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Federal – State Relations: A Matter of Balance

Abstract: Balance, with an eye toward the benefit to broad public and national interest must be, and in fact has become, the only acceptable approach to western natural resource policy. At the same time, there are legitimate occasions when western states must assert themselves in the face of a failure of national policy or political will or when specific issues and concerns in the states or across the West have gone unmet.

Keywords: nuclear waste policy; public lands; state's rights

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1 Preservation and the National Interest

Since March 1909¹ when President Theodore Roosevelt took the last of his unbelievably farsighted actions to conserve the vast forest reserves and natural areas of the US – most located in the West – the states in the American West and the federal government have struggled to achieve a delicate balance between a broad national interest, effecting all the country's citizens, and the interests of resource rich states that often find themselves motivated, by economics and politics, to pursue exploitation of a state's natural resources. When Roosevelt acted to protect the Grand Canyon from development in 1908, for example, he did so, in part, out of fear that political forces in the then-territory of Arizona would allow the commercial exploitation of the canyon to the detriment or destruction of its scenic values.²

As historian Douglas Brinkley has written in his book about Teddy Roosevelt's environmental legacy: "What disturbed Roosevelt . . . was that the Arizona territory was *debating* whether to leave the canyon virtually untrammelled (allowing

1 Proclamation of March 2, 1909 (no. 896), Mount Olympus National Monument, 35 Stat. 2247. Presidential proclamations were authorized by the 1906 Act for the Preservation of American Antiquities, (American Antiquities Act) 16 U.S.C. §§ 431–33, 34 Stat. 225.

2 Proclamation of January 11, 1908 (no. 794), Grand Canyon National Monument, 35 Stat. 2175.

only a few horse trails and hotels, at most) or to open it for mining companies in search of zinc, copper, asbestos, and the like. The case for preservation, to Roosevelt, was so obvious that the very concept of debate was almost criminal. This incomparable chasm was the exclusive property of the U.S. government, to be care taken for future generations – a birthright like the Declaration of Independence or the Bill of Rights.”³

Roosevelt came down decisively on the side of the national interest, indeed we would argue he was acting with the broad, future-oriented public interest in mind. This federal-state policy divide, particularly over classic western issues involving timber, mining, agriculture, and water, is an old story in the land beyond the 100th meridian and it has often been a story of conflict and controversy. We will argue in this review of federal and state relations that the federal-state dynamic works best when *balance* is the goal of all the parties. When western public policy seeks *real* balance, including a healthy respect for conservation and moderation, then responsible, sustainable economic growth can also take place. When the broad public interest is paramount among both federal and state decision-makers, then states also have a chance to maintain the ability to exercise credible policy and political leadership on issues of regional or national importance when, as frequently happens, leadership at the federal level falters or fails.

A balanced approach to the public policy challenges that dominate the western agenda – call it common sense conservation, a respect for and willingness to conserve the wonders nature has lavished on the West, while accommodating careful utilization of the region’s vast riches – has never been easy. Occasionally political consensus that real balance is even desirable has been hard to come by. Over the last century political leaders have tried to find this delicate balance between wise use and conservation of natural resources.

On the other hand, some elected officials have stoked controversy rather than seek common ground as they have sought an opportunity for political or economic gain. These frequently shrill and unproductive westerners, operating at both the state and federal levels, have often played the emotional “state’s rights” card rather than acknowledge that frequently – indeed, almost always – the broad public interest requires the hard work and quiet persuasion that brings about political and policy compromise and, yes, such an approach does require common sense.

Balance, with an eye toward the benefit to broad public and national interest must be, and in fact has become, the only acceptable approach to western natural resource policy. At the same time, there are legitimate occasions when western states must assert themselves in the face of a failure of national policy or political will or when specific issues and concerns in the states or across the West have gone unmet.

3 Douglas Brinkley, “How the West Was Saved,” *Vanity Fair*, May 2009.

Two examples illustrate these broad themes: the successful effort during the administration of President Jimmy Carter to resolve the long dispute over the fate of spectacular public lands in Alaska and the successful effort in Idaho in the 1980s and 1990s to force a more coherent federal policy with regard to nuclear waste storage and disposal. As with most contentious public policy issues, few things are ever fully resolved. The debate still rages, for example, nearly 30 years after passage of the Alaska lands legislation, over development of the Arctic Wildlife Refuge and the nation still struggles to define and implement a comprehensive policy for the safe disposal of the most dangerous nuclear waste. Still the two examples, we believe, illustrate how balance and common sense, when applied to federal-state relations, create outcomes that serve the long-term public interest.

2 Terms of the Debate

Over the long period from when President Roosevelt established a conservation ethic in the national government to the passage of the essential conservation and environmental legislation of the 20th century those who have worked hard to avoid balance have often played fast and loose with the language of the debate. The debate has included legislation that has become part of the modern framework for land management and conservation in the American West such as the Clean Air Act, the Clean Water Act, the National Environmental Policy Act (NEPA), Federal Land Management Policy Act (FLMPA), and the Endangered Species Act (ESA). Occasionally this dubious approach, usually involving an appeal to emotion, has worked and just as often the American public has suffered.

A fundamental case in point: the vast acres of public land in the American West are owned by the American people and are supposed to be managed for the benefit of all Americans. Yet, how often have we heard a western politician bellowing outrage about “locking up federal land” or bemoaning an out of touch “absentee landlord” nefariously impacting some aspect of the western lifestyle.

In truth the national forests, the nation’s wilderness areas, the national parks and refuges, and the vast tracts of land managed by the Bureau of Land Management (BLM) are the public’s lands. We all own them and each of us have a stake in how they are managed. That fact that the state of Idaho is comprised of 70% public land (combining both federal and state management)⁴ is both a matter of settled law – the states agreed to these terms in exchange for becoming states – and enormous benefit to Idaho, the nation, and to generations yet unborn.

⁴ US Bureau of the Census, *Statistical Abstract of the United States*, 11th ed. (US Government Printing Office, Washington, DC, 1991), p. 201.

The West's public lands are just that – the public's land. Must the states have a place at the table to help influence how the public's lands are managed? Of course, but the influence of any one state must also be balanced by the national imperative to manage and preserve the public's land in the broad public interest. The state role, particularly in resource policy, is important, but necessarily it is also limited and, once again, balanced by the national and public interest.

Western mythology has often been employed to argue for something other than real balance in our public policy. The myth of the rugged individual, determined to make it alone without the help of government, is one such reoccurring myth in the American West. There have been, of course, and still are, genuine rugged individuals in the American West. Many of their accomplishments are worth celebrating, but the myth that single-minded determination and rugged individual action alone built the West has often been the enemy of honest and pragmatic public policy.

Where would the West's farmers be without government action and subsidy in the form of the Bureau of Reclamation? Would Idaho Falls, Idaho or Richland, Washington or Las Alamos, New Mexico be what they are today without the billions in public dollars spent over the last 60-plus years to create great laboratories now integral to the Department of Energy's research and development mission? Could the West's vast geography have been mastered by anything less than a massive public investment in the interstate highway system? Would navigation, electric generation, and flood control on the Columbia, the Missouri, and Snake Rivers have ever developed on the scale it has without the infusion of public dollars to design, construct, and maintain locks and dams?

Of course, some who have been quickest to condemn "the heavy hand of federal interference" in the West are the first to line up to benefit from the public investment that has made the West an economic power and created vast opportunity for generation after generation. For most of the last 100 years, some in the West have seemed simultaneously to reject the federal role in the region while aggressively championing federal subsidies for everything from reclamation projects to logging roads in the national forests. The late, great Wallace Stegner dubbed the West "the native home of hope" and it remains just that, but Stegner also saw clearly that the West's myths often get in the way of the kind of common sense balance that should define our region of hope.

"When the West fully learns," Stegner wrote, "that cooperation, not rugged individualism, is the quality that most characterizes and preserves it, then it will have achieved itself and outlived its origins. Then it has a chance to create a society to match its scenery."⁵

5 Wallace Stegner, "The Sound of Mountain Water," *Penguin Books*, 1980, p. 38.

One reoccurring myth that had periodically produced a cloud over the effort to achieve a balanced approach to federal–state relations is the notion that the states could somehow do a better job of protecting the public’s interest in public land. Repeated efforts to shift the management orientation from a broad public perspective to a state-focused, privatization perspective have failed time and again. The American public continues to be the beneficiary of this failure.

By 1980, the last year of the Carter administration, the nation was benefiting from the enactment of a Surface Mining Control and Reclamation Act⁶ (twice vetoed by President Gerald Ford), reform of the Outer Continental Shelf Land Act⁷ (resulting in acceleration of leasing), resolution of controversies in the Redwood National Park, and progress in the settling of various Native American claims. In addition, a new policy regarding power development on federal lands was in place (allowing the development of the Intermountain Power Project in Utah), the Public Rangeland Improvement Act became law, and comprehensive Alaska lands legislation, designed to balance the interests of development and preservation in the last frontier, had been signed into law. Any administration caring about a western and conservation legacy could be proud of such a list of accomplishments, yet during the election year of 1980 it was the so-called Sagebrush Rebels who generated big headlines and political heat across the West.

3 The Sagebrush Rebellion

As *U.S. News and World Report* noted in December 1980, “the spark that ignited the rebellion was the 1976 Federal Land Policy and Management Act, which says that public land must be kept in perpetual trust by the federal government. The legislation dashed Western hopes that the U.S. would gradually turn control of public lands over to local governments, which residents argue could do a better job of managing public land than bureaucrats stationed in Washington, D.C.”⁸

The so-called Sagebrush Rebellion was both more and less than the rebels made it out to be. The short lived rebellion was fundamentally a political tactic to drive a wedge into the idea that balance and common sense in the public interest should determine western resource policy. Proponents sought to convert public assets to private gain while making the claim that the western

⁶ Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328; 91 Stat. 445).

⁷ Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331–1356, P.L. 212, Ch. 345, August 7, 1953, 67 Stat. 462. Also see Outer Continental Shelf Lands Act amendments of 1978 (P.L. 95–372).

⁸ *U.S. News and World Report*, “The Sagebrush Rebellion,” December 1, 1980.

states could better serve the public interest. The rebellion did, for a short time, generate a great deal of political heat, but it produced little useful light that might actually help both federal and state governments do a better job serving the broad public interest.

Ronald Reagan, who went on to preside over an 8 year effort, unsuccessfully for the most part, to roll back the national consensus about the framework of environmental and conservation policy, made partisan political hay of the rebellion issue. Ironically, since much of the landmark legislation defining the western policy framework is now so fundamentally implanted in our politics, it is easy for some to forget that most of the lawmaking dates to the presidency of another Republican, Richard Nixon, although some of the legislation – the Clean Water Act,⁹ for example – was passed over Nixon's veto. It is also worth noting that most of the legislation that the Sagebrush Rebels tried to bend to partisan political ends in the early 1980s passed the Congress with broad bipartisan support.

Nonetheless, when he promised to reflect the “values and goals” of the Sagebrush Rebellion, Reagan must have known there was no public desire to sell off the public's land or to allow it to be exploited by the rape, ruin, and run types of developers. Quite to the contrary, the public wanted in the 1980s, and increasingly demands today, a conservation and economic development balance that demonstrates respect for policies that both conserve and carefully utilize the public lands.

An internal 1980 Interior Department analysis of the Sagebrush Rebellion, “An Old Issue with a New Name,” pointed out that agitation over control, ownership, and management of western public land is as old as the nation itself. In other words, the political winds have blown back and forth on these issues, but always the policy course has tacked in the direction of maintaining the public's land for public benefit.

To quote from the Interior analysis:

- In 1832 the Public Land Committee of the U.S. Senate claimed that state sovereignty was threatened by federal land ownership. The rest of Congress, however, maintained its discretionary authority to manage such land without limitation and rejected the complaint.
- In 1930 the Hoover Commission proposed to cede much of the public domain to the states. The recommendation was opposed by both the eastern Congressional majority and by the Western states, who having already acquired the most productive land, wanted no responsibility for the “waste lands” remaining.

⁹ Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251–1376).

- In the 1940s Senator Pat McCarran (D., Nevada) conducted a series of investigations into the Grazing Service (one of BLM's predecessors) and the Forest Service, both of whom were trying to bring livestock grazing under control. In 1946 Senator Edward Robertson of Wyoming sponsored a bill to convey all unreserved and unappropriated lands to their respective states. BLM was formed the same year.
- In 1956 Senator Russell Long (D., Louisiana) proposed similar legislation.

The Interior document went on to link the genesis of the 1980 version of the latest western public land rebellion on “the pinch of the Federal Land Policy and Management Act of 1976, the final comprehensive articulation of national policy on how the remaining unreserved lands would be managed.” The Federal Land Policy and Management Act of 1976 (FLPMA), years in the making, reflected the public realization of the enormous national values held in trust in the public lands and called for those resources and values to be managed for all Americans under the principles of multiple use and sustained yield and on the basis of sound land planning. “Stated simply, it became clear that consideration of all possible users made the sphere of influence of certain users, heretofore unchallenged, suddenly shrink.”

It has been argued by the various advocates of state control over these vast public lands that states could manage the land more efficiently. The 1980 Interior analysis asked and answered a more important question. “Fundamentally, the question isn’t whether the States can afford to manage the public lands. They could. They could increase taxes and sell some of the land, and in the case of the energy States bet against future revenues. That’s not the right question. The question is whether the Nation’s interests are best served by such management, and the answer is no.”¹⁰

From time-to-time, we suspect, we will hear of “a new Sagebrush Rebellion” sparked by some alleged misdeed by a federal agency or federal policy, still, notwithstanding the occasional dust up over some regional issue, the overall course of federal-state relations in the West is set. Serving the broad public interest will remain, and must remain, the essential objective of public lands policy in the American West.¹¹

10 “Sagebrush Rebellion: An Old Issue With A New Name,” U.S. Department of the Interior Analysis, February 1980. Reproduced from the Andrus Collection at Boise State University. MSS 140.1, Box 5, Folder 23.

11 For additional contemporary analysis of the Sagebrush Rebellion, see “The Attack on Federal Lands” a *Wall Street Journal* Op-Ed piece, December 5, 1979.

4 The Battle to Conserve “the Crown Jewels”

On the tenth anniversary of President Jimmy Carter’s signing of the Alaska Lands Act,¹² the late historian T. H. Watkins wrote of the landmark legislation that it “...was at once one of the noblest and most comprehensive legislative acts in American history, because, with the scratch of the presidential pen that signed it, the act set aside more wild country than had been preserved anywhere in the world up to that time – 104.3 million acres. By itself, the Alaska Lands Act stood as a ringing validation of the best of what the conservation movement had stood for in the century since Henry David Thoreau had walked so thoughtfully in the woods of Walden Pond.”¹³

The enactment of the Alaska Lands Act in 1980 was a triumph for the broad public interest. It resolved decades of debate about what portion of “America’s crown jewels” should be forever maintained as places of unspoiled beauty and solitude where fish, wildlife and scenic values remain paramount.

But the victory in Alaska did not come easily or quickly and the final result was seen by many in Alaska at the time as nothing short of the heavy hand of the federal government dictating what would happen to Alaska’s land. Nearly 30 years later, T.H. Watkins’ view has become the prevailing view. A broad national consensus has emerged that the Alaska legislation does indeed represent the pinnacle of the national effort to preserve the very best of “the last frontier.” Why did it take so long and require so much effort?

When Alaska was admitted to the Union in 1959, the Statehood Act acknowledged the claims of native Alaskans had never been settled.¹⁴ More than a decade later, in 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA)¹⁵ which, among other things, established a deadline for sorting out these important claims. A key section of the legislation – section 17 (d)2 – decreed that at least 80 million acres of the “national interest” lands be set aside for protection based on their natural features. The Secretary of the Interior was authorized to administer the dollars and the process to settle claims and determine which lands in Alaska were worthy of protection as national parks, monuments, preserves, and wildlife refuges. But the political clock was ticking. The land was protected from development only for 7 years.

¹² Alaska National Interest Lands Conservation Act of 1980 (16 USC 410hh-3233, 43 USC 1602–1784).

¹³ T.H. Watkins, “Alaska and the Weight of History,” in *Celebrating Wild Alaska: Twenty Years of the Alaska Lands Act*, booklet published by the Natural Resources Defense Council and Alaska Wilderness League (2000), frontispiece [reprinting 1990 essay].

¹⁴ Alaska Statehood Act, Public Law 85–508, 72 Stat. 339, July 7, 1958.

¹⁵ Alaska Native Claims Settlement Act of 1971, Public Law 92–203.

By the time President Carter took office in 1977, and his Interior Secretary, Cecil D. Andrus from Idaho, moved into to the big office Harold Ickes had designed to be the largest in Washington, much of the time to sort out the Alaska controversy had slipped away and a variety of political and economic considerations were conspiring to delay a resolution and pave the way for widespread development of the unspoiled land in the last frontier.

The issue had to be forced. The leverage necessary to gain and keep Alaska and Congressional attention was the use of the then-70 year old Antiquities Act. The maps were rolled out in the Oval Office and President Carter was shown that with a stroke of the pen he could set aside fifty-six million acres to protect special places of national importance from the Brooks Range in the north of Alaska to the Misty Fjords in the south.

“Can I do that?” the President asked. When told that such presidential action was the only apparent way to generate a crisis and cause the Congress and the special interests to move in the direction of a comprehensive Alaska agreement, Carter said simply, “Let’s do it.”

The Carter Administration was accused of dictatorial action and, especially by then-Senator Ted Stevens of Alaska, of misuse of the Antiquities Act. Before long the leverage applied by the President’s actions and the threat that Congress could be left out of policymaking prompted action. Some of the nation’s finest public officials, including Senators Henry Jackson (WA) and Paul Tsongas (MA) and Representatives Mo Udall (AZ) and John Seiberling (OH), did much of the heavy lifting on Capitol Hill to knit together a bill that finally passed. Ironically, the nation’s greatest legislative conservation accomplishment was signed into law by a defeated president who, contrary to the popular portrayal of his presidency, willingly embraced an aggressive, gutsy strategy to protect the nation’s “crown jewels.”

You will still find some in Alaska and across the West who lament the ability of the national government, acting as trustee for the public’s land, to take action as far reaching as the Alaska legislation, but those voices will continue to diminish with time and the public interest will remain the focus of western public policy.

President Carter has never received the credit he deserves for this remarkable piece of legislation, but perhaps there is adequate satisfaction contained in the knowledge that one can claim a legacy of protecting rivers, ancient forests, volcanic craters, and critical habitat for grizzly bears and caribou. Future generations will not remember much of the complicated and controversial path and the many obstacles that stood in the way of legislation conserving much of the best of America’s last frontier. Likewise, few visitors who stand in awe at the rim of the Grand Canyon remember how that great wonder came to be

preserved. We tend to forget the battles, but we all enjoy the benefits of the victories.¹⁶

5 One State's Effort to Shape National Policy

The desire to achieve a common sense balance in state and federal policy should not suggest that western states may find cause from time-to-time to resist the federal government using legal, political, and public relation means. In fact, it has been necessary on many occasions for states in the West, acting individually or as a group, to assert themselves, as Idaho did in the 1980s and 1990s regarding nuclear waste policy, when the federal government has failed to deliver a coherent national policy and left the states to suffer the burden of a political and policy failure.

Idaho has been home since the early 1950s to one of the nation's premier nuclear energy research facilities, the Idaho National Laboratory (INL). For years the INL served vital national functions as the place where nuclear reaction designs were tested and where the sailors of the nuclear navy received their training. Located west of Idaho Falls in eastern Idaho, the site is a remote expanse of windswept high desert that just happens to be situated above the massive Snake River Aquifer, the source of millions of gallons of water that, among other uses, feeds the spectacular springs that flow into the Snake River miles to the southwest.

Almost from the beginning of the nuclear age in the years after World War II, the federal government, without much planning, even less foresight and with little consultation with the state of Idaho, became comfortable utilizing the eastern Idaho landscape as a disposal site for various forms of nuclear material. Although the language explaining the federal government's approach often carefully described what was happening as "temporary storage" it is now clear that "temporary" really meant "permanent" and "storage" really meant "disposal."

In truth, for many years the federal government had no coherent or practical policy related to long-term handling (and storage or disposal) of nuclear material. As one four-star Navy admiral put it, not too thoughtfully, "we look to put (the nuclear waste) in some remote location." The high desert of eastern Idaho must have seemed just about ideal. After all, the region was primarily interested

¹⁶ Some material on the Alaska lands legislation from 1980 is drawn from a speech by Cecil D. Andrus – "Lame Ducks and America's Crown Jewels" – at events celebrating the 20th anniversary of the legislation at the University of Alaska in September 2000.

in fostering good relations with the Atomic Energy Commission (AEC) and its predecessor agencies. Of course, there were other obvious benefits including often lavish federal appropriations and many good jobs. The waste material, some of it fairly easily managed and some very dangerous, was just not a major concern at the time. Whenever the question was asked of the federal government, states were assured the issue of the waste was under study and all would be well. For an industry born in secrecy, there was little inclination to include governors or other state officials into the policymaking. In the early days, states had limited capability to help fashion a coherent policy and knowledge of the material and how it might be handled was also limited.

In any event, in the view of most federal policymakers, “spent nuclear fuel” or other nuclear waste material was a technological problem best left to the scientists. For many years that attitude dominated what little attention the nation paid to what we might think of as “the back end” of the nuclear development process. Money and policy attention was lavished on the front end – the development of new technology and new applications – while the back end, the waste products, were largely ignored.

Finally, in 1973, Cecil D. Andrus, a then-rookie governor of Idaho, took the initiative to inform the chair of the Atomic Energy Commission (AEC) (the forerunner of today’s Department of Energy, DOE) that Idaho was concerned about the amount of nuclear material being shipped to Idaho under the guise of “temporary” storage. Since the material, in various forms, had been piling up by that point for more than 20 years, temporary appeared to be headed for permanent. A feisty woman named Dixie Lee Ray was chair of the AEC and she replied saying, in essence, not to worry. We (the federal government) have a plan and the nuclear waste material would be removed from Idaho “by the end of the decade.” She emphasized the “temporary” nature of the storage.¹⁷ By the time that rookie governor had served as Secretary of the Interior and then returned to the Idaho governorship in 1987, little had happened to reduce the flow of new waste material to Idaho and the “by the end of the decade” promise had long since come and gone.

Idaho was determined to force the issue. It was again a situation where political leverage was required to force a confrontation over national policy. In the nuclear waste management case, much as the Antiquities Act provided leverage to force action on a national priority in Alaska, leverage was required to force action on a national priority in several western states, including Idaho. The

¹⁷ Much of the material on Idaho’s efforts to influence nuclear waste policy is drawn from Cecil D. Andrus’ February 24, 1994 Carver Lecture in Natural Resources at the University of Denver College of Law. The lecture was entitled, “Facing Down the Genie: One State’s Efforts to Confront the Nuclear Waste Dilemma.” Copy in the authors’ possession.

federal government had clearly failed to develop and implement comprehensive nuclear waste management policy and many western states, including Idaho, were suffering the most from the policy failure. The reasons for the policy failure are many. Waste policy is a complex and controversial area. Policy solutions are extremely costly and take years to develop. And, political will, the determination to act in an area of complexity and controversy, was sorely lacking.

On October 19, 1988, acting in the interest of Idaho and to protect public safety and with full knowledge that the federal government's policy apparatus was broken, Governor Andrus closed the borders of Idaho and access to the INL facility for further shipments of DOE-owned nuclear waste. For nearly 20 years regular shipments of relative low-level, but long-lived transuranic (TRU) waste had been shipped by rail to the INL from the DOE's Rocky Flats, Colorado nuclear weapons facility. The shipments came as routinely as a milk delivery and the 55 gallon drums (and earlier boxes and other containers) were neatly stacked in the Idaho desert above the Snake River Aquifer. Some of the material had been buried just below the surface of the earth and the integrity of the containers was of serious concern. This approach was generally regarded as state of the art materials handling in the 1950s, but by the late 1980s it was clearly an environmental problem demanding a solution. Both the federal government and the state of Idaho had knowledge that radioactive material was migrating to the vast underground water supply.

The governor's legal authority to close the borders was, to say the least, debatable. The moral authority, on the other hand, was unassailable. The shipments stopped immediately and eventually the ban was extended to various other forms of nuclear waste material destined for Idaho. In one celebrated example, spent nuclear fuel from US Navy vessels began to clog the docks at federal installations on both coasts. Then-senator John Warner of Virginia complained that the Norfolk Navy Yard was an inappropriate location for spent fuel and Washington Congressman Norm Dicks felt the same way about the Bremerton Yard in his district. Idaho's position remained steadfast. If Norfolk or Bremerton did not seem appropriate for "temporary" storage, neither did the Idaho desert.

Along a long and bumpy legal path, Idaho pursued its position and the results helped move the nuclear waste disposal debate – and federal action – in a more coherent and positive direction. The Department of Energy and the U.S. Environmental Protection Agency developed a greater sense of urgency about permitting and opening the Waste Isolation Pilot Plant in New Mexico that became the permanent disposal site of much of the TRU waste. DOE was ordered by a federal judge in Idaho to perform a comprehensive environmental impact statement on the INL. Finally the federal government would have to account for what

it intended to do with the waste material that had been “temporarily” accumulating in Idaho for years. In 1992 Congress passed and the president signed in the Federal Facilities Compliance Act that simply stated that the federal government has the same obligations at federal facilities as any business has to comply with environmental laws. Idaho’s actions, consistently carried on by each succeeding governor, have not solved every issue related to the safe handling of nuclear waste materials, but one state acting in the absence of a real national policy was able to jump start the policy process.

Regrettably, the nation has yet to resolve fully the issues of how and where to dispose of highly radioactive nuclear materials, including spent fuel from the nation’s commercial nuclear reactors. This policy failure, like the failure that Idaho set out to address in the late 1980s, continues to haunt and hamper the development of additional nuclear power generation in the US. While most of us would like to see a permanent, effective resolution of the high level waste issue, it is impossible not to feel some sympathy for the long fight the state of Nevada has waged in this area against the federal government. Such fights – Idaho’s and Nevada’s – illustrate the importance of states being willing to confront the federal government when policy breaks down and political will does not exist or cannot be sustained.

The late, great Arizona Congressman Mo Udall was one of the finest – and funniest – politicians the West has ever produced. Mo was a passionate defender of the interests of Arizona, but he had a national perspective as well. In his collection of political yarns and tall tales, he recounts a story that he attributed to Harry Truman’s vice president Alben Barkley. Barkley, a Kentuckian and a fine story teller, told the story of a hitchhiker who was picked up by an elderly moonshiner. After driving some distance the old fellow said, “Son, there is a jug under the seat, get it out.”

The young hitchhiker did as he was told and pulled out a fresh jug of moonshine.

“Take a drink,” the old man said.

“No, thank you, sir, I really wouldn’t care for one,” the lad replied.

At this point the old man pulled a pistol from his pocket and held it to the boy’s temple and said again, “Now take a drink.”

“Under the circumstances, sir, I don’t mind if I do,” the young man said and proceeded to take a very healthy swig. His eyes watered, his stomach burned and he choked as the homemade liquor hit bottom.

The old man handed his pistol to the boy, and said, “Now you hold the gun on me and I’ll take a drink.”¹⁸

18 Morris Udall, *Too Funny to Be President*, Henry Holt & Company, New York, 1989, p. 248.

Some of us in the West are a little like the old moonshiner. We sometimes need a gun to the temple to force us to act to conserve the vast resources of the West and seek genuine balance in how those resources are utilized. We have plenty of information to guide us. We know with certainty where the mistakes and excesses of the past have led to long-term damage. We can draw upon the perfect knowledge of hindsight to know what to do to serve our long-term best interest of the West and the nation.

Westerners are both the victims and beneficiaries of our history and our landscape. The myth of the rugged individual beating back the geography of the region in order to create new beginnings and new opportunities is still powerful and pervasive. Even with the explosive growth of the urban West from Denver to Phoenix, from Boise to Bozeman, the land can seem limitless and all too available for exploitation.

In truth, the West is about limits. Limits to what the land can tolerate from the hand of man, and limits on water, on wilderness, on fish and wildlife. There are limits to what our generation can do and still leave for future generations the kind of West we have come to love even while we debate the best way to keep it special. The best, indeed the only, construct for federal – state relations in the West is to acknowledge our need for balance and common sense. Not every area should be exploited for maximum economic gain, but we can also have wise and proper utilization of natural resources. Not every policy can be made on the basis of what is good for us, but rather on the basis of what we leave for others. Every generation must ask: How can we make certain that Roosevelt's vision at the Grand Canyon and Carter's vision in Alaska are the foundations of western policymaking now and 100 years from now?

Western historians Mike Malone and Richard Etulain have made the point that the West over the last one hundred years has demonstrated an ability to adapt that has eluded much of the rest of the country. Perhaps that ability to grow and respond, to adapt to constantly changing circumstances, is really the fundamental strength of the American West. We have, in the course of the last century, largely made the transition from a society where consumption and the needs of the moment seemed always to power western public policy to a culture where balance, common sense and a commitment to the future now dominate. We do not see a retreat from this approach and believe it will continue to influence relations between the federal government and the western states.¹⁹

¹⁹ Michael P. Malone and Richard W. Etulain, "The American West – A Twentieth Century History," University of Nebraska, 1989. Malone and Etulain's fine book is a very useful and readable survey of politics, economics and policy in the West during the 20th Century.

The one feature uniting all of the states that are the American West, from the edge of the Great Plains to the eastern slope of the Sierras, is the simple abundance of the public's land. These public-land states and the federal government will undoubtedly find many reasons in the future to disagree about how best to make public policy on and around these lands. Nevertheless, as long as the broad public interest is the dominate policy concern, our region and our nation will be able to benefit from policies that finally have begun to match the grandeur of the West.