington, D. C.

John Marvel
Rancher
Battle Mountain, Nevada

Bernard L. Orell
Vice President
Weyerhaeuser Company
Tacoma, Washington

Bruce Renwick
Vice President and General Counsel
Southern California Edison Co.
Los Angeles, California

Fred Smith
Businessman and Trustee
Jackson Hole Preserve, Inc.
New York, New York

H. A. True, Jr.
Chief Executive Officer
True Oil Company
Casper, Wyoming

Michael F. Widman, Jr.
Director
Research and Marketing Dept.
United Mine Workers of America
Washington, D. C.

FORMER ADVISORY COUNCIL MEMBERS

(Titles indicate affiliation at time of membership on Council)

Federal Liaison Members

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Assistant Secretary
Department of the Interior

John A. Baker
Assistant Secretary
Department of Agriculture

Victor Fischer
Assistant Administrator
Housing and Home Finance Agency

Charles M. Haar
Assistant Secretary
Department of Housing and Urban Development

Paul R. Ignatius
Assistant Secretary of Defense
Department of Defense

Karl S. Landstrom
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Department of the Interior

Clyde O. Martz
Assistant Attorney General
Department of Justice

John C. Mason
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Federal Power Commission

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The New York State College of Forestry
Syracuse University
Syracuse, New York

THE SYSTEM of private land ownership in most of the states can be traced to the public land system developed after the Revolutionary War. In order to form and maintain the Union, those states asserting claims west of their traditional boundaries ceded their interests to the National Government. This Federal public domain grew as the Nation's sovereignty became established across the continent.

Contrary to the traditions of sovereigns elsewhere in the world, the United State disposed of much of the land at nominal prices and encouraged private ownership. At the same time, in order to promote the common school system and, later, institutions of higher learning, Congress granted substantial acreages to new states as they were formed.

In two years, the Nation will celebrate the 100th anniversary of the establishment of Yellowstone as the first national park, when Americans became aware that some of the rare public domain should be set aside and dedicated to provide for their enjoyment, ". . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." [1]

Although the National Government provided for the reservation of forest resources in 1891 and subsequently set aside other lands for various purposes, the emphasis continued on disposal well into this century as detailed in the *History of Public Land Law Development*, prepared for this Commission as part of its study program.[2]

Despite the fact that controversy surrounded the establishment of many different types of programs on public domain lands, Professor Gates, in the *History* referred to above, came to the following conclusion:

> 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.

The increased demand for the use of the public lands during and after World War II gave rise to a need for new management and disposal tools concerning the public lands. The inability of Congress and the administrators of public lands to resolve all the conflicting demands being made on the lands led to a multitude of suggestions for various amendments or additions to the body of public land laws. The interrelationships among all segments of public land law led to the conclusion that a broad review should be undertaken in order to assure that no facet of public land policy was being overlooked.

In reporting out the legislation which resulted in the establishment of the Public Land Law Review Commission, both of the committees of Congress that were involved stated:

> It is the considered opinion of the committee that the necessary comprehensive study required of the public land laws cannot be carried out successfully by this committee acting alone. The committee believes that due to the many and varied factors, considerations, and interests involved, only a bipartisan commission supplemented by an advisory council made up of the many interested users of the public lands would be in a position to coordinate and supervise effectively such a broad study.
>
> H.R. 8070, if enacted as amended, will establish such a bipartisan commission to conduct a review of existing public land laws and regulations and recommend revisions necessary therein. The commission and its staff would be assisted by liaison officers from Federal agencies with a direct interest.[3]

The Commission as established is comprised of 19 members: Six appointed by the Speaker of the House of Representatives and six appointed by the President of the Senate, equally divided between the two major parties from among the membership of the respective Committees on Interior and Insular Affairs; six appointed by the President of the United States from persons outside of the Federal Government; and a Chairman elected by the 18 appointed members.

The full text of the statute creating the Commission appears in Appendix A to this report.[4] Certain salient provisions must, however, be kept in mind:

1. Section 10 of the Commission's Organic Act defines as follows the lands concerning which the Commission was charged with responsibility for making recommendations:

> As used in this Act, the term "public lands" includes (a) the public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws, including the mining

[1] 16 U.S.C. § 1 (1964).

[2] Paul Wallace Gates and Robert W. Swensen, *History of Public Land Law Development*. PLLRC Study Report, 1968.

[3] H. R. Rep. No. 1008, 88th Cong., 1st Sess. 8 (1964); S. Rep. No. 1444, 88th Cong., 2d Sess. 5 (1964).

[4] 43 U.S.C. §§ 1391–1400 (1964) *as amended*, (Supp. IV, 1969).

laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forests, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.

Only Indian reservations were, therefore, excluded from consideration.[5] The Commission thus generally examined matters pertaining not only to the lands included within the definition of its Act, but also to lands that are managed in conjunction with defined public lands, or that have characteristics similar to them.

Of the 2.2 billion acres of land within the United States, the Federal Government owns 755.3 million acres, of which 724.4 million acres are specifically within the definition of lands concerning which the Commission is charged with the responsibility of making recommendations. As discussed in this report, there are both known and unknown values in these lands. This Commission never lost sight of the potential significance that its recommendations might have because of these values.

2. The Commission was charged with making a "comprehensive review of [public land] laws, and the rules and regulations promulgated thereunder" as well as "the policies and practices of the Federal agencies charged with administrative jurisdiction over [public] lands insofar as such policies and practices relate to the retention, management, and disposition of those lands" in order "to determine whether and to what extent revisions thereof are necessary." This broad charter meant that the Commission was required to do much more than codify existing statutes. Although it is a *law* review commission, its members recognized that the laws could not be reviewed under the above-quoted statutory language without having a comprehensive examination of the lands and their resources, as well as the uses and potential uses.

3. The Act requires the Commission to "compile data necessary to understand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future."

The Commission's work was based on a determination that the year 2000 is the limit of *its* "foreseeable future." Such data were compiled and were referred to as the Commission made decisions.

4. The Commission is then charged with the responsibility of recommending "such modifications in existing laws, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out the policy" that the "public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." (§§ 4, 1)

The Commission held its organizational meeting in Washington, D. C. on July 14, 1965, at which time it elected unanimously Representative Wayne N. Aspinall (D-Colo.) as Chairman; a Presidential appointee, H. Byron Mock, as Vice Chairman; and Milton A. Pearl as Director. The Director was charged with the responsibility of assembling a staff and formulating a program that would produce all the information and data necessary as a foundation for the Commission's deliberations, conclusions, and recommendations.

The Commission then chose 25 members of the Advisory Council to be, in the words of the statute, "representative of the various major citizens' groups interested in problems relating to the retention, management, and disposition of the public lands," to whom were added liaison officers appointed by the heads of Federal departments and agencies which have an interest in or responsibility for the retention, management, or disposition of the public lands.[6]

Thereafter, each of the Governors of the 50 states, in response to an invitation from the Chairman, designated a representative to work with the Commission, its staff, and the Advisory Council.[7]

The first meeting of the Advisory Council, with the Governors' Representatives participating, was held on March 24, 1966. In June of the same year, the Commission held the first of a series of public meetings designed to obtain the views of all interested persons and groups. During the course of those meetings, which were held throughout the country, over 900 witnesses presented statements that were helpful in focusing attention on problems and their possible solutions.[8]

The meetings of the Advisory Council with the Governors' Representatives participating and the presentations by members of the public contributed substantially to the Commission's understanding of the impacts of public land laws, policies, practices, and procedures.

The Commission is indebted particularly to members of the Advisory Council and the Governors' Representatives for their dedicated service in providing comments and recommendations. The members and staff of the Commission benefited from

[5] The United States holds legal title to Indian reservation lands for the benefit of the Indians. A body of law has developed for these lands wholly separate from those commonly termed public land laws. For these reasons, Indian reservations were specifically excluded from the Commission's study by the Act establishing the Commission.

[6] A listing of the Advisory Council appears on page vi.

[7] A listing of the Governors' Representatives appears in Appendix C.

[8] See Appendix D, Attachment No. 3, for a listing of the public meetings.

their knowledge and insights throughout their work. These people were not advisors in name only—the Commission asked for and obtained their advice, which was then referred to frequently during the Commission's deliberations.

As one of its main objectives at the outset, the Commission undertook the task of establishing some principles or criteria that could furnish help in judging whether retention and management, or disposition, would provide the maximum benefit for the general public. The Commission recognized that it would be impossible to establish scientific criteria and that, in any event, much judgment would be required.

Considering the scope of this task, the Commission believes it has been successful. As brought out in the report, the Commission agreed upon a checklist of the justifiable interests affected by public land policy that permitted it (and that it believes will be helpful to future policymakers and administrators) to arrive at conclusions and recommendations which, after taking all factors into consideration, will meet the test of providing the maximum benefit for the general public.

In response to the requirement that it develop background data, the Commission's staff designed a research program embracing 33 individual subjects, on each of which manuscripts were prepared as one source of information for Commission consideration. A discussion of the research program is included in the appendix.[9]

Although thereafter the Commission discussed with the Advisory Council and the Governors' Representatives, as well as in executive session, material on a subject-by-subject basis, it never lost sight of the concept that it was necessary for one group in one place at one time to look at all the public land laws and policies, as well as their interrelationships. This the Commission did as it went along.

For the purposes of our review and report, the Commission considered all the resources and uses of the public lands to be commodities. Accordingly, in addition to the traditional resources of minerals, timber, forage, intensive agriculture, water, and fish and wildlife, there were included outdoor recreation and the various spatial uses such as for residential, commercial, and industrial purposes.

The impact that the use or development of each commodity has on other commodities, was considered. The Commission also considered to what extent, if any, the commodity would affect the environment so that, where appropriate, recommendations could be made to alleviate any adverse effect.

The Commission also examined several other factors that are common to all the commodities. These are pricing or fees to be charged, objectives or goals in providing and supplying the commodities, investment and financing by both the Federal Government and the user, questions of allocation of either the resource base for production of the commodity or of the commodity to users, and finally, whether lands that are chiefly valuable for a particular purpose should be retained and managed in Federal ownership or disposed of either to another public body or into private ownership. As to those lands the Commission proposes be retained, the management policies that should be adopted were considered.

It is not intended by the foregoing to suggest that these were the only policy matters given consideration. Quite the contrary is true and policy matters peculiar to individual commodities were considered in connection with each such commodity.

In addition, at the final meeting of the Advisory Council with the Governors' Representatives participating, the Commission conducted a complete review of suggestions of how to determine guidelines concerning which lands should be retained and managed and which lands should be disposed of, all in a manner to provide the maximum benefit for the general public.

The comprehensive research program conducted by and under the supervision of the staff, examined each and every public land law as well as the regulations, practices and procedures involved in their administration. However, throughout its work, the Commission took a broad approach to matters of policy and did not consider the subject before it in a law by law review. Nor have we attempted to identify in our recommendations all of the inconsistent laws that should be repealed or possibly modified upon adoption of our recommendations. Where we have not recommended repeal or modification of specific statutes, the recommendation is implicit if the action we propose is inconsistent with existing law.

The Digest of Public Land Laws, prepared as part of the research program set forth in Attachment No. 4, Appendix D, will be of considerable aid to the Congressional Committees in ascertaining the laws that are affected by the Commission's recommendations. It will be up to the Congress in framing new legislation, in those instances where an entire law would not be rendered obsolete, to determine whether there should be an amendment to or replacement of existing law. The probability is that upon adoption of this Commission's recommendations, no public land law will be left intact.

We note, however, that many of the Commission's recommendations can be implemented by administrative action in the executive branch. We have been

[9] Attachment No. 4, Appendix D.

pleased and encouraged by the responsiveness of land management agencies to possibilities for change that were suggested during the course of our review, either by our official advisors, citizens at meetings, or by the study reports. Some of these changes have been instituted, and we understand that others are under active consideration on the basis of material developed by or for us and without awaiting study of the Commission's specific recommendations.

With the various interests—private and public, Federal as well as non-Federal—represented in the advisory groups, and with the diverse political, social, and economic backgrounds of the Commissioners, taken together with the comprehensive studies prepared by or under the direction of the staff, as well as the several thousand views received at meetings and otherwise from members of the public, the Commission believes that all factors have been given consideration in the making of its final decisions. All the members of the Commission, including those who are legislators, have looked beyond the narrow requirements of their constituencies, affiliations, and associations to judge the public weal.

cover photograph by Leland Prater

A Program for the Future

An introductory summary of the Commission's basic concepts and recommendations for long-range goals, objectives, and guidelines, underlying the more specific recommendations in the individual chapters of the report.

FEELING THE PRESSURES of an enlarging population, burgeoning growth, and expanding demand for land and natural resources, the American people today have an almost desperate need to determine the best purposes to which their public lands and the wealth and opportunities of those lands should be dedicated. Through the timely action of Congress, and through the work of this Commission, a rare opportunity is offered to answer that need.

For reasons that we will detail, we urge reversal of the policy that the United States should dispose of the so-called unappropriated public domain lands. But we also reject the idea that merely because these lands are owned by the Federal Government, they should all remain forever in Federal ownership.

We have also found that by administrative action the disposal policy, although never "repealed" by statute, has been rendered ineffective. In the absence of congressional guidelines, there has been no predictable administrative policy.

We, therefore, recommend that:

> The policy of large-scale disposal of public lands reflected by the majority of statutes in force today be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.

While there may be some modest disposals, we conclude that at this time most public lands would not serve the maximum public interest in private ownership. We support the concepts embodied in the establishment and maintenance of the national forests, the National Park System, the National Wildlife Refuge System, and the parallel or subsidiary programs involving the Wilderness Preservation System, the National Riverways and Scenic Rivers Systems, national trails, and national recreation areas.

In recent years, with very few exceptions, all areas that have been set aside for specific use have been given intensive study by both the legislative and executive branches and have been incorporated in one of the programs through legislative action. We would not disturb any of these because they have also been subjected to careful scrutiny by state and local governments as well as by interested and affected people.

Based on our study, however, we find that, generally, areas set aside by executive action as national forests, national monuments, and for other purposes have not had adequate study and there has not been proper consultation with people affected or with the units of local government in the vicinity, particularly as to precise boundaries. Although the Department of the Interior and the Bureau of Land Management classified lands under the temporary Classification and Multiple Use Act of 1964,[1] we believe that in many cases there was hasty action based on preconceived determinations instead of being based on careful land use planning. In addition, there are many areas of the public domain

[1] 43 U.S.C. §§ 1411–1418 (1964).

that have never been classified or set aside for specific use.*

We, therefore, recommend that:

> An immediate review should be undertaken of all lands not previously designated for any specific use, and of all existing withdrawals, set asides, and classifications of public domain lands that were effected by Executive action to determine the type of use that would provide the maximum benefit for the general public in accordance with standards set forth in this report.

The result of these reviews will be the delineation of lands that should be retained in Federal ownership and those that could best serve the public through private ownership. For those to be retained in Federal ownership, there will be a further breakdown indicating which ones should be set aside for special-purpose use—which may or may not include several different uses.

As intimated above, our studies have also led us to the conclusions that the Congress has largely delegated to the executive branch its plenary constitutional authority over the retention, management, and disposition of public land; [2] that statutory delegations have often been lacking in standards or meaningful policy determinations; that the executive agencies, understandably, in keeping with the operation of the American political system, took the action they deemed necessary to fill this vacuum through the issuance of regulations, manuals, and other administrative directives; and that the need for administrative flexibility in meeting varying regional and local conditions created by the diversity of our public lands and by the complexity of many public land problems does not justify failure to legislate the controlling standards, guidelines, and criteria under which public land decisions should be made.

[2] U.S. Const., Art. IV, § 3.

* Commissioner Clark submits the following separate view: Some of the statements in this and other parts of the report may lead to interpretations in the minds of some readers which do not represent views of all members of the Commission. However, since this is a consensus effort, a brief caveat is appropriate regarding the language and subjective tone employed to describe some past actions affecting public lands which should not detract from the general utility of the recommendations. This report must be read against nearly 200 years of history and no doubt a nongovernment report would contain similar inferences that would emphasize perhaps disproportionately the past inaction, delays, and piecemeal approach of Congress.

We, therefore, recommend that:

> Congress should establish national policy in all public land laws by prescribing the controlling standards, guidelines, and criteria for the exercise of authority delegated to executive agencies.

Many types of public land have been reserved by executive action for governmental uses, such as defense installations and atomic energy testing areas. The result has been to materially restrict or preclude their availability for recreation and resource development purposes. In other cases, withdrawals and reservations have severely limited permissible types of uses on tremendous acreages of public land in order to further administrative land policies.

We find that when proposed land uses are passed on by the Congress, they receive more careful scrutiny in the executive branch before being recommended; furthermore, in connection with congressional action, the general public is given a better opportunity to comment and have its views considered. We conclude that Congress should not delegate broad authority for these types of actions.

We, therefore, recommend that:

> Congress assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited-purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action.

Our studies have convinced us that, with respect to lands retained in Federal ownership, the rules and regulations governing their use, to the extent that they exist, have not been adequate to fulfill the purpose; that they were promulgated without proper consultation with, and participation by, either those affected or the general public; that existing regulations are cumbersome; and that the procedures for users or other interested parties to exercise their rights to seek or oppose the grant of interests in public land are likewise cumbersome as well as expensive with no assurance of objective, impartial consideration of appeals from, or objections to, decisions by land managers.

We, therefore, recommend that:

> Public land management agencies should be required by statute to promulgate comprehensive rules and regulations after full consideration of all points of view, including

protests, with provisions for a simplified administrative appeals procedure in a manner that will restore public confidence in the impartiality and fairness of administrative decisions. Judicial review should generally be available.

In pursuing our work, we took cognizance of the fact that between 1965, when we started our work, and the year 2000, the population of the United States will have grown by over 100 million people. The public lands can, must, and will contribute to the well-being of our people by providing a combination of many uses. Some of these will help to take care of the increasing leisure time that Americans of the future will have, while others must help in furnishing the added amounts of food, fiber, and minerals that the larger numbers of people will require.

Under existing statutes and regulations, there is no assurance that the public lands retained in Federal ownership will contribute in the manner that will be required. We find that the absence of statutory guidelines leaves a void which could result in land managers withholding from public use public lands or their resources that may be required for a particular time; that even if land managers plan to make specific goods and services available to the public, there are no long-range objectives or procedures that will assure fulfillment of a program; and that the absence of statutory guidelines for the establishment of priorities in allocating land uses causes unnecessary confusion and inconsistent administration.

We, therefore, recommend that:

Statutory goals and objectives should be established as guidelines for land-use planning under the general principle that within a specific unit, consideration should be given to all possible uses and the maximum number of compatible uses permitted. This should be subject to the qualification that where a unit, within an area managed for many uses, can contribute maximum benefit through one particular use, that use should be recognized as the dominant use, and the land should be managed to avoid interference with fulfillment of such dominant use.

Throughout our work we were aware of the ever-growing concern by the American people about the deterioration of the environment. We share that concern and have looked in vain to find assurance in the public land laws that the United States, as a landowner, had made adequate provision to assure that the quality of life would not be endangered by reason of activities on federally owned lands. We find to the contrary that, despite recent legislative enactments, there is an absence of statutory guidelines by which land management agencies can provide uniform, equitable, and economically sound provision for environmental control over lands retained in Federal ownership.

We, therefore, recommend that:

Federal statutory guidelines should be established to assure that Federal public lands are managed in a manner that not only will not endanger the quality of the environment, but will, where feasible, enhance the quality of the environment, both on and off public lands, and that Federal control of the lands should never be used as a shield to permit lower standards than those required by the laws of the state in which the lands are located. The Federal licensing power should be used, under statutory guidelines, to assure these results.

Every landowner is concerned with the return that he receives for the use of his land or for the revenue he receives from products produced on that land. United States citizens, collectively the owners of the public lands, are similarly concerned. We ascertained from the many witnesses that we heard that the concern of some is that the United States has not been receiving the maximum dollar return; the concern of others is that the United States has been trying to receive too much of a dollar return; while the concern of still others is that the United States is uneven in its efforts to obtain monetary return from its public lands.

From our review, we find that there is a great diversity in public land policy on fees and charges for the various goods and services derived from the public lands; that the fee structures vary among commodities and among agencies administering the public lands; that objectives for the pricing of goods and services are unclear; and that the absence of comprehensive statutory guidelines has created a situation in which land managers are unable to provide uniform equitable treatment for all.

We, therefore, recommend that:

Statutory guidelines be established providing generally that the United States receive full value for the use of the public lands and their resources retained in Federal ownership, except that monetary payment need not represent full value, or so-called market value, in instances where there is no consumptive use of the land or its resources.

Many of those who appeared before the Commission testified to the drastic results that sometimes flow from the uncertainty of tenure and the insecurity of investment of public land users. Studies prepared for the Commission confirm this, despite the fact that not only individuals and companies but many communities are wholly or partially dependent for their economic life on the public lands and their resources.

We, therefore, recommend that:

> Statutory provision be made to assure that when public lands or their resources are made available for use, firm tenure and security of investment be provided so that if the use must be interrupted because of a Federal Government need before the end of the lease, permit, or other contractual arrangement, the user will be equitably compensated for the resulting losses.

The United States need not seek to obtain the greatest monetary return, but instead should recognize improvements to the land and the fact that the land will be dedicated, in whole or in part, to services for the public as elements of value received.

Having determined that there should be no wholesale disposition of the public lands, we turned our attention to the impact that the retention in Federal ownership would have on other levels of government. In doing this, we made an intensive review of existing programs.

Revenue-sharing programs were established for the purpose of compensating state and local governments for the fact that certain types of lands would not be going into private ownership and, therefore, onto the tax rolls. Nonetheless, we find that such programs actually have no relationship to the burdens imposed on state and local governments by the retention of public lands in Federal ownership. The continuation of the general United States policy of providing for transfer to private ownership of virtually all of the public lands would not have required consideration of a comprehensive program to compensate state and local governments for the burdens imposed by Federal ownership of public lands since such ownership was then transitory. The establishment of new programs in recent years and the administration of the public land laws generally has resulted in millions of acres of land being set aside for permanent retention by the Federal Government throughout the 50 states with concomitant unpredicted burdens on state and local governments. The potential retention of additional millions of acres of public domain lands as a result of the review recommended by this Commission requires that we reexamine the obligations and responsibilities of the United States as a landowner in relation to state and local governments upon which continuing burdens will be placed. We find further that any attempt to tie payments to states and local governments to receipts generated from the sale or use of public lands or their resources causes an undue emphasis to be given in program planning to the receipts that may be generated.

We, therefore, recommend that:

> The United States make payments in lieu of taxes for the burdens imposed upon state and local governments by reason of the Federal ownership of public lands without regard to the revenues generated therefrom. Such payments should not represent full tax equivalency and the state and local tax effort should be a factor in determining the exact amount to be paid.

The statute establishing the Public Land Law Review Commission stated that, "those laws, or some of them, may be inadequate to meet the current and future needs of the American people." [3] Our review has led us to the conclusion that the laws are indeed inadequate, first, because of the emphasis on disposition, second, because of the absence of statutory guidelines for administration, as discussed above, and third, because the disposition laws themselves are obsolete and not geared to the present and future requirements of the Nation. With the exception of the temporary Public Land Sale Act,[4] which will expire 6 months after submission of the final report by this Commission, there is no statute permitting the sale of public domain lands in any large tracts for residential, commercial, or industrial use, and we find that the statute for the sale of small tracts has not worked well.

Accordingly, we find that it is necessary to modify or repeal all of the public domain disposition laws and replace them with a body of law that will permit the orderly disposition of those lands that can contribute most to the general welfare by being placed in private ownership.

We, therefore, recommend that:

> Statutory authority be provided for the sale at full value of public domain lands required for certain mining activities or where suitable only for dryland farming, grazing of

[3] 43 U.S.C. § 1392 (1964).
[4] 43 U.S.C. § 1421–1427 (1964).

domestic livestock, or residential, commercial, or industrial uses, where such sale is in the public interest and important public values will not thereby be lost.

In the mid-1860's, statutory provision was made for the use of public lands as sites for new towns.[5] Our studies reveal that relatively few new towns are established on public lands through the townsite laws.

We find that the need for the establishment of new towns to provide for a portion of the anticipated population growth and the parallel growth of industry by the year 2000 will be, realistically, challenging and difficult to fulfill. Compounding the problem are the mounting difficulties facing the large existing cities. While we find that the problems of urban areas cannot be solved by transplanting large numbers of people to the public land areas, we also find that the public lands offer an opportunity for the establishment of at least some of the new cities that will be required in the next 30 years, and that, in many instances, they offer the only opportunity for the expansion of existing communities.

We, therefore, recommend that:

Legislation be enacted to provide a framework within which large units of land may be made available for the expansion of existing communities or the development of new cities.

Until some experience has been gained in the various mechanisms that might be utilized and a national policy adopted concerning the establishment of new cities generally, Congress should consider proposals for the sale of land for new cities on a case-by-case basis.

Our inquiries and studies have revealed that there are many instances where all concerned will agree that public domain land previously incorporated within a national forest could best serve the public interest by being transferred to private ownership. We find, however, that the present procedures for the accomplishment of such transfer, requiring as they do an exchange for other lands, are cumbersome, administratively burdensome, and unnecessarily expensive to both the Government and the private party, inordinately time consuming, and result in the acquisition of land that may not, in fact, be needed by the United States any more than the land of which it is disposing through the exchange process.

[5] 43 U.S.C. § 711 et seq. (1964).

We, therefore, recommend that:

Statutory authority be granted for the limited disposition of lands administered by the Forest Service where such lands are needed to meet a non-Federal but public purpose, or where disposition would result in the lands being placed in a higher use than if continued in Federal ownership.

The administration of some programs, such as recreation, can be accomplished just as well, if not better, by state and local government units; in other instances, Federal public lands are required for construction of schools and other buildings that provide state or local government services.

We find that it is in the best interest of all concerned to encourage state and local governments to assume complete responsibility for the maximum number of programs that those levels of government can and will administer and to acquire title to the required land in order to permit the proper level of investment to be made.

We, therefore, recommend that:

Legislation be enacted to provide flexible mechanisms, including transfer of title at less than full value, to make any federally owned lands available to state and local governments when not required for a Federal purpose if the lands will be utilized for a public purpose.

Throughout our studies and inquiries, we compared the policies, practices, and procedures applicable to the public lands as defined in the statute establishing the Public Land Law Review Commission with the policies, practices, and procedures applicable to other types of lands where such other lands were managed in conjunction with or had characteristics similar to public lands concerning which this Commission was charged with responsibility of making recommendations. We also take note of the fact that within the definition of lands in our Organic Act, there are both "public domain" and "acquired" lands as discussed elsewhere in this report.

We find that there is no logical basis for distinguishing between public domain and acquired lands or between lands defined as "public lands" and all other federally owned lands.

We, therefore, recommend that:

Generally, in both legislation and administration, the artificial distinctions between pub-

lic domain and acquired lands of the Federal Government should be eliminated.

We find that the division of responsibility for the development of policy and the administration of public lands among Congressional Committees and several Federal departments and agencies has led to differences, contradictions, and duplications in policies and programs. Not only have these factors been administratively burdensome, but they have also been the source of confusion to citizens dealing with the Government.

We, therefore, recommend that:

Responsibility for public land policy and programs within the Federal Government in both the legislative and executive branches should be consolidated to the maximum practicable extent in order to eliminate, or at least reduce, differences in policies concerning the administration of similar public land programs.

We submit the foregoing findings and basic recommendations as a statement of principles that should govern the retention and management or disposition of federally owned lands. In the chapters that follow, we will develop detailed background in specific subject areas, along with more detailed recommendations designed to implement the basic principles enunciated in the foregoing recommendations.

In arriving at these recommendations and those that follow, we made each decision on the basis of what we consider to be the maximum benefit for the general public, in accordance with the statutory charge to the Commission as cited in the Preface.

We have not defined in any one place what we consider to be "the maximum benefit for the general public." Nor have we defined a set of criteria that will lead all persons to the same conclusion as to what is the maximum benefit for the general public. These are tasks that are perhaps best left to sociologists, philosophers, and others. But, we did study the problem and found, in the end, that our work was eased and made more meaningful by adopting a convenient categorization of broadly justifiable, unexceptionable, yet often conflicting, interests within the totality of the general public.

Obviously, the general public is made up of many persons and groups with conflicting aims and objectives. Stated another way, it may be said that there are several "publics" which, in the aggregate, make up the general public with respect to policies for the public lands. Perhaps this categorization of identifiable interests would be useful in other areas of public policy, too. In any case, we found it useful in our work and applied it to all of our decisions. The six categories of interests we recognized are:

—*the national public:* all citizens, as taxpayers, consumers, and ultimate owners of the public lands are concerned that the lands produce and remain productive of the material, social, and esthetic benefits that can be obtained from them.

—*the regional public:* those who live and work on or near the vast public lands, while being a part of and sharing the concerns of the national public, have a special concern that the public lands help to support them and their neighbors and that the lands contribute to their overall well-being.

—*the Federal Government as sovereign:* the ultimate responsibility of the Federal Government is to provide for the common defense and promote the general welfare and, in so doing, it should make use of every tool at its command, including its control of the public lands.

—*the Federal Government as proprietor:* in a narrower sense, the Federal Government is a landowner that seeks to manage its property according to much the same set of principles as any other landowner and to exercise normal proprietary control over its land.

—*state and local government:* most of the Federal lands fall within the jurisdiction limits of other levels of governments, which have responsibility for the health, safety, and welfare of their constituents and, thus, an interest in assuring that the overriding powers of the Federal Government be accommodated to their interests as viable instruments in our Federal system of government.

—*the users of public lands and resources:* users, including those seeking economic gain and those seeking recreation or other noneconomic benefits, have an interest in assuring that their special needs, which vary widely, are met and that all users are given equal consideration when uses are permitted.

The Commission in each of its decisions gave careful consideration to the interests of each of the several "publics" that make up the "general public." Distinguishing among these interests required that the Commission specifically consider each of them and, thus, assure that the decisions of the Commission, to the best of its ability, reflect all of the interests of the general public.

In applying the procedure that we did, in each case it was possible to see which interest is affected most. This is not only useful in the decisionmaking process but provides a healthy atmosphere in which all parties

interested can be assured that consideration has been given to them.

We, therefore, recommend that:

> In making public land decisions, the Federal Government should take into consideration the interests of the national public, the regional public, the Federal Government as the sovereign, the Federal proprietor, the users of public lands and resources, and the state and local governmental entities within which the lands are located in order to assure, to the extent possible, that the maximum benefit for the general public is achieved.

Premises

Fundamental premises are beliefs set forth in the foregoing underlying principles as well as in the implementing recommendations that follow. These are:

1. *Functioning of Government in a manner that reflects the principles set forth in the Constitution.*

In adhering to this principle, we seek to give recognition particularly to these specific principles:

—Congress, elected by and responsive to the will of the people, makes policy; the executive branch administers the policy.

—Maintenance of a strong Federalism. The Federal Government not only recognizes the importance of state and local governments in the Federal system but affirmatively supports and strengthens their roles to the maximum extent possible.

—The Federal Government protects the rights of individual citizens and assures that each one is dealt with fairly and equitably.

2. *Balancing of all major interests in order to assure maximum benefit for the general public.*

—No one of the interests we have identified should benefit to the unreasonable detriment of another unless there is an overriding national interest present.

3. *Providing responsible stewardship of the public lands and their resources.*

—Environmental values must be protected as major permanent elements of public land policy.

—Public lands must be available to meet a diversity of expanding requirements without degradation of the environment and, where possible, enhancement of the environment.

—Better planning will provide increased efficiency in the allocation of resources and the investment of funds.

—Guidelines must be established to provide for priorities in reducing conflicts among users and resolving conflicts when they arise.

4. *In addition to serving national requirements, the public lands must serve regional and local needs.*

—In many areas, consideration must be given to dependence of regional and local social and economic growth upon public lands and land policy.

—In planning the use of public lands, the uses of nonpublic lands must be given consideration.

Summary

ONE HUNDRED THIRTY-SEVEN specific recommendations are set forth below, as they appear and as they are numbered consecutively beginning in Chapter 3 and concluding in Chapter 20.[1] Not included here are (1) the basic principles set forth in A Program for the Future as underlying the detailed recommendations elsewhere in the Report, and (2) the unnumbered recommendations, which appear in italics within the various chapters subsidiary to the ones here set forth.

Chapter Three (Planning Future Public Land Use):

1. Goals should be established by statute for a continuing, dynamic program of land use planning. These should include:

Use of all public lands in a manner that will result in the maximum net public benefit.

Disposal of those lands identified in land use plans as being able to maximize net public benefit only if they are transferred to private or state or local governmental ownership, as specified in other Commission recommendations.

Management of primary use lands for secondary uses where they are compatible with the primary purpose for which the lands were designated.

Management of all lands not having a statutory primary use for such uses as they are capable of sustaining.

Disposition or retention and management of public lands in a manner that complements uses and patterns of use on other ownership in the locality and the region. *Page 42.*

2. Public land agencies should be required to plan land uses to obtain the greatest net public benefit. Congress should specify the factors to be considered by the agencies in making these determinations, and an analytical system should be developed for their application. *Page 45.*

3. Public lands should be classified for transfer from Federal ownership when net public benefits would be maximized by disposal. *Page 48.*

4. Management of public lands should recognize the highest and best use of particular areas of land as dominant over other authorized uses. *Page 48.*

5. All public land agencies should be required to formulate long range, comprehensive land use plans for each state or region, relating such plans not only to internal agency programs but also to land use plans and attendant management programs of other agencies. Specific findings should be provided in their plans, indicating how various factors were taken into account. *Page 52.*

6. As an essential first step to the planning system we recommend, Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964. *Page 52.*

7. Congress should provide authority to classify national forest and BLM lands, including the authority to suspend or limit the operation of any public land laws in specified areas. Withdrawal authority should no longer be used for such purpose. *Page 53.*

8. Large scale, limited or single use withdrawals of a permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for executive action. *Page 54.*

9. Congress should establish a formal program by which withdrawals would be periodically reviewed and either rejustified or modified. *Page 56.*

10. All Executive withdrawal authority, without limitation, should be delegated to the Secretary of the Interior, subject to the continuing limitation of existing law that the Secretary cannot redelegate to anyone other than an official of the Department appointed by the President, thereby making the exercise of this authority wholly independent of public land management operating agency heads. *Page 56.*

11. Provision should be made for public participation in land use planning, including public hearings on proposed Federal land use plans, as an initial step in a regional coordination process. *Page 57.*

12. Land use planning among Federal agencies should be systematically coordinated. *Page 60.*

13. State and local governments should be given

[1] There are no recommendations in Chapters One and Two.

an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning. *Page 61.*

14. Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning. *Page 63.*

15. Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965. Such commissions should come into existence only with the consent of the states involved, with regional coordination being initiated when possible within the context of existing state and local political boundaries. *Page 64.*

Chapter Four (Public Land Policy and the Environment):

16. Environmental quality should be recognized by law as an important objective of public land management, and public land policy should be designed to enhance and maintain a high quality environment both on and off the public lands. *Page 68.*

17. Federal standards for environmental quality should be established for public lands to the extent possible, except that, where state standards have been adopted under Federal law, state standards should be utilized. *Page 70.*

18. Congress should require classification of the public lands for environmental quality and enhancement and maintenance. *Page 73.*

19. Congress should specify the kinds of environmental factors to be considered in land use planning and decisionmaking, and require the agencies to indicate clearly how they were taken into account. *Page 77.*

20. Congress should provide for greater use of studies of environmental impacts as a precondition to certain kinds of uses. *Page 80.*

21. Existing research programs related to the public lands should be expanded for greater emphasis on environmental quality. *Page 80.*

22. Public hearings with respect to environmental considerations should be mandatory on proposed public land projects or decisions when requested by the states or by the Council on Environmental Quality. *Page 81.*

23. Congress should authorize and require the public land agencies to condition the granting of rights or privileges to the public lands or their resources on compliance with applicable environmental control measures governing operations off public lands which are closely related to the right or privilege granted. *Page 81.*

24. Federal land administering agencies should be authorized to protect the public land environment by (1) imposing protective covenants in disposals of public lands, and (2) acquiring easements on non-Federal lands adjacent to public lands. *Page 82.*

25. Those who use the public lands and resources should, in each instance, be required by statute to conduct their activities in a manner that avoids or minimizes adverse environmental impacts, and should be responsible for restoring areas to an acceptable standard where their use has an adverse impact on the environment. *Page 83.*

26. Public land areas in need of environmental rehabilitation should be inventoried and the Federal Government should undertake such rehabilitation. Funds should be appropriated as soon as practical for environmental management and rehabilitation research. *Page 86.*

27. Congress should provide for the creation and preservation of a natural area system for scientific and educational purposes. *Page 87.*

Chapter Five (Timber Resources):

28. There should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice. *Page 92.*

29. Federal programs on timber production units should be financed by appropriations from a revolving fund made up of receipts from timber sales on these units. Financing for development and use of public forest lands, other than those classified for timber production as the dominant use, would be by appropriation of funds unrelated to receipts from the sale of timber. *Page 95.*

30. Dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury. Such factors should also play an important but not primary role in timber management on other public lands. *Page 96.*

31. Major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors. *Page 97.*

32. Timber sales procedures should be simplified wherever possible. *Page 98.*

33. There should be an accelerated program of timber access road construction. *Page 99.*

34. Communities and firms dependent on public land timber should be given consideration in the management and disposal of public land timber. *Page 99.*

35. Timber production should not be used as a

justification for acquisition or disposition of Federal public lands. *Page 101.*

36. Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed. *Page 101.*

Chapter Six (Range Resources):

37. Public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth. *Page 106.*

38. The grazing of domestic livestock on the public lands should be consistent with the productivity of those lands. *Page 106.*

39. Existing eligibility requirements should be retained for the allocation of grazing privileges up to recent levels of forage use. Increases in forage production above these levels should be allocated under new eligibility standards. Grazing permits for increased forage production above recent levels should be allocated by public auction among qualified applicants. *Page 108.*

40. Private grazing on public land should be pursuant to a permit that is issued for a fixed statutory term and spells out in detail the conditions and obligations of both the Federal Government and the permittee, including provisions for compensation for termination prior to the end of the term. *Page 109.*

41. Funds should be invested under statutory guidelines in deteriorated public grazing lands retained in Federal ownership to protect them against further deterioration and to rehabilitate them where possible. On all other retained grazing lands, investments to improve grazing should generally be controlled by economic guidelines promulgated under statutory requirements. *Page 114.*

42. Public lands, including those in national forests and land utilization projects, should be reviewed and those chiefly valuable for the grazing of domestic livestock identified. Some such public lands should, when important public values will not be lost, be offered for sale at market value with grazing permittees given a preference to buy them. Domestic livestock grazing should be declared as the dominant use on retained lands where appropriate. *Page 115.*

43. Control should be asserted over public access to and the use of retained public grazing lands for nongrazing uses in order to avoid unreasonable interference with authorized livestock use. *Page 116.*

44. Fair-market value, taking into consideration factors in each area of the lands involved, should be established by law as a basis for grazing fees. *Page 117.*

45. Policies applicable to the use of public lands for grazing purposes generally should be uniform for all classes of public lands. *Page 118.*

Chapter Seven (Mineral Resources):

46. Congress should continue to exclude some classes of public lands from future mineral development. *Page 123.*

47. Existing Federal systems for exploration, development, and production of mineral resources on the public lands should be modified. *Page 124.*

48. Whether a prospector has done preliminary exploration work or not, he should, by giving written notice to the appropriate Federal land management agency, obtain an exclusive right to explore a claim of sufficient size to permit the use of advanced methods of exploration. As a means of assuring exploration, reasonable rentals should be charged for such claims, but actual expenditures for exploration and development work should be credited against the rentals.

Upon receipt of the notice of location, a permit should be issued to the claimholder, including measures specifically authorized by statute necessary to maintain the quality of the environment, together with the type of rehabilitation that is required.

When the claimholder is satisfied that he has discovered a commercially mineable deposit, he should obtain firm development and production rights by entering into a contract with the United States to satisfy specified work or investment requirements over a reasonable period of time.

When a claimholder begins to produce and market minerals, he should have the right to obtain a patent only to the mineral deposit, along with the right to utilize surface for production. He should have the option of acquiring title or lease to surface upon payment of market value.

Patent fees should be increased and equitable royalties should be paid to the United States on all minerals produced and marketed whether before or after patent. *Page 126.*

49. Competitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected. *Page 132.*

50. Statutory provision should be made to permit hobby collecting of minerals on the unappropriated public domain and the Secretary of the Interior should be required to promulgate regulations in accordance with statutory guidelines applicable to these activities. *Page 134.*

51. Legislation should be enacted which would authorize legal actions by the Government to acquire outstanding claims or interests in public land oil shale subject to judicial determination of value. *Page 134.*

52. Some oil shale public lands should be made available now for experimental commercial development by private industry with the cooperation of the Federal Government in some aspects of the development. *Page 135.*

53. Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously. *Page 135.*

54. The Department of the Interior should continue to have sole responsibility for administering mineral activities on all public lands, subject to consultation with the department having management functions for other uses. *Page 136.*

55. In future disposals of public lands for nonmineral purposes, all mineral interests known to be of value should be reserved with exploration and development discretionary in the Federal Government and a uniform policy adopted relative to all reserved mineral interests. *Page 136.*

Chapter Eight (Water Resources):

56. The implied reservation doctrine of water rights for federally reserved lands should be clarified and limited by Congress in at least four ways: (a) amounts of water claimed, both surface and underground, should be formally established; (b) procedures for contesting each claim should be provided; (c) water requirements for future reservations should be expressly reserved; and (d) compensation should be awarded where interference results with claims valid under state law before the decision in *Arizona v. California. Page 146.*

57. Congress should require the public land management agencies to submit a comprehensive report describing: (1) the objectives of current watershed protection and management programs; (2) the actual practices carried on under these programs; and (3) the demonstrated effect of such practices on the program objectives. Based on such information, Congress should establish specific goals for watershed protection and management, provide for preference among them, and commit adequate funds to achieve them. *Page 150.*

58. "Watershed protection" should in specified, limited cases be: (1) a reason for retaining lands in Federal ownership; and (2) justification for land acquisition. *Page 151.*

59. Congress should require federally authorized water development projects on public lands to be planned and managed to give due regard to other values of the public lands. *Page 154.*

Chapter Nine (Fish and Wildlife Resources):

60. Federal officials should be given clear statutory authority for final land use decisions that affect fish and wildlife habitat or populations on the public lands. But they should not take action inconsistent with state harvesting regulations, except upon a finding of overriding national need after adequate notice to, and full consultation with, the states. *Page 158.*

61. Formal statewide cooperative agreements should be used to coordinate public land fish and wildlife programs with the states. *Page 159.*

62. The objectives to be served in the management of fish and resident wildlife resources, and providing for their use on all classes of Federal public lands, should be clearly defined by statute. *Page 160.*

63. Statutory guidelines are required for minimizing conflicts between fish and wildlife and other public land uses and values. *Page 164.*

64. Public lands should be reviewed and key fish and wildlife habitat zones identified and formally designated for such dominant use. *Page 168.*

65. A Federal land use fee should be charged for hunting and fishing on all public lands open for such purposes. *Page 169.*

66. The states and the Federal Government should share on an equitable basis in financing fish and wildlife programs on public lands. *Page 173.*

67. State policies which unduly discriminate against nonresident hunters and fishermen in the use of public lands through license fee differentials and various forms of nonfee regulations should be discouraged. *Page 174.*

Chapter Ten (Intensive Agriculture):

68. The homestead laws and the Desert Land Act should be repealed and replaced with statutory authority for the sale of public lands for intensive agriculture when that is the highest and best use of the land. *Page 177.*

69. Public lands should be sold for agricultural purposes at market value in response to normal market demand. Unreserved public domain lands and lands in land utilization projects should be considered for disposal for intensive agriculture purposes. *Page 179.*

70. The states should be given a greater role in the determination of which public lands should be sold for intensive agricultural purposes. The state governments should be given the right to certify or veto the potential agricultural use of public lands but only according to the availability of state water rights. Consideration should also be given to consistency of use with state or local economic development plans and zoning regulations. *Page 180.*

71. The allocation of public lands to agricultural use should not be burdened by artificial and obsolete restraints such as acreage limitations on individual holdings, farm residency requirements, and the exclusions of corporations as eligible applicants. *Page 182.*

Chapter Eleven (The Outer Continental Shelf):

72. Complete authority over all activities on the Outer Continental Shelf should continue to be vested by statute in the Federal Government. Moreover, all Federal functions pertaining to that authority, including navigational safety, safety on or about structures and islands used for mineral activities, pollution control and supervision, mapping and charting, oceanographic and other scientific research, preservation and protection of the living resources of the sea, and occupancy uses of the Outer Continental Shelf, should be consolidated within the Government to the greatest possible degree. *Page 188.*

73. Protection of the environment from adverse effects of activities on the Federal Outer Continental Shelf is a matter of national concern and is a responsibility of the Federal Government. The Commission's recommendations concerning improved protection and enhancement of the environment generally require separate recognition in connection with activities on the Shelf, and agencies having resource management responsibility on the Shelf should be required by statute to review practices periodically and consider recommendations from all interested sources, including the Council on Environmental Quality.

In addition, there must be a continuing statutory liability upon lessees for the cleanup of oil spills occasioned from drilling or production activities on Federal Outer Continental Shelf leases. *Page 190.*

74. Proposals to open areas of the Outer Continental Shelf to leasing, including both the call for nomination of tracts and the invitation to bid, as well as operational orders and waivers of order requirements should be published in at least one newspaper of general circulation in each state adjacent to the area proposed for leasing or for which orders are promulgated.

Where a state, on the recommendation of local interests or otherwise, believes that Outer Continental Shelf leasing may create environmental hazards, or that necessary precautionary measures may not be provided, or that natural preservation of an area is in the best interest of the public, then, at the state's request, a public hearing should be held and specific findings issued concerning the objections raised. *Page 191.*

75. The Outer Continental Shelf Lands Act should be amended to give the Secretary of the Interior authority for utilizing flexible methods of competitive sale. Flexible methods of pricing should be encouraged, rather than the present exclusive reliance on bonus bidding, plus a fixed royalty. In addition, the timing and size of lease sales, both of which are presently irregular, should be regularized. Furthermore, while discretion to reject bids should remain with the Secretary, this authority should be qualified to require that he state his reasons for rejection. *Page 192.*

76. To the extent that adjacent states can prove net burdens resulting from onshore or offshore operations, in connection with Federal mineral leases on the Outer Continental Shelf, compensatory impact payments should be authorized and negotiated. *Page 193.*

77. The Federal Government should undertake an expanded offshore program of collection and dissemination of basic geological and geophysical data.

As part of that program, information developed under exploration permits should be fully disclosed to the Government in advance of Outer Continental Shelf lease sales. However, industry evaluations of raw data should be treated as proprietary and excluded from mandatory disclosure. *Page 193.*

Chapter Twelve (Outdoor Recreation):

78. An immediate effort should be undertaken to identify and protect those unique areas of national significance that exist on the public lands. *Page 198.*

79. Recreation policies and programs on those public lands of less than national significance should be designed to meet needs identified by statewide recreation plans. *Page 199.*

80. The Bureau of Outdoor Recreation should be directed to review, and empowered to disapprove, recreation proposals for public lands administered under general multiple-use policy if they are not in general conformity with statewide recreation plans. *Page 202.*

81. A general recreation land use fee, collected through sale of annual permits, should be required of all public land recreation users and, where feasible, additional fees should be charged for use of facilities constructed at Federal expense. *Page 203.*

82. Statutory guidelines should be established for resolving and minimizing conflicts among recreation uses and between outdoor recreation and other uses of public lands. *Page 205.*

83. The Federal role in assuming responsibility for public accommodations in areas of national significance should be expanded. The Federal Government should, in some instances, finance and construct adequate facilities with operation and maintenance left to concessioners. The security of investment afforded National Park Service concessioners by the Concessioner Act of 1965 should be extended to concessioners operating under comparable conditions elsewhere on the Federal public lands. *Page 208.*

84. Private enterprise should be encouraged to play a greater role in the development and management of intensive recreation use areas on those public

lands not designated by statute for concessioner development. *Page 211.*

85. Congress should provide guidelines for developing and managing the public land resources for outdoor recreation. The system of recreation land classification recommended by the Outdoor Recreation Resources Review Commission should be refined and adopted as a statutory guide to be applied to all public lands. *Page 213.*

86. Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public lands. *Page 214.*

87. The direct Federal acquisition of land for recreation purposes should be restricted primarily to support the Federal role in acquiring and preserving areas of unique national significance; acquisitions of additions to Federal multiple use lands for recreation purposes should be limited to inholdings only. *Page 215.*

88. The Land and Water Conservation Fund Act should be amended to improve financing of public land outdoor recreation programs. During the interim period until the recreation land use fee we recommend is adopted, the Golden Eagle Program should be continued. After essential acquisitions have been completed, the Land and Water Conservation Fund should be available for development of Federal public land areas. *Page 215.*

Chapter Thirteen (Occupancy Uses):

89. Congress should consolidate and clarify in a single statute the policies relating to the occupancy purposes for which public lands may be made available. *Page 219.*

90. Where practicable, planning and advanced classification of public lands for specific occupancy uses should be required. *Page 219.*

91. Public land should be allocated to occupancy uses only where equally suitable private land is not abundantly available. *Page 220.*

92. All individuals and entities generally empowered under state law to exercise an authorized occupancy privilege should be eligible applicants for occupancy uses, although a showing of financial and administrative capability should be required where large investments are involved.

Lands generally should be allocated competitively where there is more than one qualified private applicant, but preference should be given to state and local governments and nonprofit organizations to obtain land for public purposes and to REA cooperatives where incidental to regular REA operations. *Page 220.*

93. In general, disposal should be the preferred policy in meeting the need for occupancy uses that require substantial investment, materially alter the land, and are comparatively permanent in character, except where such uses are nonexclusive. *Page 220.*

94. Where occupancy uses are authorized on retained lands by permit, lease, or otherwise, (a) the term and size of permits should be adequate to accommodate project and the required investment; (b) compensation should be paid when the use is terminated by Federal action prior to expiration of the prescribed term; and (c) a preference right to purchase should be accorded to such users dependent on the lands if they are later offered for disposal. *Page 221.*

95. Public lands should not hereafter be made available under lease or permit for private residential and vacation purposes, and such existing uses should be phased out. *Page 223.*

96. Land management agencies should have the authority to require a reciprocal right-of-way on equitable terms as a condition of a grant of a right-of-way across public land. *Page 224.*

97. A new statutory framework should be enacted to make public lands available for the expansion of existing communities and for the development of new cities and towns. *Page 226.*

98. Whenever the Federal Government utilizes its position as landowner to accomplish, indirectly, public policy objectives unrelated to protection or development of the public lands, the purpose to be achieved and the authority therefor should be provided expressly by statute. *Page 229.*

99. While control and administration of occupancy uses should remain with the agencies managing the lands, assistance should be obtained from agencies having technical competence in connection with specific programs. *Page 229.*

100. The Secretary of the Interior should be authorized to approve other uses of railroad rights-of-way with the consent of the affected railroad, and persons holding defective titles from railroads to right-of-way lands should be confirmed in their uses by the Federal Government and the affected railroads. *Page 230.*

Chapter Fourteen (Tax Immunity):

101. If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands. *Page 236.*

102. Payments in lieu of taxes should be made to state governments, but such payments should not

attempt to provide full equivalency with payments that would be received if the property was in private ownership. A public benefits discount of at least 10 percent but not more than 40 percent should be applied to payments made by the Government in order to give recognition to the intangible benefits that some public lands provide, while, at the same time, recognizing the continuing burdens imposed on state and local governments through the increased use of public lands. The payments to states should be conditioned on distribution to those local units of government where the Federal lands are located, subject to criteria and formulae established by the states. Extraordinary benefits and burdens should be treated separately and payments made accordingly. *Page 237.*

103. In a payments-in-lieu-of-taxes system, a transition period should be provided for states and counties to adjust in changing from the existing system. *Page 241.*

Chapter Fifteen (Land Grants to States):

104. No additional grants should be made to any of the 50 states. *Page 243.*

105. Within a relatively brief period, perhaps from 3 to 5 years, the Secretary of the Interior, in consultation with the involved states, should be required to classify land as suitable for state indemnity selection, in reasonably compact units, and such classifications should aggregate at least 3 or 4 times the acreage due to each state. In the event the affected states do not agree, within 2 years thereafter, to satisfy their grants from the lands so classified, the Secretary should be required to report the differences to the Congress. If no resolution, legislative or otherwise, is reached at the end of 3 years after such report, making a total of 10 years of classification, selection, and negotiation, all such grants should be terminated. *Page 245.*

106. Limitations originally placed by the Federal Government on the use of grant lands, or funds derived from them, should be eliminated. *Page 247.*

107. The satisfaction of Federal land grants to Alaska should be expedited with the aim of completing selection by 1984 in accordance with the Statehood Act, and selections of land under the Alaska Statehood Act should have priority over any land classification program of the Bureau of Land Management. *Page 249.*

Chapter Sixteen (Administrative Procedures):

108. Congress should require public land management agencies to utilize rulemaking to the fullest extent possible in interpreting statutes and exercising delegated discretion, and should provide legislative restrictions to insure compliance with this goal. *Page 251.*

109. Congress should direct the public land agencies to restructure their adjudication organization and procedures in order to assure: (1) procedural due process; (2) greater third party participation; (3) objective administrative review of initial decisions; and (4) more expeditious decisionmaking. *Page 253.*

110. Judicial review of public land adjudications should be expressly provided for by Congress. *Page 256.*

Chapter Seventeen (Trespass and Disputed Title):

111. Statutes and administrative practices defining unauthorized use of public lands should be clarified, and remedies available to the Federal Government should be uniform among land management agencies. Where necessary, statutory authority for policing by Federal agencies should be provided. *Page 259.*

112. An intensified survey program to locate and mark boundaries of all public lands based upon a system of priorities, over a period of years, should be undertaken as the public interest requires. *Page 260.*

113. The doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment.

In cases where questions of adverse possession, equitable estoppel, and laches do not apply, persons who claim an interest in public land based upon good faith, undisturbed, unauthorized occupancy for a substantial period of time, should be afforded an opportunity to purchase or lease such lands. *Page 260.*

Chapter Eighteen (Disposals, Acquisitions, and Exchanges):

114. Statutory eligibility qualifications of applicants for public lands subject to disposal should generally avoid artificial restraints and promote maximum competition for such lands. Preferences for certain classes of applicants should be used sparingly. *Page 265.*

115. Disposals in excess of a specified dollar or acreage amount should require congressional authorization. *Page 265.*

116. Where land is disposed of at less than fair-market value, or where it is desired to assure that lands be used for the purpose disposed of for a limited period to avoid undue speculation, transfers should provide for a possibility of reverter, which

should expire after a reasonable period of time. *Page 265.*

117. Public lands generally should not be disposed of in an area unless adequate state or local zoning is in effect. In the absence of such zoning, and where disposal is otherwise desirable, covenants in Federal deeds should be used to protect public values. *Page 266.*

118. Protective covenants should be included in Federal deeds to preserve important environmental values on public lands in certain situations, even where state or local zoning is in effect. *Page 266.*

119. The general acquisition authority of the public land management agencies should be consistent with agency missions. *Page 267.*

120. The general land acquisition authority of the public land management agencies should be revised to provide uniformity and comprehensiveness with respect to (1) the interests in lands which may be acquired, and (2) the techniques available to acquire them. *Page 267.*

121. The public land management agencies should be authorized to employ a broad array of acquisition techniques on an experimental basis in order to determine which appear best adapted to meeting the problem of price escalation of lands required for Federal programs. *Page 268.*

122. Congress should specify the general program needs for which lands may be acquired by each public land agency. *Page 269.*

123. Justification standards for and oversight of public land acquisitions should be strengthened, and present statutory requirements for state consent to certain land acquisitions should be replaced with directives to engage in meaningful coordination of Federal acquisition programs with state and local governments. *Page 269.*

124. General land exchange authority should be used primarily to block up existing Federal holdings or to accomplish minor land tenure adjustments in the public interest, but not for acquisition of major new Federal units. *Page 270.*

125. Exchange authority of the public land management agencies should be made uniform to permit (1) the exchange of all classes of real property interests, and (2) cash equalization within percentage limits of the value of the transaction. *Page 271.*

126. Generally, within each department, all federally owned lands otherwise available for disposal should be subject to exchange, regardless of agency jurisdiction and geographic limitation. *Page 271.*

127. Public land administrators should be authorized by law to dispense with the requirement of a formal appraisal: (1) in any sale or lease where there is a formal finding that competition exists, the sale or lease will be held under competitive bidding procedures, and the property does not have a value in excess of some specified amount set forth in the statute; and (2) whenever property can be acquired for less than some specified price set forth in the statute, provided a formal finding is made that the property to be acquired has a value at least equal to the amount the Government would be paying in either a direct purchase or exchange. *Page 272.*

128. Administration of all land acquisition programs for Department of the Interior agencies, including performance of the appraisal function, should be consolidated within the Department. Procedures, however, should be standardized for all public land management agencies. *Page 273.*

Chapter Nineteen (Federal Legislative Jurisdiction):

129. Exclusive Federal legislative jurisdiction should be obtained, or retained, only in those uncommon instances where it is absolutely necessary to the Federal Government, and in such instances the United States should provide a statutory or regulatory code to govern the areas. *Page 278.*

130. Federal departments and agencies should have the authority to retrocede exclusive Federal legislative jurisdiction to the states, with the consent of the states. *Page 279.*

Chapter Twenty (Organization, Administration, and Budgeting Policy):

131. The Forest Service should be merged with the Department of the Interior into a new department of natural resources. *Page 282.*

132. Greater emphasis should be placed on regional administration of public land programs. *Page 284.*

133. The recommended consolidation of public land programs should be accompanied by a consolidation of congressional committee jurisdiction over public land programs into a single committee in each House of Congress. *Page 284.*

134. The President's budget should include a consolidated budget for public land programs that shows the relationship between costs and benefits of each program. *Page 285.*

135. Periodic regional public land programs should be authorized by statute as a basis for annual budgets and for appropriation of funds. *Page 286.*

136. There should be a uniform, statutory basis for pricing goods and services furnished from the public lands. *Page 287.*

137. Statutory authority should be provided for public land citizen advisory boards and guidelines for their operation should be established by statute. *Page 288.*

Where and What Are Public Lands?

THE Commission's task has been a challenging one. The Congress of the United States has charged it with reviewing, in the light of contemporary conditions, laws, policies, practices, and procedures affecting the public lands, which constitute nearly one-third of the area of the Nation.

The Act creating the Commission declared that the Nation's public lands should be retained and managed, or disposed of, all in a manner to provide the maximum benefit for the general public. This goal has been the Commission's objective. In the process of developing its conclusions and recommendations, its members have constantly applied John Ruskin's admonition: "God has lent us the earth for our life; it is a great entail. It belongs as much to those who are to come after us . . . as to us; and we have no right, by anything we do or neglect, to involve them in any unnecessary penalties, or to deprive them of benefits which it was in our power to bequeath." [1]

In the 100 years after the United States became a Nation, it was presented with an unparalleled opportunity by the acquisition of lands. Seven of the original states ceded their western lands to the Federal Government. These lands generally included those between the original states and the Mississippi River. Following this, the acquisition of the lands between the Mississippi and the Pacific Ocean and finally the acquisition of Alaska in 1867 provided the United States with a vast area of largely unsettled lands that in the main had not been committed to private ownership or use.

The acquisition of these lands and the desire to dispose of them to encourage settlement of the West took place just at the time that the railroad was making it possible to open these lands to settlement and use. And the lands generally were rich in resources and productive for farming so that it was possible to settle the West. The policy of making these lands available to those who would develop them must be judged as highly successful. In good part because of this policy, the United States now has the highest standard of living of any nation on the earth.

But not all of the Federal lands were suitable for development and not all of them have been made available for development. Some of the lands were too dry for farming and some of the high mountain lands were also unsuited to farming. And much of Alaska was unsuitable for farming. Other lands, the national forests and national parks, were reserved from disposition under the settlement laws in order to meet other objectives of the Federal Government.

The Lands and Their Administration

The remaining public domain in Federal ownership together with additional areas of acquired national forest and wildlife refuge lands total nearly 725 million acres.[2] These lands, which have been assigned by Congress to this Commission for review, cover an area equal to the size of India. In addition, the Commission has considered the laws, policies, and practices governing some 20 million acres of land acquired for the National Park System, land utilization project lands, and other areas which, for various reasons, were deemed similar to those within the Commission's mandate.

Nearly 700 million acres of the original public domain, lands that were never transferred from Federal ownership, remain as part of our public lands.

[1] *The Seven Lamps of Architecture,* 8 Works of John Ruskin 233 (E. T. Cook and A. Wedderburn, ed. 1903).

[2] The distribution of public lands throughout the United States is shown for each major category of lands on the map folded in this report.

Over 179 million acres of the public domain have been reserved as national parks and national forests. Some, approximately 53.5 million acres, have been set aside for specific uses by the Department of Defense, Atomic Energy Commission, and other Federal agencies. In all cases the lands are still classed as part of the public domain for some purposes.

The rest of the Federal lands have been acquired from non-Federal owners. Some 26 million acres have been acquired for inclusion in national forests and national wildlife refuges and another 29 million acres have been acquired for other purposes that are connected with or similar to those on which our review concentrated.

The lands with which our review is concerned are for the most part managed by four agencies of the Federal Government: the United States Forest Service of the Department of Agriculture, and the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service of the Department of the Interior. Smaller but significant acreages are administered by the military departments, the Atomic Energy Commission, and the Bureau of Reclamation.[3]

The Bureau of Land Management is responsible

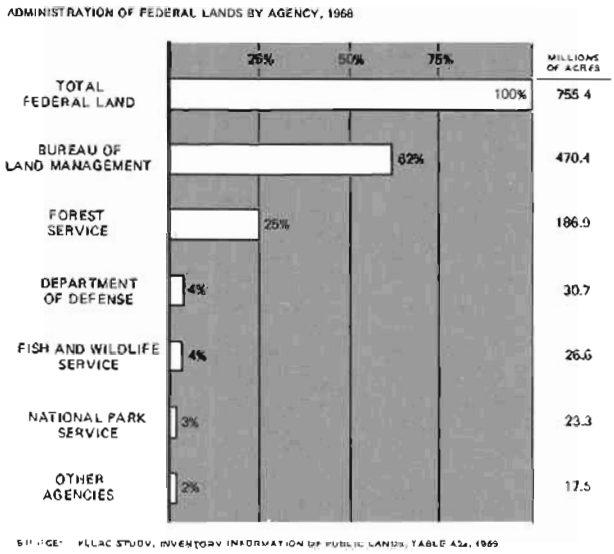
[3] The graph, Administration of Federal Lands by Agency, 1968, page 22, shows the proportion of public lands administered by each major agency. Areas administered by each agency are shown in Acreage of Lands Administered by Agency and State, Appendix F.

Diversity of Geology on the Public Lands: The "young" Sierras and the "old" Blue Ridge Mountains.

for administration of the more than 465 million acres of public domain lands that have not been set aside for particular uses; together with other lands, it administers over 60 percent of all Federal lands. Almost two-thirds of the lands it manages are in Alaska. The remainder are almost entirely in the 11 western states. These are primarily the lands that were not considered suitable for farming or for inclusion in national parks and forests.

About one-fourth of the Federal lands are administered by the Forest Service. Most of this is 160 million acres of public domain under its control in the West. It also administers over 22 million acres of acquired national forest lands, primarily in the eastern United States, and approximately 3.5 million acres of other acquired lands.

Much smaller acreages are managed by the National Park Service (23.3 million acres) and Bureau of Sport Fisheries and Wildlife (26.6 million acres). The responsibilities of these agencies, however, are



The bulk of the Federal lands are administered by the Bureau of Land Management and the Forest Service.

substantial because of the variety of lands included in the national park and national wildlife refuge systems, and their location throughout the country.

Location of the Public Lands

About one-half of the public lands are in Alaska. Because of its remoteness and northern location, development has not made progress in Alaska to the same extent as in other states. As a result, the Federal Government still owns over 95 percent of all the lands in the state.

The other half of the public lands are located in the 48 contiguous states, but are not evenly distributed throughout the states. Over 90 percent of the Federal lands outside of Alaska are in the 11 western states. The huge expanse of the public lands of the Far West is difficult for many to comprehend. Yet, to understand adequately the Commission's conclusions and recommendations, this vastness must be studied, understood, and kept in mind.

More than 86 percent of the State of Nevada is owned by the Federal Government, and the public land area in that state is twice the size of the entire State of New York. Similarly, public land in California amounts to eight times the total area of the State of Massachusetts. Utah's public lands are about equal to the total area of the State of Florida, and Idaho's about equal to the size of Arkansas. The entire area of Pennsylvania is smaller than the Federal public land holdings in either Oregon or Wyoming. The public lands in Montana and New Mexico are each about equal to the total area of Virginia. Federal lands in Colorado are equal to the total area of Indiana; and the public land area in the State of Washington is twice as great as the total area of New Hampshire.

Despite the heavy concentration of public lands in the western states, Federal land ownership nevertheless is vitally important to other states as well. Minnesota, for example, has Federal public lands which exceed the area of Connecticut. In addition, there are 10 other nonwestern states in each of which the public landholdings of the Federal Government approximate or exceed the land area of the State of Delaware.[4] There are also significant but comparatively lesser acreages in New Hampshire, Vermont, and several Appalachian states, which are substantial in relation to the total of the area of each state involved.

The public lands must also be viewed in the context of their location relative to the population of the Nation. Of the 11 contiguous western states only two, California and Washington, have population densities equal to or exceeding the national average. The other nine western states have population densities substantially less than that of Maine, the most lightly populated state east of the Mississippi. In fact, two of them have a density of about one-tenth that of Maine and four more have a density less than one-third that of Maine.

Alaska, of course, is not comparable to any of the other states, and it is difficult to make any meaningful comparison with Alaska's sparse population. But it can be noted that the population density of Alaska is now about one-tenth that of the United States at the time of the first census in 1790.

In part because of the uneven distribution of public lands, but also because of the obvious importance of these lands to all regions—including the South, the Northeast, and the Midwest—the Commission has necessarily given substantial weight to regional as well as national considerations. We have found that Federal land ownership is important to all areas because of the diversity and regional concentration of the lands.

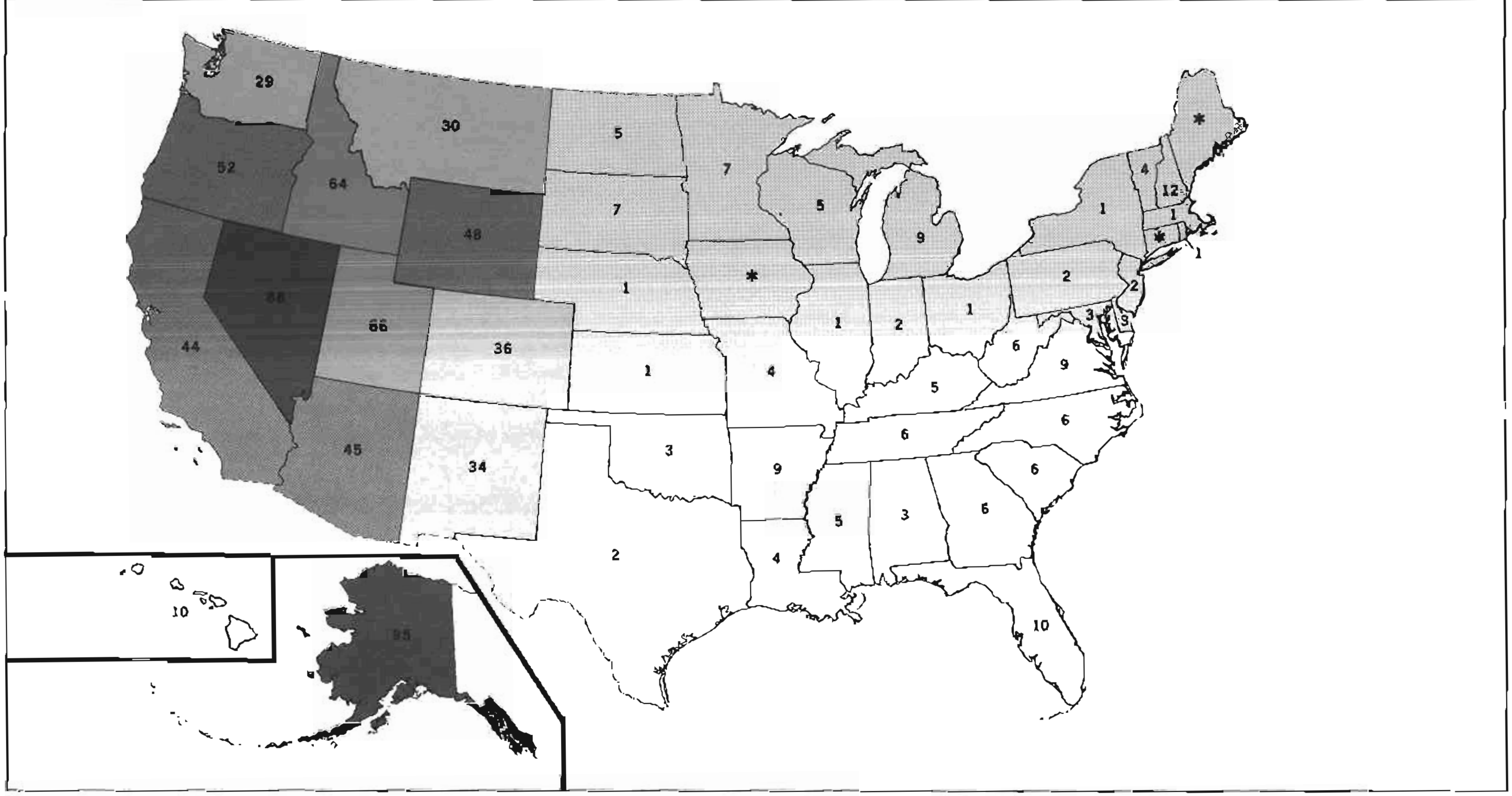
Diversity of the Public Lands

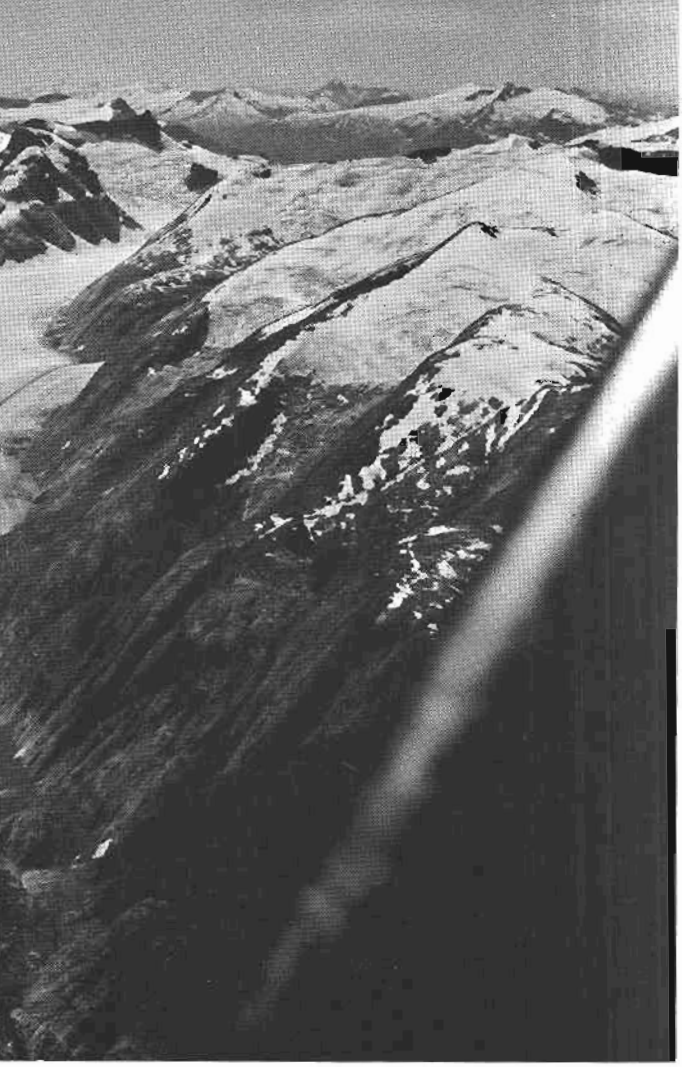
One of the most important characteristics of the public lands is their great diversity. Because of their great range—they are found from the northern tip of Alaska to the southern end of Florida—all kinds of climate conditions are found on them. Arctic cold, rain forest torrents, desert heat, mountain snows,

[4] They are Arkansas, Florida, Georgia, Michigan, Mississippi, Missouri, North Carolina, South Dakota, Virginia, and Wisconsin.

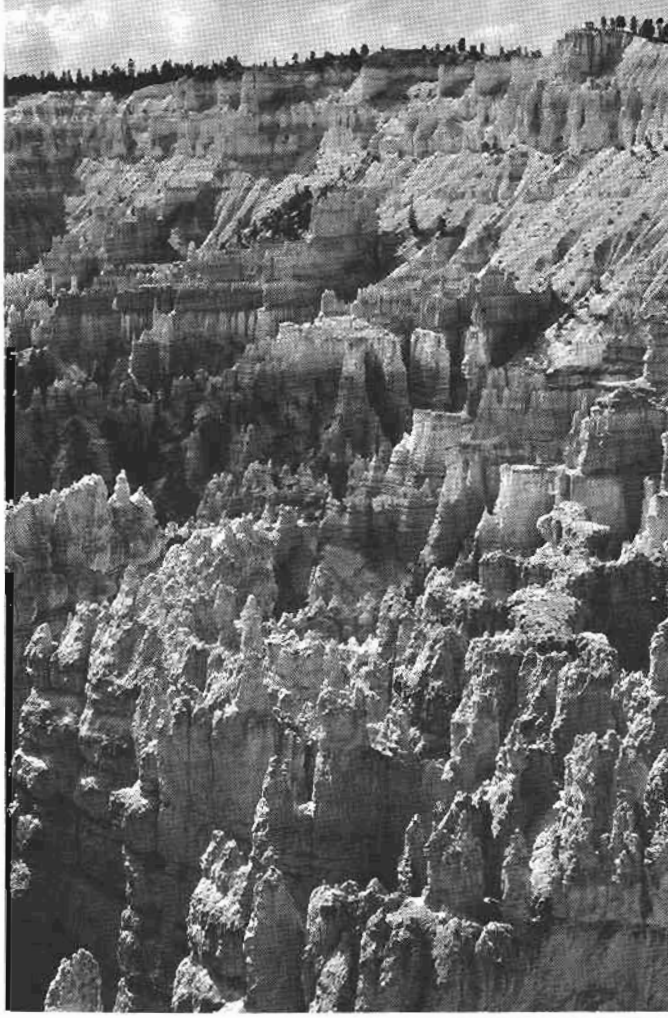
FEDERAL LAND IS DISTRIBUTED UNEVENLY THROUGHOUT THE UNITED STATES
PERCENT OF EACH STATE AREA FEDERALLY-OWNED, 1968

* Less than 1%	20-40%	60-80%
0-20%	40-60%	80-100%

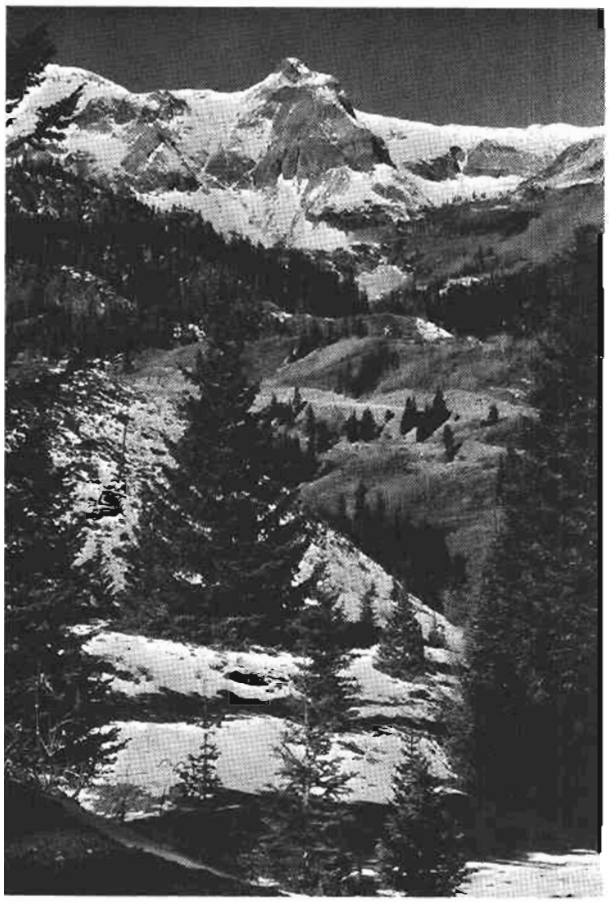




Diversity of Climate on the Public Lands: Glacial rivers of Alaska (top left); dry desert reaches of the Southwest (left); humid lowlands of the Deep South (above).



Diversity of Terrain on the Public Lands: Northern lake country (above); time-eroded spires in the Southwest (top center); the Rockies (top right); and a national seashore (right).



and semitropical littoral conditions are all characteristic of public lands in one area or another.

Great differences in terrain are also typical. The tallest mountain in North America, Mount McKinley in Alaska, is on public lands, as is the tallest mountain in the 48 contiguous states, Mount Whitney in California. But the lowest point in the United States, Death Valley, is also on public lands, as are most of the highest peaks in the White Mountains of New Hampshire and the Appalachians of the southeastern states.

Not all of these lands are mountains and valleys, however. Vast areas of tundra and river deltas in Alaska are flat, marked only with an incredible number of small lakes. Other vast areas in the Great Basin area of Nevada and Oregon are not marked with lakes, but with desert shrubs. Still other areas of rolling timber-covered mountains extend for mile after mile, both in the Pacific Northwest and the Inland Empire of Idaho, eastern Washington, and western Montana, and in the Allegheny, Green, and Ouachita Mountains of Pennsylvania, Vermont, and Arkansas. And still other vast areas are rangelands used for grazing domestic livestock.

However, not all of these public lands can be characterized as vast wild or semideveloped expanses. In many instances, Federal ownership is scattered in relatively small tracts among largely privately owned lands. The condition of the land may still be undeveloped, but our consideration of how the land should be used is necessarily influenced by the scattered nature of the Federal ownership. In some cases, public lands are found almost in the midst of urban areas and here again we must view the use of the lands in relation to the surrounding lands.

The great diversity of these lands is a resource in itself. As needs of the Nation have changed, the public lands have been able to play a changing role in meeting these needs. Whether the demand is for minerals, crop production, timber, or recreation, and whether it is national or regional, the public lands are able to play a role in meeting them.

Historical Development

Many of the present national public land attitudes and policies can be traced to historical backgrounds. While today one thinks of Alaska and the 11 western states as "public land states," 19 others in the Middle West and the South were carved from land which was once public domain. The Federal Government, in the last 175 years, has granted or sold over one billion acres of public land, land which now constitutes a major portion of the productive base of the United States.

Today we are a Nation of more than 200 million people and almost 2.3 billion acres of land. Some-

what over 1.5 billion acres are in private or state ownership. If one excludes Alaska, this is nearly four-fifths of the total area of the Nation.

It is obvious that past and present Federal land laws and policies concerning the disposal or retention of public land have shaped the mosaic of land uses over most of the United States. It is equally obvious that future public land laws and policies relating to the retention or disposal of the remaining public land will greatly influence American land use and the quality of life in the years ahead.

During most of the 19th century, our public land policy was basically one of disposal into non-Federal ownership to encourage settlement and development of the country. Those lands most favorably situated for mineral development, agriculture, and townsites were settled first. And land grants to states and to railroads resulted in areas of land being transferred out of Federal ownership. Many of these grants, which were made to provide the states with a basis for development and to encourage the westward spread of railroads, were made in a manner that much unfavorably, as well as favorably, situated land was placed in non-Federal ownership.

On the whole, however, the best and most productive land was settled first. Therefore, as a general rule, the land in non-Federal ownership is the most valuable, and the residual Federal holdings tend to be those with the least economic potential. There are, of course, significant exceptions. Beginning just prior to 1900, the emphasis in public land policy began to shift toward the retention of some lands in Federal ownership. Millions of acres of land were set aside to be held as national forests, national parks, or other conservation and management units.

Many of these lands were or became highly valuable. The timberlands that were placed in the national forests of the Pacific Northwest, largely during the early conservation period from 1891 to 1920, were recognized even then as having great commercial value. And many of the national park areas were potentially valuable not only for their splendid scenery, but for their resource values as well. In fact, reservation of the parks was often necessary to protect them from resource development.

The policy of reservation of lands for parks and forests did not halt large scale disposals after 1900. Homesteading was still a means of conveying considerable Federal land into private ownership until the 1930's. But by this time most of the land suitable for farming under the existing conditions was in private ownership. The Taylor Grazing Act of 1934,[5] which stabilized the range livestock industry, brought the era of homesteading largely to an end.

The lands that remained in the unappropriated and unreserved public domain, outside of those in Alaska, were mainly the arid and semiarid grazing lands of the West. These lands, together with the national parks, forests, and wildlife refuges, and other similar Federal lands are the subject of this report.

Uses of the Public Lands

Just as the public lands themselves are diverse, the resources and uses of these lands also exhibit great diversity. Logging, mining, and grazing have always been important uses of public land. And recreation, watershed protection, and other uses of land in its semiwild state are becoming increasingly important. Some of the lands are still potentially valuable for agriculture and others have great potential value as a place for cities and towns to develop and expand. Magnificent scenery and incomparable wilderness also characterize much of the public land. These environmental resources are a national treasure for all the American people.

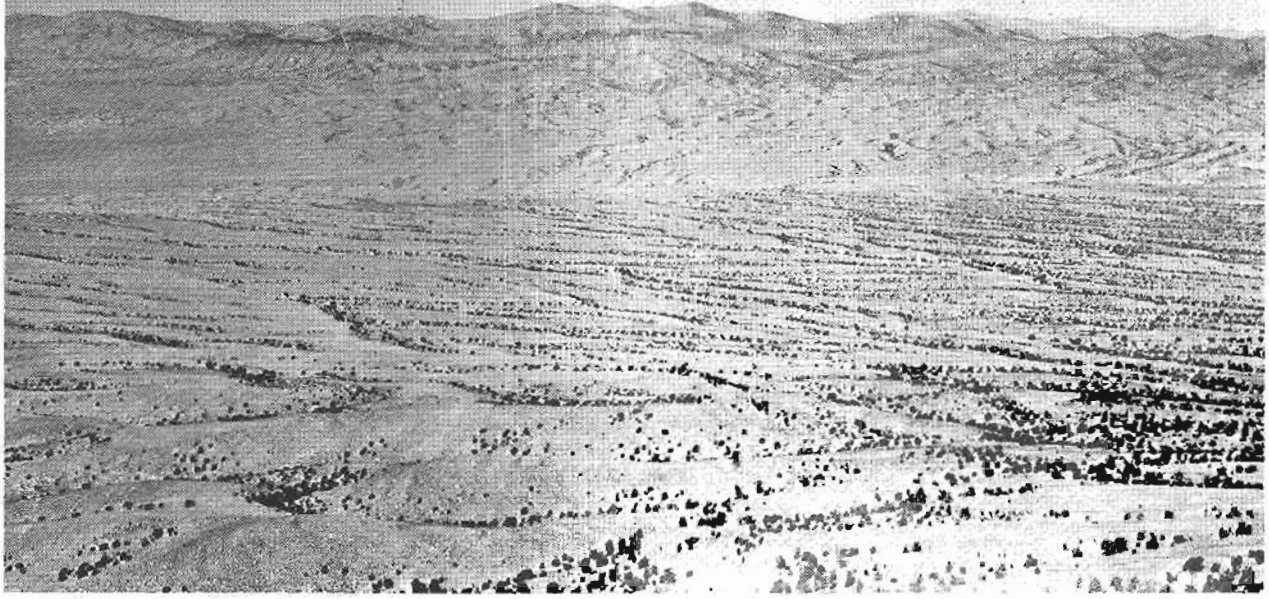
As did Gifford Pinchot, the Commission recognized that these resources have a direct bearing on the material well-being of all the American people, wherever they live. And we have also recognized their importance as recreational resources and as part of our heritage. The public lands have been important in the past and we are committed to the principle that they continue to be available to serve the Nation's needs in the future.

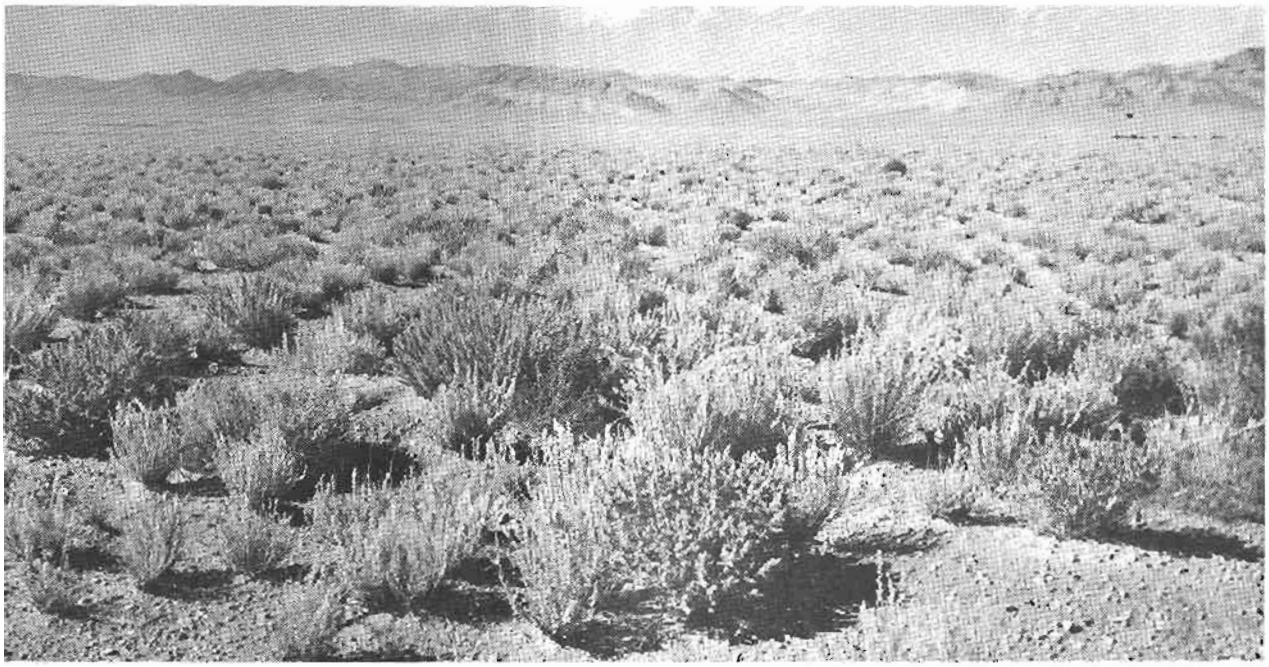
If one excludes Alaska, which possesses vast areas never subjected to anything more than casual human use, the most widespread economic use of public lands has been, and is today, for the grazing of domestic livestock. Over one-third of our public land is administered for grazing. While grazing is an extensive use of relatively low value lands, cattle and sheep grazed on the public lands are important to the livestock industry of the Nation and as the economic basis for many western communities.

Timber production is also a widespread use of undeveloped lands. The public lands include about 100 million acres of land classed as commercial forest, which is being managed to maintain a sustained yield of wood products. Because many of the national forests were reserved in the mountainous areas of the West, much of the commercial forest land has never been logged. But in recent years, the timber cut has increased to the point where the public lands now support nearly one-third of the Nation's total production. These forests are important as a

[5] 43 U.S.C. §§ 315 et. seq. (1964).

Diversity of Vegetation on the Public Lands: Pinyon-juniper region of the Upper Desert (top); sagebrush (center); and timber country west of the Continental Divide.





source of raw materials to the timber industry not only in the West, but throughout the eastern part of the country.

Like timber production, mineral extraction is an intensive use of public land. This is illustrated by the fact that in 1968 there were 8,245 producing leases, primarily for oil and gas, under the Mineral Leasing Act,[6] generating royalties to the Federal Government of over $92 million from less than 6 million acres. And an even smaller area is required for the production of hard minerals, such as copper and lead. Areas that were public lands when minerals were first discovered on them have contributed much of the Nation's production of hard minerals, and in some cases have been almost the sole source.

While not constituting public land interests in the usual legal or lay definitions of public lands, the mineral resources in the Outer Continental Shelf were included in the statutory charge to the Commission. Since the early 1950s, oil and gas from the Outer Continental Shelf has been of growing importance to the petroleum industry and the Shelf also promises to become a source of other resources in the future.

In addition to those areas held in fee by the United States, the Federal Government also owns mineral rights in approximately 62 million acres of land previously conveyed under the public land laws. These mineral rights have raised a number of environmental and equitable issues for consideration in the Commission's review.

In many cases, the most valuable economic use of public lands are occupancy uses dictated by essential human needs. Examples include rights-of-way for utility transmission lines and lease or permit rights for the operation of service facilities, such as hotels, service stations, and other business enterprises. Schools and other needs of state or local governments are also high value intensive uses, as is the use of land for cities and urban expansion. Public land often abuts western communities (such as Las Vegas and Phoenix), and as they grow, their spatial requirements for urban expansion make the adjoining public land increasingly valuable. We recognize that this use is likely to increase in the future as the rapidly growing areas of the West continue to expand.

Some recreation use is also highly intensive, with heavy concentrations of people at some times during the year. Yosemite National Park and the White Mountain, Angeles, Arapaho and Wasatch National Forests, for example, are subjected to very intensive use for recreation. And it is undoubtedly true that public land areas like these, which are readily accessible to metropolitan areas, will be utilized even more heavily in the future.

Much of the recreation use, however, is concentrated within less intensively used areas. Ski slopes and campgrounds on the national forests, the 7 square miles of valley floor at Yosemite National Park, and the area around the geysers at Yellowstone National Park bear the brunt of use in these areas. Much of the other recreation use on public lands is extensive, rather than intensive, in relation to the magnitude of the Federal public land areas and the remoteness of most of them from large population centers.

Wildlife of one form or another occurs on nearly all public lands, most of which can also be considered to be watershed lands. In most cases, these are broad, extensive uses with relatively little concentration of activity. But consideration must be given to them. Many of the arid public lands contain fragile soils subject to wind and water erosion. Often their principal value is that they constitute a major source of water for downstream communities. Consequently, their management for watershed protection and wildlife habitat purposes has become more important.

The Future of the Public Lands

Inevitably, the value of land changes with population changes and with the location advantages or disadvantages of the land itself. The highest and best use in many public land areas today is not the same as it was 30 years ago. Nor will it remain static over the next 30 years. Recognition of these rapidly changing values in relation to public land is implicit in the recommendations proposed by this Commission.

As we have proceeded with our task of reviewing the Nation's public land laws and policies, we have kept in constant view the great variation in public lands, resources, uses, and human needs. We have recognized the dominant role of Federal public land in the 12 far western states. In large measure the future of those states may depend on the adoption of sound public land laws and policies that will assure environmental quality and, at the same time, encourage healthy economic growth. We have also recognized the importance of these lands to other regions of the country. We are confident that the very diversity of lands, resources, uses, and needs that made our task so complex will assure that the public lands can continue to meet the changing, and perhaps unexpected, needs of the future.

[6] 30 U.S.C. §§ 181 et. seq. (1964).

To Whom the Public Lands Are Important

WE START with a strong belief that the public lands of the United States and their resources are important to everyone.

These lands are a natural heritage and national asset that belong to all of us. Each American should cherish them and seek to assure their retention and management or disposition—in the words of section 1 of the Commission's Organic Act—so as to provide "the maximum benefit for the general public."

How does one achieve "maximum benefit"?

How does one define "general public"?

Virtually all matters of governmental policy pose questions of relative advantages and disadvantages to different segments of our society. Public land policy is no different. To arrive at a reasonable judgment of what constitutes the maximum benefit for the general public requires evaluating and weighing many diverse considerations and interests.

As part of our research program, a staff study was undertaken to develop criteria and identify factors that could be used to assist us in making a consistent and rational approach toward defining the maximum benefit for the general public in public land matters. In addition to soliciting the views of the Commission's Advisory Council and the representatives of the 50 Governors, individuals and groups throughout the country were asked to contribute their recommendations. Not only was the question of maximum benefit for the general public a recurrent theme in many of the meetings of the Advisory Council with the Governors' Representatives participating, but three of our meetings with these advisors focused specifically on this subject. Many of the Commission's witnesses and correspondents also made recommendations.

We recognized that there cannot be a scientifically accurate manner of determining how the various justifiable interests can and should be weighed in order to assure maximum benefit for the general public. But we did find that it is useful to categorize and catalog such interests in order to determine their common goals and objectives as well as the conflicts among them. It is also essential to have an historical perspective on the use of the public lands in examining the role that these lands must fulfill today and in the years ahead.

The public lands have played a vital, though changing, role in the development of the Nation. Historically, they served as an inducement for the development of the frontier and, before the Civil War, as a major source of revenue. Today, the public lands must serve more complex and rapidly changing needs. Even though other aspects of national policy may overshadow public land policy, the public lands are, indeed, still important to all the people of the country.

We found, however, that recognizing the importance of public lands in our national life was only the first step in approaching our task of making recommendations that will serve the public interest. The wide range of suggestions received by the Commission, the very considerable differences in the apparent interests of various individuals and groups, and the great geographical variation in population relative to the public lands, all suggest that the general public must be recognized as a composite of many different interests. *One of our earliest conclusions was that the "general public" is in fact made up of many publics.*

The variety and range of those having a direct

interest in the retention, management, or disposition of the public lands was recognized by Congress in this Commission's Organic Act. As detailed in the Preface, provision was made for an Advisory Council to the Commission with members representative of the various interest groups, including representatives of Federal departments and agencies.

For clarity of analysis, and in an effort to assure ourselves that all justifiable interests were given consideration, we classified these interests and, as indicated in this chapter, identified the direct and indirect benefits and burdens that are afforded or imposed on them by public land policies. In doing so, we gave recognition not only to the direct user, whether a consumptive or nonconsumptive one, but also to those whose only interest might be an intellectual or emotional one. The Nation has learned that a threatened destruction of a wilderness or some other unit of natural beauty will have a tremendous impact on city dwellers thousands of miles away, even though they have no immediate expectation of themselves being able to visit such areas. While such reactions may sometimes have had a disproportionate impact on a decision in either the legislative or the executive branch, we believe that it can be placed in perspective in the weighing of interests that we have used, and that we recommend for future use in decisionmaking.

The interests we identified could have been categorized in many different ways. In analyzing the multiplicity of problems brought to our attention, we identified six interests or points of view which, in our opinion, comprise, in the aggregate, the general public with respect to public land policies.

Because the interests are not mutually exclusive, there is some overlapping and, therefore, duplication among them. An individual living in an area where public lands are dominant possesses the interest of each one of the different publics we have identified. Similarly, the concerns of the city dweller far removed from the public lands will, in many respects, be the same as those of a person who uses the public lands daily. Nevertheless, we find the identification of these separate interests necessary in order to work with them consistently in the analysis of public land policy.

Our six categories, each of which is discussed in detail below, are:

The National Public;
The Regional Public;
The Federal Government as Sovereign;
The Federal Government as Proprietor;
State and Local Governments; and
The Users of the Public Lands

It is difficult, if not impossible, to establish priorities among the concerns that a member of any group has regarding the public lands. Our enumeration, therefore, is to assure that all of them are given consideration. There is no intent to indicate priorities for weighting the various publics or the interests within categories.

The National Public

Although the public lands, as noted in Chapter 1, are not distributed proportionally throughout the Nation, they and their resources belong to all the people of the United States. Considered by many as playgrounds, the public lands annually provide millions of dollars in revenue for the Treasury of the United States, and much more in terms of the value of goods and services they produce. Despite the fact, noted above, that many desirable public lands are not readily accessible to everyone, it is obvious that all the people of the United States have certain common interests in them.

The national public has an interest in reducing the burden on taxpayers generally either by maximizing the net revenue from the public lands, or by assuring more efficient management, or both. The national public also has an interest that consumer goods and services derived from the public lands will be made available at the lowest possible price consistent with good conservation practices.

Each citizen, whether he has expressed it or not, wants the lands to be used and, to the extent necessary, retained, so as to maintain capability for future use. Timber, water, forage, and wildlife are among the most plentiful renewable resources of the public lands, but good management is required to increase or even maintain the ability of the land to produce them. Policies for the use of nonrenewable resources must take into consideration the interest of the national public that the resources be available when and if needed.

The national public, we assume, is concerned that the public lands should contribute to the maintenance of a quality environment. The interest of each person in the preservation of areas of national importance, such as national parks, monuments, or wilderness areas adds significance to his identity as an American. We have concluded and base our consideration on the assumption that the national public is also desirous that the public lands should be managed to enhance human and social values.

While the interests of the national public are not associated with any particular kind of use of the public lands, the national public is concerned that people who do use the public lands shall be treated equally.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The Regional Public

Those who live and work on and near the public lands have a separate, identifiable and special concern with those policies that go beyond their interest as members of the national public. This was made quite evident to the Commission at the various meetings held throughout the country.

Identifiable concerns of regional publics occur wherever these lands may be located. The regional public in the area of the White Mountains National Forest in New Hampshire is as concerned about those public lands as is the regional public in the area of public domain lands in Alaska or in Montana. The interests of the various regional publics may be expressed in different terms, but there are common threads among them.

We found, for example, that the people living in the immediate vicinity of public lands have a strong desire that these lands contribute meaningfully to the quality of the environment in which they live. Scars from poorly planned rights-of-way or siltation of favorite fishing streams are environmental impacts that are with the regional public every day of the year. And so are the contributions of the public lands to their way of life. The child who has ready access to the use of public lands for fishing and hiking, and whose father derives an income from these lands, grows to have an abiding interest in them as a member of the regional public.

Taxes on private property ownership are a major source of revenue in public land states, particularly at the local level. They contribute significantly to public education and other governmental services in public land areas. It is in the regional public interest to have the Federal Government, as landowner, pay its fair share of the costs of adequate local and state governmental services.

Public lands and their resources are an important part of the economic base in at least 22 states. There clearly is a regional public interest in laws and policies which permit public lands and their resources to contribute to regional growth, development, and employment. There is also a companion interest that the public lands contribute to the stability of the community.

The Federal Government as Sovereign

As a matter of constitutional law, there is no legal significance in the different roles of the Federal Government as sovereign and as proprietor, but it is useful to separate these two institutional interests in public land. By doing so, we may distinguish those interests which relate to governmental functions from those which are similar to the interests of any other landowner.

Through all its powers, including regulation and administration, the Federal Government has great influence on the economy and other aspects of our national life which only incidentally relate to public land. If it is to achieve its broad constitutional responsibilities toward the national community, public land laws and policies should complement and implement other nationwide programs and policies.

Under the Constitution, it is the ultimate responsibility of the Federal Government to provide for the common defense and promote the general welfare. Public lands must be viewed as one of the tools that the Federal Government has available in pursuing its sovereign objectives. Control over public lands, for example, has been important historically in meeting various national defense needs. And the reservation of national parks and national forests from the public domain was accomplished to promote the general welfare of the Nation.

We believe the public lands can be used in a variety of ways to promote sovereign objectives. We also found that present and proposed uses of public lands must be examined carefully to ascertain whether they might interfere with the pursuit of sovereign objectives. The nature of modern society, the pervasiveness of the Federal Government's objectives, and the large number of laws and treaties that define Federal sovereign objectives complicate this task.

For example, the Federal sovereign interest lies in the efficient economic and noneconomic utilization of all the resources of our Nation and the avoidance of diversion of labor and capital to less productive enterprises. Consequently, from the sovereign point of view, laws and policies should be avoided which permit public lands and resources to be used in unfair competition with resources from other sources. Withholding of public land resources from development may in different circumstances either further or thwart the sovereign interest. The national interest requires users of public land and resources to contribute their fair share of Federal revenues. This principle precludes tax or pricing policies which unduly favor the users of public land. There is a sovereign interest in assuring access on equal terms to all potential users of the goods and services from those lands. The avoidance of monopoly and special privilege is the basic policy of many Federal laws, including, for example, the anti-trust laws.

There is also a sovereign interest in the maintenance of quality environmental conditions on public lands at least equal to those standards legislated for the Nation generally. It would be unfair, if not impossible, to enforce on the private sector standards higher than those established for public lands by the very government charged with their enforcement.

In a crisis, the sovereign responsibilities must over-

ride the objectives of all the others. However, in the absence of an emergency, policies and practices in connection with the retention and management or disposition of the public lands should be based on decisions made after taking into consideration all categories of interest, without assigning a higher priority to the interest of the sovereign.

The Federal Government as Proprietor

With about one-third of the country's land in its ownership, the Federal Government is a giant landowner. To a substantial extent, Federal ownership of the public lands is a coincidence of history. Most of these lands were obtained as our national territory expanded. Although some were dedicated to meeting specific needs, the remaining unreserved public domain lands are mostly those for which there was neither a Federal need nor demand under Federal laws providing for transfer into non-Federal control. Consideration of policies for these lands must generally start from the premise that they are not in Federal ownership because of some direct tie to Federal sovereign objectives.

In its role as proprietor, the Federal Government has much the same interest as other landowners. It wants at least the same degree of freedom as other landowners to manage and use its resources.

As a proprietor, the Federal Government wants to maximize the net economic return from sales of land and resources.

The Government, in the role of proprietor, has an interest in assuring the availability of sufficient funds to finance programs at a level that will result in a net monetary gain. It is also interested in the furtherance of research to achieve better use of the land.

The Federal proprietor, in addition, has an interest in controlling users of the land in order to maintain the resource base and minimize damage or adverse environmental impacts. In performing these and other functions, every owner seeks maximum freedom of action, and the Federal Government is no exception. As owner of the public lands, the Government wants to be free from control by state or local government and to pay no more for the support of local government than other landowners.

Before giving consideration to the noneconomic elements of the public interest that may require retention of land, the Federal Government, strictly from the standpoint of a proprietor, is interested in the relationship between the cost of administering lands and the income received.

State and Local Governments

In the absence of conflicting Federal legislation, state and local governments have constitutional jurisdiction over federally owned public lands for many purposes except where exclusive Federal jurisdiction has been ceded over specific areas, as discussed in Chapter Nineteen. Roads, schools, and police protection are examples. Local governments, in particular, obtain substantial revenues from property taxes to finance their functions, and state governments generally supplement these from other tax sources throughout the state as a whole. Federal property is immune from property taxes. State and local governments have an interest in obtaining an equitable share of their governmental costs from the Federal Government as a proprietor of public lands.

Other matters of state and local governmental concern can also be affected by Federal actions on the public lands. Zoning and use of non-Federal lands is affected by uses made of contiguous public lands. And activities on public lands can result in environmental pollution on or damage to adjacent or nearby non-Federal lands.

State and local governments that will be affected by land use decisions expect, as a minimum, that they will be consulted and have a voice in the Federal decisionmaking process. They expect the United States in that way to give consideration to relevant state and local programs and also to consider the impact of public land actions on state and local governments. These units of government want the United States to share with other landowners in bearing the costs of providing services, not only for the public lands but for the community as a whole.

It is in the interest of state and local governments that measures for the control of the health, safety, and welfare of the people apply equally within their boundaries, including public land areas.

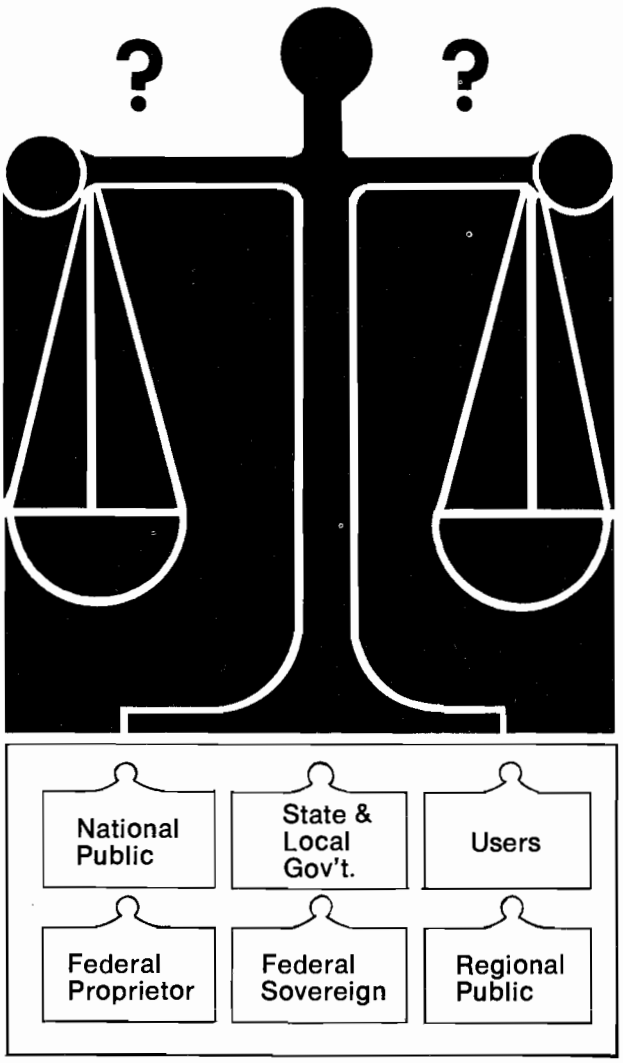
Because they use public lands for a public purpose, these units of government except a preference over competing potential users, and to purchase or lease public land at less than market value.

Users of Public Lands and Resources

Those who use the public lands as a basis for economic enterprise and those who use the public lands for personal recreation, together have an identifiable interest in the public lands. This is not necessarily a short-term interest, since all users are concerned that public land policies provide an opportunity for the satisfaction of future requirements as well as present needs.

While users as a group have a common interest in the public lands, different classes of users, and, indeed, individual users within classes, often must compete for the opportunity to use the public lands. Many of the controversies over public land policy involves such conflicts and they should be so recognized.

Users as a class have many interests. They want equal opportunity for access to public lands and resources in which they are interested, and equal treatment in their relations with the Federal Government and with other users. They are interested in having a voice in decisionmaking from the time that plans are made for general use through the chain of events that may involve decisions affecting their particular uses. In this latter connection, of course, all users desire prompt and fair consideration of disputes with public land administrators.



All users are interested in having the terms and conditions under which use will take place specifically stated in advance. Although such need is not always recognized by those who use the public lands for noneconomic purposes, we believe it has significance and should be taken into consideration by all users. In addition, all users desire a minimum of interference by the landowner, i.e., the Federal Government, in the manner in which the public lands are used.

Users also have a justifiable interest in seeking pricing and other conditions competitive with the use of other lands, together with security of investment, usually through assured tenure of use. As a corollary, they expect to be compensated if their use is disrupted or interfered with before the expiration of the term of the lease or permit of use.

Summary

We believe that it is in the public interest to encourage the highest and best use of the public lands to the end that they contribute the most in social and economic values. As national resources, they have little value unless their values are made available for the use of our people, either in Federal or non-Federal ownership.

Our efforts to find a formula for the maximum benefit for the general public are in response to that belief.

The Commission believes that the maximum benefit for the general public can most nearly be ascertained after a careful consideration and weighing of the impacts on the interests of the six categories we have identified and discussed in this chapter.

In establishing guidelines to determine whether lands should be retained and managed or disposed of, we are in search of the means of accomplishing the task rather than the end result. The end result, of course, is to achieve the maximum benefit for the general public and it is for that reason that we have focused so much of our attention on seeking criteria to assist in that determination.

We could find no better way to perform our complex task, and, having found it helpful, we recommend its use in future public land decisionmaking.