

UCLA

UCLA Journal of Environmental Law and Policy

Title

The Sagebrush Rebellion: The West against Itself--Again

Permalink

<https://escholarship.org/uc/item/3d2722zk>

Journal

UCLA Journal of Environmental Law and Policy, 2(2)

Authors

Wald, Johanna H.
Temkin, Elizabeth H.

Publication Date

1982

DOI

10.5070/L522018669

Copyright Information

Copyright 1982 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

The Sagebrush Rebellion: The West Against Itself—Again

Johanna H. Wald and Elizabeth H. Temkin***

The proposition that “the public interest demands that the public lands be returned to the states” is the rallying cry of the so-called Sagebrush Rebellion. Supporters of this movement routinely overlook the fact that the public lands never belonged to the states and, therefore, cannot be “returned” to them. Nor does the “public interest” require that the federal government give these lands to the western states. On the contrary, the nature of the public lands, the history of their use and present day management issues “demand” that the federal government retain ownership of them, regardless of whether the “public interest” is viewed from a national or western perspective.

In this paper we first describe the public lands and the status of the “Rebellion”. We then identify the movement’s supporters and opponents. Next we demonstrate the invalidity of the major arguments advanced by the Rebels. Finally, we summarize the advantages of federal ownership of the public lands that would be lost were the rebellion to succeed.

The primary goal of the Sagebrush Rebellion is to secure the transfer to the states of the lands now administered by the Bureau of Land Management (BLM), an agency of the Department of the Interior. These BLM lands comprise the balance of the original western public domain. Located chiefly in the eleven contiguous western states and Alaska, public lands are the lands which either were not disposed of pursuant to various homestead acts and other laws enacted during the 18th and 19th centuries, or were set aside for specific purposes, such as national forests or parks.¹

* A.B., Cornell University, 1963; LL.B., Yale Law School, 1967; Attorney, Natural Resources Defense Council, Inc., 25 Kearny St., San Francisco, CA, 94108.

** A.B., Cornell University, 1977; J.D., Stanford University, 1982.

The authors are indebted to Bern Shanks for generously sharing unpublished materials, to Russ Shay for perceptive editorial suggestions and to Bernard DeVoto for inspiration and most of the title of this article.

1. See generally P. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT (1968).

These lands currently total approximately 324 million acres, 174 million of which are located in the West.²

Once the lands no one wanted, the public lands sustain a huge variety of valuable resources. For example, they provide open space as well as habitat for large numbers and types of wildlife, including bighorn sheep, pronghorn antelope, golden eagles and anadromous fish. They contain magnificent wilderness areas, and their recreational resources are enjoyed by millions of people each year.³

The BLM lands also contain a variety of resources of considerable economic value, including about forty percent of the nation's coal, approximately eighty percent of our high grade oil shale, an estimated thirty-five percent of our uranium reserves and billions of dollars worth of timber.⁴

Some supporters of the Sagebrush Rebellion would not be content with the transfer to the states of just the BLM-administered lands and resources. These supporters want—or say they want—the 180 million acres of land in the West administered by the U.S. Forest Service,⁵ an agency of the Department of Agriculture, to be transferred as well.

To date, five states—Nevada, Arizona, New Mexico, Utah and Wyoming—have enacted laws claiming title to the BLM lands within their boundaries and Wyoming's law has also claimed title to Forest Service lands.⁶ The first of these state Sagebrush Rebel-

2. Personal communication with C. Most, BLM, Office of Public Affairs (Nov. 10, 1981). The acreage the BLM now manages in Alaska is subject to claims from both the state and Alaska natives pursuant to federal laws. Pub. L. No. 85-508, 72 Stat. 339 (1958) (admitting Alaska); Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1601 *et seq.* (1981); Alaska National Interest Lands Conservation Act of 1980, Pub. L. No. 96-487, 1981 U.S. CODE CONG. & AD. NEWS (94 Stat.) 2371 (codified in scattered sections of 16 U.S.C. and 43 U.S.C.). The BLM estimates that, once those claims are settled, 66 million acres will remain under its jurisdiction. Most, *supra*.

3. Nothdurft, *The Lands Nobody Wanted*, THE LIVING WILDERNESS, Summer 1981, at 18, 20. See U.S. PUBLIC LAND L. REV. COMM'N, ONE THIRD OF THE NATION'S LAND 157 (1970) [hereinafter cited as PLLRC REPORT].

4. Nothdurft, *supra* note 3, at 20.

5. FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, AN ASSESSMENT OF THE FOREST AND RANGE LAND SITUATION IN THE UNITED STATES 35 (1980).

6. NEV. REV. STAT. §§ 321.596-.599 (1981); ARIZ. REV. STAT. ANN. §§ 37-901 to -909 (Supp. 1981-1982); N.M. STAT. ANN. §§ 19-15-1 to -10 (Supp. 1982); UTAH CODE ANN. §§ 65-11-1 to -9 (Supp. 1981); WYO. STAT. §§ 36-12-101 to -109 (Supp. 1980). Each of these five states, like others in the West and elsewhere, was required to disclaim forever title to the public lands within its borders as a condition of statehood. See generally GATES, *supra* note 1, at 288-318; see, e.g., Act of March 21, 1864, § 1, 13 Stat. 30 (admitting Nevada). It seems likely that repeal of these disclaimers requires amending the constitutions of these states, rather than mere legislative acts. See

lion laws was passed in Nevada in 1979; the others were passed in 1980. In 1981, similar laws failed to pass in Idaho, California, Oregon and Montana.⁷ In Colorado, supporters were unable to muster enough votes to override the governor's veto.⁸

In 1981, as in 1979, legislation which would achieve the announced objectives of the Sagebrush Rebels was introduced into Congress. The Senate bill would give both BLM and Forest Service lands to the states.⁹ The House bill would give away only BLM lands.¹⁰

The chief proponents of the Sagebrush Rebellion are those who hope to gain economically or politically from transferring the public lands to the states. They are led by some members of the public land livestock industry.¹¹ This industry, together with the mining industry, has historically dominated western state legislatures¹² as well as the BLM.¹³ The rebellious ranchers have been

Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C.D.L. REV. 317, 335-36 (1980). To date, only one attempt has been made to enact such a constitutional amendment. The proposed amendment to the Washington State Constitution was soundly defeated by the voters. See, e.g., *id.* at 335 n.52.

7. See *States' Land Rights—"Sagebrush Rebellion"—Legislation Through June 2, 1981*, PUB. LAND NEWS (updated by authors) (copy on file in San Francisco offices of NRDC).

8. Denver Post, June 30, 1981, at 1, col. 2.

9. S. 1245, 97th Cong., 1st Sess. (1981). This bill, entitled the "Public Lands Reform Act of 1981," was introduced by Senator Orrin Hatch (R-Utah) and others on May 20, 1981. See also S. 1680, 96th Cong., 1st Sess. (1979). ("Western Lands Distribution and Regional Equalization Act of 1979" (Hatch)).

10. H.R. 3655, 97th Cong., 1st Sess. (1981) (introduced by Representative James Santini (D-Nev.) and others).

11. Boly, *The Sagebrush Rebels*, NEW WEST, Nov. 3, 1980, at 17, 19. The "Father of the Sagebrush Rebellion" is Dean Rhoads, a Nevada cattle rancher and state representative who authored the Nevada Sagebrush Rebellion bill (AB 413). Rhoads is also a past president of the Public Lands Council, an association of ranchers who graze livestock on federal lands. Contributions from ranchers have played a major role in the establishment of LASER (League for the Advancement of States' Equal Rights), formed to publicize and lobby for the Rebels' cause. *Id.* at 19-20. See generally Hamre, *LASER: Rolling Out*, AM. FORESTS, Mar. 1981, at 26. Not all ranchers, however, support the Sagebrush Rebellion. See, e.g., *It's Your Land* (newsletter of Save Our Public Lands and the Citizens Information Center (Idaho)), Jan. 1981, at 2-3.

12. Leshy, *supra* note 6, at 347 (1980). Leshy notes that while the West is now highly urbanized, the interests of its urban populations in recreation, open space and similar values "have not yet been effectively translated into political power in state legislatures. Where public lands are concerned, traditional agricultural, stock-raising and mining interests still tend to hold sway. . . ." *Id.* This "lag between demographic changes and political power shifts" is a major factor in the Rebellion's success. *Id.* at 346.

13. Historically, the BLM was known as the "Bureau of Livestock and Mining" for its willingness to allow those interests to control the use of the public lands. See,

joined by miners, some energy companies, timber companies, developers and similar interests, all of which resent the efforts of the federal government to control their use—and abuse—of publicly-owned resources. The Rebels obviously believe that they will get a better deal if state ownership—and especially state management—are substituted for federal ownership and management. As one critic of the Rebellion has noted:

Ranchers anticipate the freedom to manage these lands as if they were no more than livestock factories. Developers and speculators fully expect the states to sell the land into private ownership, cutting up the open spaces of the West for subdivisions and industrial parks. Utilities expect *carte blanche* for powerplant siting and powerline rights-of-way. Miners and the oil and gas industry expect freedom to dig and drill wherever and however they like.¹⁴

This is not the first time that western economic interests and their political supporters have advocated transferring federal lands to the states. As Arizona's Governor Bruce Babbitt has pointed out, today's Rebels are "the same old special-interest crowd that has been grabbing for western land [since] the days of Teddy Roosevelt."¹⁵ And, as in the past, the current grab was sparked by the efforts of the federal government to manage public resources, rather than merely administer them in the economic interest of their historic clientele.¹⁶

e.g., Wald and Shay, "Sagebrush Rebellion" or: Great Terrain Robbery, NRDC News, Summer 1981, at 2. The influence of the livestock industry on the BLM has been extensively documented. See generally FOSS, POLITICS AND GRASS (1960). Based on a detailed analysis of the role grazing advisory boards played in the BLM's administration of publicly owned rangelands, *id.* at 117-39, Foss concludes that the boards have "been able to establish a kind of private government with reference to federal grazing districts. It would appear that they formulate the broad policy, make the rules, and superintend the execution of these rules and policies." *Id.* at 136.

The Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1782 (1976) [hereinafter cited as FLPMA], authorizes the continued existence of such boards. *Id.* § 1753. However, other public participation requirements of that Act, *see, e.g., id.* §§ 1701(a)(5), 1712(a), (f), and the establishment of specific criteria and procedures for agency decision-making, *see, e.g., id.* §§ 1712(c), 1732, at least threaten, if not actually undermine, the dominance of these boards in rangeland administration.

14. Shay, *The Sagebrush Rebellion*, SIERRA, Jan.-Feb., 1980, at 29, 30.

15. Quoted in Stegner, *If the Sagebrush Rebels Win, Everybody Loses*, THE LIVING WILDERNESS, Summer 1981, at 30, 32-33. Concerning efforts in 1891 and 1930 to transfer the public lands to the states, *see* GATES, *supra* note 1, at 647-50 and 522-29, respectively. For spirited and highly literate criticism of the 1946-47 "revolt," *see* DeVoto, *Sacred Cows and Public Lands*, 197 HARPER'S, July 1948, at 44-55. *See also* DeVoto, *The West Against Itself*, 194 HARPER'S, Jan. 1947, at 1-13; GATES, *supra* note 1, at 627-34.

16. *See, e.g.*, Leshy, *supra* note 6, at 321 n.13. Prior to the passage of FLPMA in 1976, the BLM had few, if any, management mandates: the principal activity of its

Recent changes in the federal approach to public land management¹⁷ have both fueled the Rebellion's fires and provided a convenient rallying point for the Rebels' cause. Aided by the romantic sobriquet given their movement by an obliging reporter, the Sagebrush Rebels and their political allies are quick to point to the size of federal land holdings in the West,¹⁸ to events such as the now-defunct plan to deploy the MX missile system in Nevada and Utah, and to the pages and pages of federal regulations devoted to public land management¹⁹ as evidence that the federal government controls the destiny of the western states. Capitalizing on national opposition to over-regulation and federal control, the Rebels have sought to package their attempted land grab and their economic concerns as a high-minded crusade for western states' rights.²⁰

Despite its rhetoric, however, the Sagebrush Rebellion is not a crusade for states' rights. Nor is it a popular movement—even in the West. A poll of eight states in the Rocky Mountain region taken in October, 1979 revealed that only in Nevada—the home of the Sagebrush Rebellion—did a majority of citizens support transferring federal lands to the states.²¹ And it is only in Nevada that the governor actually endorses the Sagebrush Rebellion.²²

employees consisted of responding to requests from private parties concerning their utilization of publicly-owned lands and resources. See Hagenstein, *Public Lands and Environmental Concerns*, 21 ARIZ. L. REV. 449 (1979). FLPMA was the first law to provide the BLM with both the authority and the duty to develop land use plans, 43 U.S.C. § 1701 (1976), and to make and implement management decisions in accordance with those plans. *Id.* § 1732. See, e.g., Hagenstein, *supra*.

17. See *supra* note 16. FLPMA is often said to have "triggered" or "sparked" the Sagebrush Rebellion. See *infra* note 41 and accompanying text.

18. See Note, *The Sagebrush Rebellion: Who Should Control the Public Lands?*, 1980 UTAH L. REV. 505, 507.

19. Volume 43 of the 1980 Code of Federal Regulations, entitled PUBLIC LANDS: INTERIOR, contains 1099 pages.

20. The Rebels' arguments are replete with states' rights rhetoric. For example, Senator Hatch has declared: "The vesting of ownership and management of the public domain with the respective western state governments means a rebirth of the prestige and power of state government." *Quoted in Hamre, supra* note 11, at 26. Senator Paul Laxalt has said of the Rebellion, "We are asking nothing more than control over our own destinies." *Quoted in Boly, supra* note 11, at 19. See *infra* notes 34-56 and accompanying text.

21. Behavior Research Center, *Westerners Give Thumbs Down on Sagebrush Rebellion*, THE ROCKY MOUNTAIN POLL, 79 IV 5 (Oct. 1979) (copy on file in San Francisco offices of NRDC).

22. Stegner, *supra* note 15, at 31-32. It is interesting to note that Nevada, unlike the other states which have enacted Sagebrush Rebellion laws, sold virtually all of the lands, including mineral rights, that it received upon admission to the Union. See PUBLIC LANDS INSTITUTE, TRUST LAND ADMINISTRATION IN THE WESTERN STATES

Yet, even in Nevada it is far from clear that there is a popular mandate for the Sagebrush Rebellion since the Rebels have failed to put the issue to a statewide vote. In fact, the Sagebrush Rebellion has been placed before voters in only one state, Washington, where it was soundly defeated.²³

Transferring the public lands to the states is opposed by numerous and varied interests, including most state wildlife agencies as well as national and western conservation, environmental, sportsmen and outdoor groups. Opponents also include governmental officials, such as the California County Planning Commissioners Association and most major western newspapers.²⁴

Transfer advocates not only lack broad based popular support for their cause, they also lack any legal basis for their assertion that the federal lands should be given to the states. Sagebrush Rebels rely chiefly on two theories to support their claim. First, they argue that the Property Clause²⁵ does not give the federal government the power to retain lands indefinitely.²⁶ Instead, they claim that that clause gives the federal government the authority to hold unappropriated lands only temporarily, pending disposal to the states or to private parties. Since no other constitutional provision grants the government the power to own such lands, the Rebels conclude that permanent retention of the public lands violates the Tenth Amendment, which reserves to the states "[t]he powers not delegated to the United States by the Constitution."

The Rebels also argue that, even if the federal government has

6 (1981) [hereinafter cited as PLI REPORT]. No state lands, of course, means no lease or royalty revenues from those lands for state coffers.

23. Seattle Times, Nov. 5, 1980, at 1. See also *supra* note 6.

24. See generally Stegner, *supra* note 15, at 30; see also, e.g., Zumbo, *Rebellion or Ripoff?*, AM. FORESTS, Mar. 1981, at 22 (opposition of state wildlife agencies); CAL. COUNTY PLANNING COMMISSIONERS ASS'N, RESOLUTION CONCERNING THE SAGEBRUSH REBELLION, (May 17, 1980) (copy on file in San Francisco offices of NRDC); Deseret News (Salt Lake City, Utah), Sept. 15, 1979 ("The idea of turning over to the capricious management of the states vast stretches of federal lands would violate a wise principle. The principle is that this precious heritage should be held in trust not just for westerners but for all Americans."); *Keep Those Lands Public*, Albuquerque Journal, June 5, 1979.

25. U.S. CONST., art. IV, § 3, cl. 2.

26. See, e.g., NEV. REV. STAT. § 321.596 (1981); S. 1680, 96th Cong., 1st Sess. (1979); Brief for the State of Nevada, Nevada *ex rel.* State Board of Agriculture v. United States, 512 F. Supp. 166 (D. Nev. 1981), *appeal docketed*, No. 81-4504 (9th Cir. Sept. 28, 1981) [hereinafter cited as Nevada v. U.S.]. Filed in 1978, this case originally challenged the June 4, 1964, withdrawal of certain public lands from entry under the Desert Land Act. After the withdrawal was rescinded, the state amended its complaint to challenge the constitutionality of FLPMA's general policy of permanent retention of the public lands, 43 U.S.C. § 1701(a)(1) (1976).

the power to retain land indefinitely, that power is overridden by the so-called "equal footing" doctrine.²⁷ This judicially created doctrine is derived from the constitutional provision for admission of new states and from the compacts of admission signed by new states, including each western state, and the United States.²⁸ In each of these compacts, the United States promised, among other things, to admit the new state "on an equal footing" with the original states.²⁹ In essence, the Rebels claim that, since the original states had no public lands within their borders, the federal government has reneged on this promise by retaining ownership of lands within western states.³⁰

Unfortunately for the Rebels, who have pinned most of their hopes of obtaining title to the public lands on the courts,³¹ both of these arguments fly in the face of numerous Supreme Court opinions.³² Even more unfortunately for Rebellion supporters, both arguments were rejected recently by the federal District Court for

27. See *supra* note 26.

28. See Leshy, *supra* note 6, at 319.

29. See generally GATES, *supra* note 1, at 285-318. As noted at note 6 *supra*, the new states, in return, disclaimed title to the unappropriated lands within their borders.

30. In making this argument, the Rebels rely principally upon one case, *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845) and specifically upon dicta in the Court's opinion. See brief for the State of Nevada in *Nevada v. U.S.*, *supra* note 26. Since handing down that opinion, the Supreme Court "has consistently limited *Pollard* to its narrow holding"—i.e., that the states, rather than the federal government, "own the shores and beds of navigable water." Leshy, *supra* note 6, at 336. See *infra* note 32.

31. See, e.g., Leshy, *supra* note 6, at 325-26.

32. See, e.g., *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) ("[W]hile the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that '[t]he power over the public land thus entrusted to Congress is without limitations.'" (citations omitted) (emphasis added)); *United States v. Texas*, 339 U.S. 707, 716 (1950) ("The 'equal footing' doctrine has long been held to refer to political rights and to sovereignty. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. . . . Some [States] had special agreements with the Federal Government governing property within their borders. . . ." (citations omitted)). See also Leshy, *supra* note 6, at 333-41; Note, *Federal and State Cooperation in the Management of Public Lands*, 5 J. CONTEMP. L. 149, 157 (1978); Note, *The Property Power, Federalism, and the Equal Footing Doctrine*, 80 COLUM. L. REV. 817, 821 (1980); Note, *The Sagebrush Rebellion: Who Should Control the Public Lands?*, *supra* note 18, at 533; LEGISLATIVE COMMISSION OF THE LEGISLATIVE COUNSEL BUREAU, STATE OF NEVADA, MEANS OF DERIVING ADDITIONAL STATE BENEFITS FROM PUBLIC LANDS, Bulletin No. 77-6, Appendix B, at 68 (Dec. 1976) ("Hence, any legal action by the State of Nevada to remove Congress from trusteeship over the public lands is unlikely to succeed because of longstanding legal precedent."). The absence of any sound legal arguments to support a judicial ruling that the federal government cannot permanently retain title to the public lands undoubtedly contributed to the failure of any state, including Nevada, to resort promptly to the courts to resolve the issue. See, e.g.,

the District of Nevada.³³

Stripped of legal rhetoric, the Rébels lack any legitimate basis for their claim that the federal government should give the public lands to the states.

The Sagebrush Rebels frequently argue that the West has long been a colony of the rest of the nation and that transferring the public lands to the states is necessary to put an end to their colonial status.³⁴ The fact of the matter is that this argument is a myth when it comes to issues involving the public lands.

Throughout the 20th century, western senators and representatives have dominated congressional activities related to the public lands. For example, western domination of Interior Appropriations Committees has historically kept the BLM underfunded and undermanned.³⁵ As recently as 1979, western senators, led by James McClure (R-Idaho), succeeded in using the appropriations process essentially to legislate overgrazing by limiting the BLM's

Underwood, *U.S. urges Nevada Suit Over Land*, Idaho Statesman, Feb. 6, 1980, at 10B, col. 1.

33. *Nevada v. U.S.*, *supra* note 26. The District Court found that the Property Power "entrusts Congress with power over the public land without limitations." 512 F. Supp. at 172, and that that power is unaffected by the equal footing doctrine. *Id.* at 171-72. Concluding that "the plaintiff can prove no set of facts which would entitle it to judicial relief," the Court granted the federal government's motion to dismiss for failure to state a claim upon which relief could be granted. *Id.* at 172. Subsequently, the Court refused to grant the state's motion for reconsideration. Order, July 20, 1981.

Since this is the first and only case involving the Rebels' legal theories to reach the courts since the Rebellion began, it is highly likely that both opponents and proponents of the movement will file *amicus curiae* briefs in connection with the state's appeal.

34. Senator Hatch is a major exponent of this argument. He has referred to the Rebellion as "A Second American Revolution," comparing the "contempt for citizens rights [which] permeates the corridors of the federal government today" with "the tactics of George the Third," and has urged the western states to join him in throwing off "the shackles in which the federal government now holds the destiny of the West—ownership of the public domain." Address by Senator Orrin Hatch, Western Conference of the Council of State Governments (Sept. 6, 1979), *quoted in* Warren, *Second American Revolution Brews Out West*, Sun-News (Las Cruces, New Mexico), Oct. 7, 1979, § D, at 2.

35. On the origins of this problem, *see* GATES, *supra* note 1, at 618-22. The continued lack of staff and funds has been noted by the Comptroller General. *See* REPORT TO THE CONGRESS, CHANGES IN PUBLIC LAND MANAGEMENT REQUIRED TO ACHIEVE CONGRESSIONAL EXPECTATIONS (July 16, 1980) [hereinafter cited as GAO REPORT]. Specifically, the report found that "[l]imited staff and funds have hampered effective land management by the Bureau. . . ." Executive Summary at 17. The report also contrasted the BLM's staff and funds to those of the Forest Service: between fiscal years 1974 and 1979, "the Service has received roughly 10 times more staff and funds per acre than the Bureau." *Id.*

authority to impose needed reductions in livestock numbers on the public lands,³⁶ despite the strong opposition of numerous national and western environmental, conservation, sportsmen and other groups.

Western congressional influence on public land issues extends far beyond the appropriations committees. Westerners have shaped virtually all of the major public land laws of this century, both in legislative committees and on the floor of Congress. For example, both the Reclamation Act of 1902³⁷ and the Taylor Grazing Act of 1934³⁸ were designed by westerners to benefit specific western interests.³⁹ As recently as 1978, westerners succeeded in legislating fees for ranchers whose livestock graze the public

36. See *Congress Completes Fiscal Year 1980 Appropriation Bill, Finally*, PUB. LAND NEWS, Nov. 15, 1979, at 7, 8.

37. Act of June 17, 1902, ch. 1093, § 1, 32 Stat. 388 (codified in scattered sections of 43 U.S.C.).

38. Ch. 865, 48 Stat. 1269 (current version in scattered sections of 43 U.S.C.).

39. The Reclamation Act was largely the product of dissatisfaction among western irrigators and homesteaders with an earlier attempt by Congress to aid western irrigation, the Carey Act of 1894, ch. 301, § 4, 28 Stat. 422 (current version at 43 U.S.C. § 641 (Supp. IV 1980)). See HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY 9 (1959). Introduced by Senator Joseph M. Carey of Wyoming, the Carey Act provided for grants of up to one million acres to each state containing desert land to aid in their irrigation. This program resulted in few projects, see *id.*, and by the late 1890s, the West was pushing for a new approach. See GATES, *supra* note 1, at 650.

The Reclamation Act is often referred to as the "Newlands Act," after its author and champion in Congress, Nevada Representative Francis G. Newlands. The Act's beneficiaries had two major concerns about Newlands' original proposal: its proposed acreage limitation of 80 acres and its provision allowing the Secretary of the Interior to withdraw irrigable land from all private entry, including the homestead laws. HAYS, *supra* at 12-13. As enacted, the law addressed both of these concerns: the acreage ceiling was raised to 160 acres, 43 U.S.C. § 431 (Supp. IV 1980), and homesteaders were allowed to enter on lands withdrawn pursuant to the Act. 43 U.S.C. § 432 (Supp. IV 1980).

The Taylor Grazing Act of 1934 was sponsored and guided through Congress by Representative Edward T. Taylor of Colorado, with the support of most cattlemen, particularly large cattle corporations. See FOSS, *supra* note 13, at 56. See also HAYS, *supra* at 62-65. In order to address one of the major concerns of the grazing interests, the Act vested authority for the grazing program in the Department of the Interior, rather than the Forest Service. Even at that time, the Forest Service had a considerable reputation for setting grazing fees in national forests at the fair market value of the forage and for limiting the number of stock allowed on forest ranges. GATES, *supra* note 1, at 607. By contrast, Interior Department officials basically agreed, prior to the Act's passage, to set their grazing fees at less than fair market value and to delegate considerable authority to grazing district advisory boards. *Id.* at 614. In discussing the Taylor Act, one commentator has noted that, "From the cattleman's point of view, it put the grazing lands in the hands of a bureau that could be milked for benefits while being controlled by its permittees." Stegner, *Land: America's History Teacher*, THE LIVING WILDERNESS, Summer 1981 at 5, 11.

lands at levels far below fair market value.⁴⁰

Even the Federal Land Policy and Management Act (FLPMA), passage of which is often alleged to have "caused" the Sagebrush Rebellion,⁴¹ illustrates the dominant influence of the West on public land laws. The original conception of this law came largely from westerners.⁴² More importantly, in Congress the law was shaped in committee,⁴³ on the floor⁴⁴ and in conference by westerners.⁴⁵ Finally, the majority of westerners in Congress voted in

40. Public Rangelands Improvement Act of 1978 [hereinafter cited as PRIA], 43 U.S.C. §§ 1901, 1905-1906 (1978).

41. See, e.g., *The Angry West vs. The Rest*, NEWSWEEK, Sept. 17, 1979, at 32, 33; Zumbo, *supra* note 24, at 27.

42. Colorado Representative Wayne Aspinall, chairman of the House Committee on Interior and Insular Affairs, advocated the establishment of "clear-cut legislative guidelines concerning the management, use and disposition of our public lands. . . ." Letter from Wayne Aspinall to President John F. Kennedy (Oct. 15, 1962). Aspinall was the driving force in Congress for the creation of the Public Land Law Review Commission. See Muys, *The Public Land Law Review Commission's Impact on the Federal Land Policy and Management Act of 1976*, 21 ARIZ. L. REV. 301 (1979). The Commission was established to conduct a "comprehensive review" of the public land laws "to determine whether and to what extent revisions thereof are necessary." Act of Sept. 19, 1964, Pub. L. No. 88-606, § 2, 78 Stat. 982 (codified at 43 U.S.C.A. § 1392 (West Supp. 1981)). Of the Commission's 19 members, 13 were from the 11 contiguous western states: Aspinall, the chairman; all 6 of the members appointed by the Senate; 3 of the 6 appointed by the House; and 3 of the 6 presidential appointees. PLLRC REPORT, *supra* note 3, at iv. Most of the Commission's recommendations—see PLLRC REPORT, *supra* note 3—were subsequently enacted in FLPMA. Muys, *supra* at 307.

43. Eight of the 18 members of the Committee on Energy and Natural Resources which favorably reported the Senate version of FLPMA, S. 507, 94th Cong., 1st Sess. (1975), were from the 11 contiguous western states, as were 17 of the 43 members of the Committee on Interior and Insular Affairs which favorably reported the House version, H.R. 13777, 93d Cong., 2d Sess. (1974).

44. Westerners led and dominated the debates on the floor of both houses. Senator Haskell (Colo.) and Representatives Melcher (Mont.) and Steiger (Ariz.) managed the respective bills—S. 507 and H.R. 13777, *supra* note 43—on the floor. In the Senate, easterners failed to offer a single floor amendment. See 122 CONG. REC. 4045 (1976); *id.* at 4418. Three of the four major floor amendments proposed by eastern representatives were rejected by the House. One sought to require that grazing fees be set at fair market value rates, *id.* at 23,459, while a substitute grazing fee amendment sought to retain existing law. *Id.* at 23,460. The other rejected floor amendment would have deleted language in the bill allowing the "donation" of wild horses and burros removed from the public lands. *Id.* at 23,462. Only Ohio Representative Sciberling's proposal providing for unconditional federal enforcement authority was adopted, with support from Representatives Ketchum (Cal.), Melcher and Steiger. *Id.* at 23,466.

45. The Conference Committee had considerable difficulty in striking a compromise because of a standoff between Senator Lee Metcalf (Mont.) and Representative James Santini (Nev.). Metcalf objected to the provisions in the House bill dealing with grazing permits, fees and advisory boards. H.R. 13777, 94th Cong., 1st Sess. §§ 210-212, 122 CONG. REC. 233,447-48 (1976). Santini objected to the Senate provi-

favor of its passage.⁴⁶

In addition to exercising a dominant influence on laws that were passed, westerners have repeatedly prevented legislation from being enacted. For example, despite widespread acknowledgment of the inadequacies of the Mining Law of 1872,⁴⁷ congressional allies of miners and prospectors have stymied repeated attempts at reform.⁴⁸ Consequently, miners—large and small—may still mine publicly owned hard-rock minerals such as uranium, molybdenum, copper and cobalt free of charge.⁴⁹

Not only do westerners dominate the legislative process, they also dominate the agencies which interpret and implement the public land laws. Traditionally, the posts of Secretary of the Interior and Director of the BLM have been given to westerners.⁵⁰ Furthermore, the BLM is organized along state lines, thereby enhancing the influence of western states and their congressional delegations on its actions.⁵¹ The agency is also highly decentralized. Its eleven state offices are divided into fifty-five districts. In turn, these districts are subdivided into 162 resource areas ranging in size from 300,000 to, in one case, 5 million acres.⁵² Most BLM

sion concerning recordation of unpatented mining claims. S. 507, 94th Cong., 1st Sess. § 207, 122 CONG. REC. 23,497 (1976). The deadlock was broken when Santini finally agreed to a compromise on the grazing provision. PUB. LAND NEWS, Oct. 7, 1976, cited in Schwartz, *A Capsule Examination of the Legislative History of the Federal Land Policy and Management Act of 1976*, 21 ARIZ. L. REV. 285, 298-300 n.68 (1979).

46. See 122 CONG. REC. 4423 (1976) (Senate vote) and 122 CONG. REC. 23,483 (1976) (House vote).

47. Act of May 10, 1872, ch. 152, 17 Stat. 91 (codified as amended in scattered sections of 30 U.S.C. (1976)). See, e.g., GAO REPORT, *supra* note 35, at v; COUNCIL ON ENVIRONMENTAL QUALITY, *HARD ROCK MINING ON THE PUBLIC LAND* (1977) [hereinafter cited as CEQ REPORT].

48. See, e.g., CEQ REPORT, *supra* note 47, at 10-11.

49. *Id.* at 1.

50. See, e.g., A Report from Mo Udall, *The 'Sagebrush Rebellion'* (Vol. XVII) (Oct. 1979) ("The West, in fact, is the only region of the country with its 'own' Cabinet agency—the Department of the Interior.").

51. A recent example of political influence on BLM actions occurred in October, 1981, when Robert O. Buffington, an employee of the agency for 25 years, was removed from his position as director of the BLM's Idaho State Office by the national BLM director "for what would appear to be purely political reasons." Johnson, *BLM Imbroglia Shows Watt's Colors*, Idaho Statesman, Nov. 13, 1981, at 12A, col. 3. BLM Director Robert Burford was subsequently quoted as saying that "there was a perception in some people's minds that [Buffington] was a political appointee of [former Interior Secretary] Andrus' and was more in tune with Carter administration policies than ours." Quoted in Moss, *Bob Burford/Making the Most of the Public Lands*, High Country News, Nov. 13, 1981, at 1, 10. For a report on an earlier politically forced transfer, see Fradkin, *The Eating of the West*, AUDUBON, Jan. 1979, at 94, 110-13.

52. Most, *supra* note 2.

employees live in the West and were educated in the West.⁵³ The regulations which these employees are implementing, and which have drawn such fire from the Rebels, were drafted with the participation of westerners and western states.⁵⁴ Moreover, they afford western governmental institutions special opportunities to participate in decision-making, both where such participation is required by law⁵⁵ and where it is not.⁵⁶

The Sagebrush Rebels are also fond of arguing that the federal government is locking up the public lands and arbitrarily constraining economic uses of them.⁵⁷ As Idaho State Senator Kenneth L. Robison has pointed out: "The truth is, the people of the United States enjoy free access to virtually every acre of these lands. Most of them are also open to grazing, mining, timber cutting and other [economic] uses."⁵⁸ Moreover, a close look at two of the examples that the Rebels use to support these arguments, the BLM's wilderness and grazing programs, demonstrates that they are unfounded.

The Rebels claim that the BLM is locking up vast acreages for a single use—wilderness.⁵⁹ Wilderness is not, in fact, a single use. It sustains multiple uses, including recreational opportunities and ecological, geological, scenic and historic values.⁶⁰ Moreover, only a relatively small percentage of the public lands in the eleven contiguous western states, approximately fourteen percent, is being considered for inclusion in the National Wilderness Preservation System.⁶¹ Finally, even now, prior to "reform" by the present administration, the policy for managing lands under wilderness

53. Personal Communication with B. Shanks, Special Assistant to Secretary of Resources, California State Resources Agency.

54. The regulations can be found at Final Rulemaking/Public Lands and Resources; Planning, Programming and Budgeting, 44 Fed. Reg. 46,386 (1979) (to be codified at 43 C.F.R. pt. 1600) and Final Rulemaking/Coal Management; Federally Owned Coal, 44 Fed. Reg. 42,584 (1979) (to be codified at 43 C.F.R. pt. 221).

55. See, e.g., 43 U.S.C. § 1712(c) (9) (1976), 43 C.F.R. § 1601.4-3 (1980) implementing FLPMA's "consistency" requirement.

56. See, e.g., 43 C.F.R. § 3420.3-2 (1980) (establishing regional coal teams to set coal leasing levels and providing for representation of western governors thereon). Despite its "good neighbor" policy, the present administration recently signaled its intention to strip these teams of this key function. See *Interior Defends Role for Regional Coal Teams*, PUB. LAND NEWS, Oct. 29, 1981, at 6.

57. See, e.g., Zumbo, *supra* note 24, at 25. See also Boly, *supra* note 11, at 19.

58. Letter from Kenneth L. Robison, Resources and Environment Committee, Idaho State Senate to the Denver Post in Denver Post, Oct. 9, 1979.

59. See *supra* note 57.

60. See, e.g., Wilderness Act, § 2(C), 16 U.S.C. § 1131(c) (1976).

61. See List of Wilderness Study Areas, 46 Fed. Reg. 15,086 (1981).

review provides for substantial amounts of new and existing economic activity.⁶²

The Rebels are also fond of claiming that the BLM has, especially during the last four years, been trying to drive livestock operators out of business in connection with its effort to comply with the requirements of the National Environmental Policy Act of 1969⁶³ as applied to management of the public's rangelands.⁶⁴ Based on our intimate involvement with this effort through NRDC, we feel that this allegation is unfounded.

Grazing is the most extensive economic use of the public lands.⁶⁵ Yet the public land livestock industry has not been in good health for years.⁶⁶ Neither have the public's rangelands. The courts,⁶⁷ Congress⁶⁸ and numerous federal agencies⁶⁹ have all found that decades of overgrazing and other poor management practices permitted by the BLM have produced widespread and severe degradation of the soil, water, wildlife and other resources of our rangelands. The Environmental Impact Statements (EISs) the Bureau has been preparing since 1975 provide site-specific confirmation of these findings as well as ample evidence to support changes in existing management, including, in many cases, reductions in livestock numbers.⁷⁰ Ranchers and other Rebels uniformly overlook the fact that the reductions actually decided upon by local managers following completion of EISs are routinely less than the optimum amount suggested by these statements.⁷¹ They also exaggerate both the magnitude of those

62. See generally Interim Management Policy and Guidelines for Land Under Wilderness Review, 44 Fed. Reg. 72,014 (1979) (to be codified at 43 C.F.R. ch. 11).

63. 42 U.S.C. §§ 4371-4374 (1976).

64. See, e.g., Zumbo, *supra* note 24, at 25.

65. See Fradkin, *supra* note 51, at 94.

66. See, e.g., Shay, *supra* note 14, at 30.

67. NRDC v. Morton, 388 F. Supp. 829 (D.D.C. 1974), *aff'd*, 527 F.2d 1386 (D.C. Cir. 1975), *cert. denied*, 427 U.S. 913 (1976); NRDC v. Andrus, 448 F. Supp. 802 (D.D.C. 1978).

68. PRIA, § 2(a)-(b), 43 U.S.C. §§ 1901(a)-(b) (Supp. III 1979); FLPMA, § 401(b), 43 U.S.C. § 1751(b) (Supp. III 1979).

69. See, e.g., BLM, U.S. DEP'T OF THE INTERIOR, RANGE CONDITIONS REPORT (1975) VII-C-48 to -53 (prepared for the Senate Committee on Appropriations); COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY 182 (1970) (First Annual Report); COUNCIL ON ENVIRONMENTAL QUALITY, DESERTIFICATION OF THE UNITED STATES 11-13 (1981); COMPTROLLER GENERAL OF THE U.S., PUBLIC RANGELANDS CONTINUE TO DETERIORATE (July 5, 1977) (Report to the Congress).

70. BLM, U.S. DEP'T OF THE INTERIOR, MANAGING THE PUBLIC RANGELANDS 15 (Public Review Draft, Nov. 1979).

71. See, e.g., Sheridan, *Can the Public Lands Survive the Pressures*, THE LIVING

reductions and their impacts.⁷² Finally, they ignore the fact that the chief beneficiary of improved range conditions and productivity will be the livestock industry.

Another major argument made by the Rebels to support transfer of the public lands to the states is that the federal government is making enormous profits from the public lands, at the expense of the economic well being of the states.⁷³ Economic uses of the public lands have generated substantial revenue in the past and undoubtedly will generate even more revenue in the future. The bulk of this revenue, however, does not go into the federal treasury. Instead, it is returned directly or indirectly to the states. In 1979, for example, \$324 million, or forty-four percent of the receipts from public land activities in the twelve western states, went directly back to those states through a variety of revenue sharing programs. Another \$253 million, or thirty-four percent, was returned indirectly through the Reclamation Fund, for irrigation projects, and through other programs. Only \$160 million, or approximately twenty-two percent, went to the general treasury. That year the western states also received an additional \$83 million through the Payments in Lieu of Taxes Program for the federal lands within their borders.⁷⁴ Clearly, the western states benefit substantially from federal ownership of the public lands, without having to bear either the responsibility or the full costs of their management.⁷⁵

The Sagebrush Rebels argue that the states could manage the public lands as well as, if not better than, the federal government.⁷⁶ There is little, if any, evidence to support this claim. In fact, a recent study of the legal and administrative practices of western states in managing state "trust" lands suggests that they would do a poor job.⁷⁷

WILDERNESS, Summer 1981, at 36, 37; Address by Johanna H. Wald, Western Governors Conference Annual Meeting (Sept. 10, 1981).

72. See, e.g., ARIZONA BLM, 5 ADVISER 2 (Apr., 1981).

73. See, e.g., Stegner, *Will Reagan Ride With The Raiders?*, Washington Post, Jan. 20, 1981, at 25, 37.

74. BLM, U.S. DEP'T OF THE INTERIOR, SAGEBRUSH REBELLION BRIEFING PAPER 7 (July 1980) (copy on file in San Francisco offices of NRDC).

75. The federal government actually loses money managing the public lands. See *id.* for an analysis of federal management costs by states.

76. See, e.g., *The Angry West vs. The Rest*, *supra* note 41, at 38.

77. PLI REPORT, *supra* note 22. "Trust" lands refers to the lands which the federal government gave to western states under the enabling acts admitting them to statehood. (California actually received title to its trust lands after statehood, while New Mexico received some of its lands before becoming a state.) See *id.* at 5. These lands,

Current federal laws require that the public lands and their resources be managed in the public interest. Most state laws contain no such mandates. Indeed, several western states have laws or constitutional provisions which specifically require that state lands be managed for maximum economic return without regard to other values. Many of these states issue leases to ranchers and other resource consumers which allow the lessee to prohibit all forms of public access, including hunting, fishing and sightseeing.⁷⁸ Few of the states have laws requiring that environmental values be considered by managers. Few, if any, have mechanisms for allowing residents, let alone non-residents, to participate in trust land decision-making.⁷⁹ Three states—California, Oregon and Nevada—long ago sold most of their trust lands.⁸⁰

Most state land agencies have few funds and skeletal staffs. In Arizona, for example, the ratio of all full-time employees to the acreage of trust lands is approximately one to 99,000 acres.⁸¹ In most states, trust lands are not actually “managed”. At best, they are “administered” with little on-site attention, monitoring, investment or concern.⁸² Should the states obtain title to the federal lands, it is obvious, as Governor Richard Lamm of Colorado has said, that “[t]he financial burden of *properly* administering and managing these lands would far outstrip our present resources. . . .”⁸³

Should the public lands be transferred to the states, it is clear that most, if not all of them, would be sold to private ownership. Pressure for sale would be virtually irresistible.⁸⁴ Indeed, trans-

which totalled millions of acres, *id.* at 123, were given to the states to benefit various public purposes. *Id.* at 5-6. Trust lands constitute “the great majority of state-owned lands” in the eleven contiguous western states. *Id.* at 5.

78. *Id.* at 7.

79. *Id.*, *passim*.

80. *Id.* at 6, 123.

81. *Id.* at 8.

82. *Id.*, *passim*.

83. Letter from Governor Richard D. Lamm to the Colorado State Senate (June 5, 1981) (vetoing Senate Bill 170, Colorado’s Sagebrush Rebellion bill) (emphasis added) (copy on file in San Francisco offices of NRDC).

84. In this day and age, the states would be unlikely to raise taxes for land management purposes. Raising user fees would be bitterly opposed by ranchers and miners whose use of public resources the federal government now subsidizes. Energy-rich states could, of course, increase the rate of development in order to defray management costs, but some of them are already concerned about the current growth rates. See, e.g., Whipple, *Watt Comes West to Woo*, High Country News, Oct. 2, 1981, at 10, 11. In the meantime, rich and politically powerful ranchers, developers and energy companies would be actively seeking to expand their holdings.

ferring the public lands to private hands is the ultimate goal of some Sagebrush Rebels. When Senator Orrin Hatch (R-Utah), the author of past and pending Senate Sagebrush legislation, introduced his first give-away bill, he said that it was intended to accomplish "transferring title to the public lands to the state capitol and from there to the county authorities and ultimately to private citizens."⁸⁵

Private ownership of the public lands would not be in the general public interest. It would leave Americans with no land and no resources; no representation of their interests in management decisions; no right of free access for mineral exploration or recreational pursuits; and no consideration of wilderness, wildlife, environmental or other non-economic interests—except in those instances where it makes good "business sense" to do so.

Given current laws, policies and practices, state ownership plainly would not be much better than private ownership. However, even if the states were to retain the federal lands once they were transferred and even if state laws were changed and effectively implemented, transfer would not be in the public interest of the nation. No less a Rebel than Nevada's Senator Paul Laxalt has conceded that "[i]t's hard to justify taking a national asset and allocating it to the states. . . ."⁸⁶ It is unrealistic, to say the least, to expect that any state would ask other states or non-residents to express their views on managing these lands when and if they were transferred. Even if these views were requested, however, it is even more unrealistic to assume that any state could, in fact, provide a forum for discussion, let alone a decision-making process, which would allow those views to be fully identified and fairly considered by policy makers and land managers.

Transfer of the public lands to the states would leave each state free to establish its own definition of the "public interest," without regard to the needs or desires of any other state, or the nation. To take just one example, transfer of these lands would preclude development of a single, coordinated, rational plan for management and use of the West's coal resources. The nation can ill-afford

85. *Quoted in Zumbo, supra* note 24, at 50. Recently, a member of the President's Council of Economic Advisors advocated transferring *all* publicly-owned lands, including those owned by the states, to private hands. *See Anderson, Private Ownership of Public Lands Proposed*, Reno Evening Gazette, Sept. 29, 1981, at 36. *See also Basic Changes in Public Land Management Eyed by Economist*, PUB. LAND NEWS, Oct. 29, 1981, at 7-8.

86. *Quoted in Underwood, Sagebrush Rebellion Acquires a New Look*, Reno Evening Gazette, Nov. 14, 1980, at 1.

such Balkanization, whether viewed in terms of either national energy needs or exacerbation of already divisive regional rivalries.⁸⁷

Transfer of the public lands to the states is not only antithetical to the public interest when viewed from a national perspective, it is also antithetical to the public interest when viewed from the perspective of the West.

Despite the title of this conference, the West is no more a confederacy than it is a colony. The very notion of "confederacy" connotes union. The West has never been united in the past where issues of public land management were concerned.⁸⁸ It is certainly not united now. There is little unanimity on the part of governors, legislatures and agencies *within* individual states, let alone agreement among states, as the Sagebrush Rebellion itself reveals.⁸⁹ Nor will there be unanimity in the future.

The pressures on the public lands are enormous and increasing daily. Perhaps at one time these pressures were largely generated by eastern interests.⁹⁰ Today, however, it is increasingly westerners themselves who are making demands on these lands and creating resource conflicts.⁹¹ Some westerners, for example, want

87. See Stevens, *Energy States' Taxing of Resources Becomes Focus of East-West Dispute*, N.Y. Times, Oct. 15, 1981, at 14, col. 1; *The Angry West vs. The Rest*, *supra* note 41, at 32-40.

88. See, e.g., HAYS, *supra* note 39, at 48-65 and GATES, *supra* note 1, at 607-32. For example, in 1916, Congress enacted a 640-acre stock-raising homestead bill. Law of Dec. 29, 1916, ch. 9, 39 Stat. 862 (repealed by FLPMA, Title VII, § 702). That measure, sponsored by Representative Taylor of Colorado, was opposed by large western cattle corporations, which favored the leasing program originally proposed by President Roosevelt in his 1905 address to Congress. H.R. Doc. No. 1, 58th Cong., 3d Sess., Ser. 4780 (1905). See, HAYS, *supra* note 39, at 63. However, the leasing proposal was defeated repeatedly between 1905 and 1934 because of the vehement opposition from small western cattle outfits and homestead groups. *Id.* at 64. It was not until 1934 that these opposing groups compromised on the leasing issue, when the precipitous decline in livestock prices, coupled with the increasing evidence of range deterioration, finally led to passage of a leasing measure as part of the Taylor Grazing Act. GATES, *supra* note 1, at 607. See also FOSS, *supra* note 13, at 45-58.

89. See *supra* notes 6-8 and 24 and accompanying text. See also SUBCOMM. ON RANGE RESOURCE MANAGEMENT, NATIONAL GOVERNORS' ASSOCIATION, PARTNERSHIP/STEWARDSHIP: MAKING FEDERALISM WORK IN PUBLIC LAND MANAGEMENT 8 (1980) ("Because of divided responsibilities and the existence of autonomous boards and agencies, state governments often cannot speak with one voice. The states generally lack coherent and comprehensive resource management policies and plans.")

90. See, e.g., Stegner, *supra* note 15, at 34.

91. See generally, *The Angry West vs. The Rest*, *supra* note 41, at 33. See also, Sandoval, *Between a rock and a hard place*, Albuquerque News, Sept. 19, 1979 (West Edition) at 1, col. 1; ELLICKSON AND MERROW, RESOLVING ENVIRONMENTAL ISSUES IN ENERGY DEVELOPMENT: ROLES FOR THE DEPARTMENT OF ENERGY AND ITS FIELD OFFICES 23-30 (Prepared for the U.S. Department of Energy by Rand Corporation, R-2335-DOE, 1979).

more wilderness. Others want less. Some westerners want more energy development. Others want less.

The Rebels essentially promise their supporters that their demands will be fulfilled and resource conflicts decided in their favor—once the public lands are transferred. While this promise is politically attractive, it has no basis in reality. Livestock cannot graze on lands being strip-mined for coal or any other mineral. The recreational demands of the West's increasingly urbanized populations⁹² cannot be satisfied if recreational resources are destroyed or public access denied. Accommodating the full range of western concerns is a difficult and highly controversial task precisely because westerners do not agree on what is "right". There is, in short, no single western public interest which demands anything when it comes to the public lands, let alone that they be given to the States.

Transferring the public lands out of federal ownership will not eliminate the pressures on them. It will not make the task of conflict resolution any easier or less controversial. Above all, it will not create a single western public interest to replace the many interests that now exist. At best, transfer will result in replacing a single decision-making institution with eleven new institutions, each of which would be incapable of accommodating the full array of public concerns and demands.⁹³

Federal ownership of the public lands brings far more than regulations, regulators and money to the western states. It provides a decision-making structure that allows the interests of all western publics—as well as the interests of other states, their residents and the nation—to be identified, considered and taken into account. It brings a measure of needed uniformity and consistency in procedures, policies and decisional standards to the task of resource management at all levels, including the courts. It provides an established bureaucracy, capable of balancing local needs with broader concerns in a professional manner. Federal ownership of the public lands allows managed development of coal, oil and oil shale resources. It requires that renewable resources such as timber and livestock forage be managed for sustained yield over time. It means that resources such as wildlife habitat, wilderness and open space will be considered in decision-making, despite the fact that no price tag can be put on them. Federal ownership means

92. See, e.g., Schmidt, *Jobs and Recreation Bring Youth Boom to Rockies*, N.Y. Times, Nov. 12, 1981, at 16, col. 1.

93. See *supra* notes 84-87 and accompanying text.

continued free access by the public for recreational and other purposes. Finally, it means that the lands and their resources are owned by all, rather than only a few special interests, and that all may benefit from them.

This is not to say that all of these benefits have, in fact, been realized or even that they ever will be. FLPMA was enacted only recently and the BLM's efforts to implement its mandates were quickly undermined by the opposition of the Sagebrush Rebels.⁹⁴ Now, many of those same Rebels are in charge of managing the very lands they sought to have transferred to the states.⁹⁵ Not surprisingly, the rhetoric of these Rebels has changed. Instead of advocating transfer of the public lands to the western states in order to resolve real or imagined conflicts between those states and the federal government, they speak of achieving needed "balance" in federal land management policies and practices through existing institutions.⁹⁶

Their actions reveal that their new rhetoric is as empty as their old. The Rebels now running the Interior Department and the BLM, like other Rebels, care about state concerns only to the extent that those concerns do not conflict with the Rebellion's real goal—ensuring that the public lands are managed for the benefit of a few special interests.⁹⁷ In short, they remain committed to doing all they can to ensure the Rebellion's success without having to transfer the public lands to the states.

In the end, the environmental and social impacts of public land "management" by Rebellion supporters ensconced in Washington may be little different than the impacts of wholesale transfer of those lands to the states. If the Rebels succeed by either means, their success will be at the expense of the West and of the nation as a whole.

94. See, e.g., Sharpe, *The Sagebrush Rebellion*, OUTDOOR AMERICA, Sept./Oct. 1980 at 5, 6-7; Shay, *supra* note 14, at 31.

95. See, e.g., Stegner, *supra* note 15, at 35.

96. Once proud to call himself a Rebel, Secretary of the Interior James Watt now says that he does not support giving away the public lands to the states. See, e.g., *Sagebrush Rebellion Talk Cools . . . at Least for the Time Being*, PUB. LAND NEWS, Mar. 19, 1981, at 6-7. Some Rebels, however, still advocate transfer of the federal lands to the states. See, e.g., *id.*; Landsberg, *Rebels Ready/Sagebrush Campaign Criticizes Watt*, Sacramento Bee, Aug. 27, 1981.

97. See, e.g., *California v. Watt*, Nos. CV 81-2080 MRP and CV 81-2081 MRP (C.D. Cal. Aug. 18, 1981), *appeal docketed*, No. 81-5818 (9th Cir. Sept. 16, 1981). *Interior Defends Role for Regional Coal Teams*, PUB. LAND NEWS, Oct. 29, 1981, at 6 (opposition of western governors to Interior Department's plan to strip regional coal teams of authority to set leasing levels).

EPILOGUE

Since this article was written, the Sagebrush Rebels have shown their true colors. They have abandoned their states-rights rhetoric and are pushing openly for the sale of public lands to private interests. Under the banner of "privatization" they and the Reagan Administration argue that public land sales are justified as a means to reduce the national debt.⁹⁸ Although a comprehensive privatization program has yet to emerge,⁹⁹ it is clear that BLM lands will rank high on the list of those to be sold. As an aide to Senator Laxalt said recently, "We're talking about grazing lands, oil and gas lands, hard rock mining lands, the big ticket items."¹⁰⁰

Development and implementation of a privatization program will require extensive amendments to existing legislation, which, in turn, require the resolution of numerous policy issues.¹⁰¹ These issues include the question whether the government should sell or retain its mineral rights in the public lands.¹⁰² If the objective of sale is to generate maximum revenues, then mineral rights must be sold along with the land.¹⁰³ If mineral rights are sold, however, then many of the staunchest supporters of the Sagebrush Rebellion, including livestock operators and small miners, will be unable to compete against interests such as energy and mineral conglomerates who will be willing, eager and financially able to pay the highest price for the public's property. For that matter, state and local governments, hunters, recreationists and environmentalists will also lose in the marketplace and on the ground as free access is eliminated and the public lands are chewed up by bulldozers.

We, of course, do not support privatization any more than we

98. See, e.g., *Sale of Public Lands to Pay Off Public Debt Gains*, PUB. LAND NEWS, Jan. 21, 1982, at 1-2.

99. See, e.g., *Budget Contains Program to Sell 5 percent of Public Lands*, PUB. LAND NEWS, Feb. 18, 1982, at 2.

100. PUB. LAND NEWS, *supra* note 98, at 1. Supporters of privatization also are talking about raising big money. For example, Laxalt's aide thinks sales will bring in "around \$200 billion," *id.* at 2, although this figure is concededly little more than a guess. *Id.*

101. See, e.g., GOVERNMENT ACCOUNTING OFFICE, NUMEROUS ISSUES INVOLVED IN LARGE-SCALE DISPOSALS AND SALES OF FEDERAL REAL PROPERTY (CED-82-18) (Dec. 11, 1981).

102. *Id.* at 37.

103. If the administration merely wanted to increase revenues from the public lands, as opposed to accomplishing the goal of the Sagebrush Rebellion through the back door, it could consider a number of as yet untried, but long overdue, options. These include increasing royalties on oil and gas leases, establishment of a leasing/royalties system for hard rock minerals and raising grazing fees.

support transferring the public lands to the states. Supporters of both of these notions are motivated by political expediency and short-term gain. Neither of these motivations constitutes a legitimate basis for a rational public land policy. The emergence of the privatization concept is worth noting here as proof of the true motives of the Sagebrush Rebellion. Its emergence also proves the continued vitality of the western death wish that Bernard DeVoto identified approximately 40 years ago.¹⁰⁴ Selling the public lands to the highest bidder would destroy the West as we now know it in both myth and reality.

104. See, e.g., *The West Against Itself*, HARPERS, Jan. 1947.

