

As of 2010, it will have been forty years since the last public land commission concluded its work. This is the longest stretch of time the United States federal government has gone without a commission to offer guidance since the first one convened 130 years ago. A new public land commission, argues the author, is needed to examine and address a languishing ecological policy.

CONGRESS

AND THE NEXT PUBLIC LAND COMMISSION

The United States Congress has taken up several important policy issues in the past year, principally health care reform, economic recovery, and national security. One of the most notable aspects of the health care debate has been the government's inability to address the deep structural problems

with the American health care system, following instead the basic script of interest group liberalism and partisan politics. What Americans need, and deserve, T. R. Reid argues in *The Healing of America*, is a more substantive discussion.¹

Unfortunately, Congress's failure to present Americans with a substantive discussion is not limited to human health care. As political scientists Christopher McGrory Klyza and David Sousa so carefully document in their recent book, *American Environmental Policy, 1990–2006: Beyond Gridlock*, Congress has failed to address ecological health care in a substantive way for at least the past twenty years.² Like health care reform, ecological policy has languished even as the tools for dealing with complex ecological challenges have improved.

Ecological health care is a sweepingly broad field, but Congress could single out the environmental policy sectors in greatest need of reform. The most important sector is most likely energy and climate change policy; a close second is land-use policy, starting with governance of the thirty percent of all U.S. surface land that lies in federal ownership. Federal land policy is, after all, an arena in which the U.S. Constitution provides specific congressional authority to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Article 4, Section 3), and Congress has an established pattern of regular, comprehensive federal land policy review that began some 130 years ago—an independent public land commission. Congress convened the public land commissions at watershed moments in

the history of federal lands and resources—1879–1883, 1903–1905, 1930–1931, and 1964–1970—and there is good evidence that the nation is at another such watershed moment.

The Public Land Commission of 1879–1883, which included John Wesley Powell, completed what was at that time the most comprehensive study of the public domain lands ever undertaken by the federal government.³ With only a few exceptions, federal land policy in this period was directed toward land and resource disposal, but existing policy had opened the way for fraud and speculation and was totally inadequate for dealing with much of the arid West. Thus, the commission focused on reforming federal land law to better serve its intended purposes of equitable land and resource distribution. Those familiar with the history of federal lands will recognize this as the watershed period in which Congress began to debate seriously the merits of permanent federal land ownership and management, leading to the Forest Reserve Act of 1891.

By the time the next public land commission met, in 1903–1905, the face of federal land policy had changed dramatically.⁴ Although the commission still endorsed liberal land and resource disposal statutes, it wrestled far more with issues of federal land retention and management. By this point, the national forests had grown to 75 million acres, the federal government had begun investing in the applied science of forestry that Bernhard Fernow and Gifford Pinchot had brought from Europe, and Congress was preparing to create the U.S. Forest Service (which it did in 1905). The

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Although most federal land is in the west, any public land commission would need to look at all lands and resources in federal ownership.

commission, which included Pinchot, advocated repeal of many land disposal acts, which it argued were being abused, and proposed establishment of grazing districts. It recommended, in other words, a significant shift in federal land and resource policy away from disposal and toward conservation management.

The Committee on the Conservation and Administration of the Public Domain of 1930–1931 was organized by President Herbert Hoover to investigate, among other things, the possibility of transferring the unreserved public domain lands wholesale to state ownership.⁵ By this time, the U.S. Forest Service and the National Park Service had established considerable political power and autonomy over the national forest and park systems, but much of the remaining public rangeland outside these systems suffered from overgrazing. Prominent ecologists, including Frederick Clements, had been struggling to build a respected field of range science to improve range management, but federal agencies had no authority to extend the tools of this new science, even if it proved successful, to the unreserved public lands.⁶

The committee ultimately recommended giving these lands to the states in which they were located, minus the subsurface mineral rights. This met with outrage from the West. As one Idaho senator complained, it was “like handing [the states] an orange with the juice sucked out of it.”⁷ Even though the committee’s main proposal failed, it highlighted a clear choice for Congress in addressing the degradation of public land: either Congress had a responsibility to give the land to those who would manage it, or Congress needed to accept responsibility for its

management. Soon after the committee finished its work, Congress passed the Taylor Grazing Act of 1934, authorizing the Department of the Interior to manage much of the remaining public lands in the lower forty-eight states.⁸

The Public Land Law Review Commission of 1964–1970 completed what is still the most comprehensive study of federal land policy and management to date.⁹ This committee wrestled with the fact that virtually all federal lands were likely to remain in permanent federal ownership, but the majority of these lands had inadequate statutory provisions. The problem was not a lack of statutes, the commission found; indeed, existing public land statutes numbered in the thousands and were filled with substantive and procedural contradictions. The commission did not itself resolve the problems, but its recommendations served as the foundation for new legislation to govern the national forests and public lands managed by the Bureau of Land Management.

It has been forty years since the last public land commission released its report, and federal land and resource policy is again in need of significant reform. The last commission released its report during a ten-year period in which Congress passed the three most powerful statutes governing federal lands: the Wilderness Act of 1964, the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973. The impact of these statutes alone necessitates a comprehensive review. Furthermore, the commission released its report at a time when biologists such as John and Frank Craighead were laying the foundation for modern ecosystem management, in light of which the commission’s focus

on resource outputs appears antiquated.¹⁰

Clearly, Congress is not in a position to pass sweeping reform of federal land and resource policy in the near term, but this is precisely why, as Martin Nie argues in *The Governance of Western Public Lands*, Congress should establish a new public land commission.¹¹ A new commission could address the important questions—both broad and specific—of federal land policy, and it could give Congress a set of concrete proposals for debate. The commission's most important task would be to assess the basic policy and management paradigm that federal agencies employ. The older preservation and multiple-use paradigms that guided federal agencies in the twentieth century were effective at protecting scenery and allocating natural resources in a relatively orderly way, but they were not designed or at least implemented to protect ecological health, despite the best efforts of many federal employees in the agencies. The National Park Service, for example, could not preserve large predators without assistance from landowners outside park areas, nor could the U.S. Forest Service protect forests in an ecological sense by focusing on resource outputs.

Recognizing the limitations of preservation and multiple-use management, the new commission needs to examine adaptive ecosystem management more carefully from a legal and political perspective and assess the possibilities for its broader implementation in areas with a high percentage of federally owned land.¹² In a nation that privileges private property as highly as the United States, federal lands provide the most promising laboratory for such large-scale experiments.

Adaptive ecosystem management, it is true, has a very mixed record in the United States.¹³ The most successful federal efforts have been the Northwest Forest Plan in California, Oregon, and Washington, and the Comprehensive Everglades Restoration Project in Florida. Other efforts, like the Greater Yellowstone Ecosystem and the Interior Columbia Basin, are far more qualified successes, and efforts such as the Sierra Nevada Framework have been rather dismal failures. This mixed record gives considerable justification for skepticism about the ability of U.S. law and politics to promote a truly holistic approach to ecological protection. But this is reason for more serious discourse and debate about adaptive ecosystem management rather than a reason to accept the status quo.

The new commission would have an incredibly difficult task, since it could not start with a blank political slate. The continued existence of the Mining Law of 1872, for example, gives ample evidence that many policies have remarkable inertia. Yet the commission's job would not be to propose new laws; its job would be to step back from the political fray, as much as this is possible, and offer the kind of substantive analysis that is scarce in congressional debate by seeking answers to two essential questions. First, is it possible to institutionalize in federal land and resource management a robust system of adaptive ecosystem management capable of stemming the loss of biodiversity and representative ecosystems in the United States, particularly when this management paradigm seems to challenge some core characteristics of the American legal and governmental systems? Second, where are the points of synergy in adaptive ecosystem management among ecological, economic, and social sustainability that are capable of breaking the gridlock in Congress over environmental policy? Conservation biologists, whose discipline did not

yet exist during the last public land commission's review, will have a central role in answering parts of these questions. What is more, as debate within the field about the appropriate scope of political advocacy continues, this is an important opportunity for conservation biologists to help identify legitimate ways to connect the descriptive authority of the natural sciences with normative commitments to ecological protection.

What better way to mark the fortieth anniversary of the last public land commission than to create a new one to ask questions for the twenty-first century. To do so is critical for the many species and ecosystems found on the nearly one-third of all lands in the United States. Let's hope for a new commission and a constructive debate about ecological health care led by the federal government that engages the American people as much as the human health care debate has. □

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NOTES

1. T. R. Reid, *The Healing of America: A Global Quest for Better, Cheaper, and Fairer Health Care* (New York: Penguin Press, 2009).
2. Christopher McGrory Klyza and David Sousa, *American Environmental Policy, 1990–2006: Beyond Gridlock* (Cambridge, MA: MIT Press, 2008).
3. See Thomas Donaldson, *The Public Domain: Its History, With Statistics* (Washington, DC: Government Printing Office, 1884) and James Alexander Williamson, Clarence King, Alexander Thompson Britton, Thomas Donaldson, and John Wesley Powell, *Report of the Public Lands Commission Created by the Act of March 3, 1879, Relating to the Public Lands in the Western Portion of the United States and to the Operation of Existing Land Laws* (Washington, DC: Government Printing Office, 1880).
4. William A. Richards, Frederick Haynes Newell, Gifford Pinchot, Albert Franklin Potter, Frederick V. Coville, and John H. Hatton, *Report of the Public Lands Commission* (Washington, DC: Government Printing Office, 1905).
5. James Rudolph Garfield, *Report of the Committee on the Conservation and Administration of the Public Lands* (Washington, DC: Government Printing Office, 1931).
6. William D. Rowley, "Historical Considerations in the Development of Range Science," in *Forest and Wildlife Science in America: A History*, edited by Harold K. Steen (Durham, NC: Forest History Society, 1999).
7. Karen R. Merrill, *Public Lands and Political Meaning: Ranchers, the Government, and the Property between Them* (Berkeley: University of California Press, 2002): 107.
8. The Bureau of Land Management was established in 1946 through the consolidation of the General Land Office (created in 1812) and the U.S. Grazing Service (formed in 1934).
9. *One Third of the Nation's Land* (Washington, DC: Government Printing Office, 1970).
10. R. Edward Grumbine, "What Is Ecosystem Management?" *Conservation Biology* 8(1) (1994): 27–38.
11. Martin Nie, *The Governance of Western Public Lands: Mapping Its Present and Future* (Lawrence: University Press of Kansas, 2008).
12. Congressional Research Service, *Multiple Use and Sustained Yield: Changing Philosophies for Federal Land Management?* (Washington, DC: Government Printing Office, 1993).
13. Judith A. Layzer, *Natural Experiments: Ecosystem-Based Management and the Environment* (Cambridge, MA: MIT Press, 2008).