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FEDERAL LANDS BILL RESOLUTION

1980 BUDGET SESSION

Engrossed Copy
H.J.R. No. 4

By Kevin Watt

A JOINT RESOLUTION OF THE BUDGET SESSION OF THE 43RD LEGISLATURE OF THE STATE OF UTAH ENDORSING THE BILL S.1680, HERETOFORE INTRODUCED IN THE SENATE OF THE UNITED STATES, WHICH PROVIDES FOR CESSION AND CONVEYANCE TO THE STATES OF FEDERALLY OWNED UNRESERVED, UNAPPROPRIATED LANDS, AND URGING THE PASSAGE INTO LAW OF S.1680.

Be it resolved by the Legislature of the State of Utah:

WHEREAS, equality of constitutional right and power is the condition of all the States of the Union, old and new;

WHEREAS, every new State admitted into the Union is entitled to exercise all of the powers of government which belong to the original States of the Union;

WHEREAS, the citizens of each State are entitled to all of the privileges and immunities of citizens in the several States;

WHEREAS, the power of Congress to admit new States into the Union under article IV, section 3 of the Constitution of the United States was not designed to impair the equal power, dignity, and authority of the States;

WHEREAS, as a condition of admission into the Union, Congress has, on occasion, imposed burdens upon new States that are not shared by the States equally;

WHEREAS, the original thirteen States, and States formed from the territories thereof, owned all public lands within their borders;

WHEREAS, title in the Federal Government to public lands within the borders of the thirteen States, and States formed from the territories thereof, rest only on deeds of cession voluntarily consented to by the legislatures of these States;

WHEREAS, as a condition of admission into the Union, Congress retained in the Federal Government ownership over substantial amounts of territory located within the borders of States west of the one-hundredth meridian, this occurring despite the Treaty of Guadalupe Hidalgo which specified that the lands which eventually became all or part of seven Western States of the union were to be formed into "free, sovereign, and independent" States;

WHEREAS, in the absence of such conditions of admission the legislative authority of the states would have extended over federally owned lands within these States to the same extent as over similar property held by private owners;

WHEREAS, during the course of the deliberations that resulted in the drafting of the Constitution of the United States, Founding Fathers, such as James Madison, recognized that the Western States neither would nor ought to submit to a Union which degraded them from an equal rank with the other States;

WHEREAS, article I, section 8, clause 17 of the Constitution of the United States authorizes the Federal government to exercise dominion over public lands only to the extent necessary to create a seat of government, and to administer places, purchased by the consent of the State legislatures, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, and in the absence of some express or implied legislative authority to perform some further function, Congress is limited by, and the rights of the States are protected by, the tenth amendment to the Constitution of the United States;

WHEREAS, the enabling Acts admitting the Western States into the Union expressly recognize that the Federal Government may some day choose to extinguish title to public lands held by it within the borders of these States;

WHEREAS, article IV, section 3 of the Constitution expressly provides Congress with the power to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," and this provision has been interpreted to invest in Congress plenary authority to dispose of lands held in Federal ownership, through sale, grant, or any other means of disposition;

WHEREAS, there is precedent for large transfers of federally owned public lands designed to place new States on par with the original thirteen States of the Union; and

WHEREAS, the States of the Union and their citizens are at least as well equipped as the central government to make the often difficult policy decisions that are necessary with respect to the use to which lands within their States shall be put.

NOW, THEREFORE, BE IT RESOLVED by the Budget Session of the 43rd Legislature that the bill S.1680, heretofore introduced in the Senate of the United States, which provides for the cession and conveyance to the States of federally owned unreserved, unappropriated lands, and the establishment of policy, methods, procedures, schedules, and criteria for such transfers, is hereby endorsed, and passage into law of S.1680 is hereby urged.

BE IT FURTHER RESOLVED, that the state legislative bodies of the States of Hawaii, Washington, Montana, New Mexico, Colorado, California, Arizona, Wyoming, Oregon, Idaho, Nevada, and Alaska, which states are affected by the bill S.1680, are hereby urged likewise to endorse S.1680 and urge its passage into law.

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the Congressional delegation from the State of Utah, the Speaker of the United States House of Representatives, President pro tempore of the United States Senate, the Secretary of the Interior, and the President of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the legislative bodies of the States of Hawaii, Washington, Montana, New Mexico, Colorado, California, Arizona, Wyoming, Oregon, Idaho, Nevada, and Alaska.

BULLETIN

AUGUST, 1979

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COMMITTEE TO RESTORE THE CONSTITUTION, Inc.

"If every person has the right to defend - even by force - his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly." THE LAW, by Frederic Bastiat, Paris, 1850.

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NEVADA CLAIMS VAST "GOVERNMENT LANDS"

GOV. ROBERT LIST SIGNS BILL DECLARING STATE SOVEREIGNTY OVER 49 MILLION ACRES OF TERRITORY "OWNED" BY FEDERAL GOVERNMENT. ALASKA, OREGON, OTHERS MAY FOLLOW.

Nevada's legislature passed and Governor Robert List signed in early June a State law of such mind-boggling magnitude that it makes inflation and energy issues picayune by comparison.

Central to Nevada's challenge of federal claim to western lands is the "equal footing doctrine" which describes the admission and status of new states on a basis of constitutional equality of right and power with the original States. The doctrine prohibits Congress from imposing, by consent or otherwise, conditions on admission to statehood which infringe upon the equality of the new state in relation to the other States.

Implementing statute is Nevada Assembly Bill No. 413, dated 15 February 1979, "AN ACT relating to public lands; creating a board of review; providing for state control of certain lands within the state boundaries; providing penalties; making an appropriation; and providing other matters properly relating thereto".

The Nevada law flows from a Senate Bill No. 398, dated 25 March 1977, drafted by Attorney T. David Horton, Counsel, Committee to Restore the Constitution, a Colorado non-profit corporation. (See, "Nevada Challenges 'Public Lands' Concept", CRC Committee of Correspondence letter, April 1978.)

Horton's argument is that the land clearly belongs to the State of Nevada by way of the Constitution; it merely needs enforcement; it is not a matter of the federal government giving or approving anything.

"Article 1, Section 8, Clause 17 of the Constitution", Horton says, "specifically restricts federal agencies and prohibits them from having any lands within the boundaries of a state once formed unless: 1. They are purchased; 2. Consent of the Legislature is given; 3. They are used for the erection of forts, arsenals, dockyards or other needful buildings."

Complaints, authorities and provisions of the 1979 Act are set out in seven pages of text. Among its highlights:

SEC. 5. 1. Subject to existing rights, all public lands in Nevada and all minerals not previously appropriated are the property of the State of Nevada and subject to its jurisdiction and control.

SEC. 5. 3. Public lands in Nevada which have been administered by the United States under international treaties or interstate compacts must continue to be administered by the state in conformance with those treaties or compacts.

SEC. 7. 3. All proceeds of fees, rents, royalties or other money paid to the state under sections 2 to 9, inclusive, of this act must be deposited with the state treasurer for credit to the state general fund.

Nevada's Attorney General Robert List (prior to his election to the office of Governor) enunciated the sovereignty of the State regarding unappropriated lands within its border in a sixty-six page opinion, "Equal Footing Doctrine and Its Application by Congress and the Courts", May 1977.

"The Power of Congress to admit new States into the Union does not carry with it the authority to maintain colonies or territories in perpetuity", said the Attorney General. "The retention under federal dominion in perpetuity of vast areas of public lands within the boundaries of a State by Congress is an exercise of a power after statehood which is denied by the Constitution before statehood. Such a situation places the equal footing doctrine in direct conflict with the Property Clause, a conflict, which if litigated, might well result in a Supreme Court holding that Congress must pursue an active plan of disposal of unappropriated public lands", he said.

Harassed by Bureau of Land Management excesses, mining and ranching interests have spurred Nevada into calling on other western states to join in battle against federal dominion over state lands. Nevada's Legislature has appropriated $250,000 to back their challenge.

The Nevada action involves no less than 87% of the entire State. That's how much is now under federal dominion. In all western states the federal government controls 607 million acres. That much land is more than twice the area of all European countries combined. One-third of the State of Colorado is controlled by the federal government, and the percentage for other western states is eye-popping: 96.4% of Alaska; 66.2% of Utah; 63.7% of Idaho; 52.3% of Oregon; and 45% of California. The U.S. Government claims 64% of all land in 13 western states - in contradiction to constitutional prohibitions.

Nevada argues that the U.S. Constitution and historic court rulings show the U.S. government was supposed to hold these lands in trust and turn them over to the territories when statehood was achieved. The State wants the revenues from the vast acreage involved. Ranchers fear that Washington,

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NEVADA (cont.)

under pressure from environmentalists wielding lawsuits, will cut back grazing on public lands. Ranchers and miners are in a rage over congressionally ordered plans to create new wilderness areas.

Constitutionally and historically the law is on the side of Nevada. Sovereignty over lands and resources within the borders of each of the original thirteen colonies, which by constitutional compact created the Union, is clearly set out in the Declaration of Independence:

> **"We, therefore, the representatives of the United States of America in General Congress assembled...solemnly publish and declare That these United Coloni[illegible] are, and of right ought to be free and independent states...; and that as free and independent states, they have full power...to do all other acts and things which independent states may of right do."**

Significantly, Article II, Articles of Confederation, adopted by the Continental Congress 15 November 1777, confirmed the sovereignty of each state.

> **"Each State retains its sovereignty, freedom and independence and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States..."**

Further, Article IX provided that no state shall be "deprived of territory for the benefit of the United States".

At the time the Constitution became effective (1789) and the thirteen independent nations became a Union, each state had, and continues to retain, dominion, title, as well as jurisdiction of all lands within its borders.

> **"The internal sovereignty of these States was complete from the time they declared themselves free, sovereign and independent States and became thus entitled to all the rights and powers of sovereign states."** ***Harcourt v. Gaillard,*** **1827, 12 Wheat. 523 527.**

In a related case the Bureau of Land Management, attempting to appropriate coal under 91,780 acres of privately owned land in Alabama, has instituted litigation against 47 property owners and coal mining companies charging "trespass".

Mr. James Free, Washington correspondent for the BIRMINGHAM NEWS, stated in an article, "Lawyer Says State Owns Coal Lands in Dispute", 11 March: "But David Horton, a Carson City, Nevada Attorney and long time fighter against what he calls federal usurpation of state property, says that all this coal really belongs to the State of Alabama. And he cites the U.S. Constitution and an 1845 U.S. Supreme Court decision to back up his claim".

The Supreme Court decision cited by Horton came in the case of ***Pollard vs. Hagan.*** **At issue was an attempt by Congress to retain control over public land in Alabama and Mississippi as a condition to their admission into the Union.**

The two States refused to disclaim title to the public lands in their respective borders, and the issue was brought to federal court, which ruled that:

> **"The United States have no constitutional capacity to execise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state, or elsewhere, except in cases in which it is expressly granted."**

The high court also declared, "The right of Alabama and every other new state to exercise all the powers of government which belongs to and may be exercised by the original states of the Union, must be admitted".

Horton said this ruling has never been overturned and suggested that the Alabama Legislature use its power to "block the pretensions of Bureau of Land Management bureaucrats".

In Oregon Representative Curt Wolfer's House Bill No. 2430 defining, "title to 'public lands' be vested in the State of Oregon", received initial hearing 3 May 1979. Testifying in favor was Archibald E. Roberts, Lt. Col., AUS, ret., Director, Committee to Restore the Constitution.

Patterned after Nevada's original Senate Bill No. 398, the Oregon bill is undergoing m[illegible]ation in compliance with recommendations by members of the Agriculture and National Resources Committee, according to Mr. Michael Kelsay, Legislative Aide.

In Alaska Representative Ray Metcalfe's House Bill No. 398 claiming 'public lands' for the State, will be introduced when the legislature reconvenes on 14 January 1980, reported Ms. Jennie Noah, Administrative Assistant, Legal Services Division.

Nevada's Legislature has focused the attention of legislators and citizens on an issue of immense importance; enforcement of the U.S. Constitution within the borders of the State.

The Denver ROCKY MOUNTAIN NEWS, in an editorial of 10 June, "Landlord of West", concluded, "Should Nevada prove successful in its land grab, it could do more to change the physical nature of our nation than anything since the Louisiana and Alaska land purchases".

REGIONAL BUREAUCRACY PART IV

TRANSCRIPT OF TESTIMONY BEFORE JOINT INDIANA COMMITTEE ON CORRECTIVE LEGISLATION

CONTINUED FROM THE JULY CRC BULLETIN

One of the clearest examples of this can be found in the history of the Habeas Corpus Act which all lawyers take for granted today. But it was not always so. There was a time when six members of the British Parliament were seized on the streets of London and thrown into the Tower of London for refusing to vote the King's revenue at a time when all British citizens had a right of habeas corpus. But it was only after the British Parliament enacted the Habeas Corpus Act and gave effective process to the vindication of that right, that we today can enjoy that right of habeas corpus.

Similarly, so far as the limitation in the Constitutional compact is concerned, they are very plain and very clear and we have a millieu of examples of where federal agents have exceeded these expressly enumerated powers. The question for this legislature and for any legislature is to determine whether or not they are going to continue to implicitly ratify the unauthorized acts of its' agents.

So far as the acts of regionalizers in Indiana are concerned, they are acting as agents of the State, because they have no authority under the Constitution. The Constitution prohibits...

SENATOR EDWARDS: Excuse me, but do...what may be the theory of this act is one thing, and I think we all understand what you are striving toward and I am not trying to initiate a Constitutional debate or a legal debate between lawyers, which I happen to also be on occasion when I am not practicing the legislative practice, but what is the intent and what is in fact written before us and we are asked to consider as a document may vary. What you are saying to me and what I read in this document, are not necessarily the same thing. I am concerned as a technician that if in fact this does require us to make a judicial decision. I am still not satisfied that you have given me an answer to that question.

MR. HORTON: No, I am saying that you are making a finding, a legislative finding.

SENATOR EDWARDS: But you are asking us to declare something void.

MR. HORTON: This is correct.

SENATOR EDWARDS: And you don't consider that to be a judicial determination.

MR. HORTON: Oh, no. Just like the powers of contempt are not the exclusive province of a court. But legislatures have the

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[illegible] just the course so. Similarly if the legislature finds that there is an attempt in 11647 to exercise: (1) powers that were not delegated by this state in agreeing to the Constitution; (2) to exercise them in a manner that is prohibited by the agreement itself. In other words, being legislative in nature and being exercised by so-called Executive Order.

SENATOR EDWARDS: Let me ask you a question as a constitutional lawyer, do you not agree with the concept that the constitutionality of an Executive Order is well established?

MR.HORTON: Oh, heavens no. By no means. In other words, there is such a thing as a valid Executive Order. This is something where a head of a department, in this case the President, tells the Secretary of State or the Secretary of Defense what to do. But that's not the nature...

SENATOR EDWARDS: But, I think you are agreeing with me in the fact that we may be disagreeing or debating whether or not in fact this executive order is constitutional. But I think, if I understand the answer to your question, you are really saying that you do agree that the constitutionality of an executive order, assuming that we can both agree that the content is proper, is well established.

MR. HORTON: There is such a thing as a valid Executive Order, yes. 11647 happens to not be one of them.

SENATOR EDWARDS: That may be exactly right and the only thing that concerns me as a legislature is that you are asking us to make that determination and we are really crossing the separation of powers into the judicial branch of government.

MR. HORTON: Well, I think if you look at it as a question of defining what the problem is that you are addressing yourselves to legislatively, then you won't find the quandry or the qualms that many lawyers will feel. In other words, we lawyers are part of this problem. We continually think in terms of handling situations such as this by bringing a lawsuit. You have a client come into your office as a private practitioner with a problem. If you don't know what the answer is off the top of your head or you can't find it in a book, you say we can always put our nickel, or your thousand dollars as the case may be, into the slot machine of this litigation, pull the handle, it will come out jackpot or lemons.

SENATOR EDWARDS: Well, maybe you do that in Nevada. I don't know that we do that here.

MR. HORTON: I think in this particular case...

SENATOR EDWARDS: Paramutual has been declared unconstitutional in the State of Indiana.

MR. HORTON: I think that you will find this sort of thing go on in every law shop. The point, however, is in trying to address it in the terms that we ordinarily use as lawyers. We overlook the plenary power of the state in dealing with the basic constitutional infraction. And it is this that the statute is addressed to.

Now, if you feel, for example, that the description in the statute is too broad, it is perfectly feasible to single it out for specific use. For example, if it were addressed specifically to the actions of OSHA, you have probably had plenty of problems here, they have had plenty of problems in South Dakota for example, so much so have they had problems that they have solved their problems almost without a statute, but they are still coming in with a statute patterned after this that is addressed to the question of there being no authority in the federal agencies to address themselves to the general police powers exercised under OSHA. Therefore the act in South Dakota of the OSHA-crats can be, and if the bill passes, will be made a criminal act. And it will also provide several remedies for its enforcement.

SENATOR EDWARDS: I would point out in Indiana we're still attempting to fight regionalism and federalism by using Indiana's own version of OSHA and operate under that rather than under the federal...

MR. HORTON: Well, I don't know whether that's necessarily fighting... Of course it's... if you are going to have to take a pill like that you may prefer to have one with a local sugar coating. But when the shots are called, by the life tenure bureaucrats and in an area that is specifically prohibited to them by the Constitution, then it is whether you have a formal OSHA bill in Indiana or not. It is, again, the state power that is being used or misused in these areas.

SENATOR EDWARDS: [illegible] I don't think you and I basically disagree in conceptual arguments on federalism. I think my concern is one of a technical nature as to the nature of this bill. I won't utilize all the time. Representative Becker, you indicated you had a question.

REP. BECKER: Thank you, Mr. Chairman. I don't care who answers this question. Somebody that is learned in the particular bill.

We as legislators are sworn to uphold the Constitution. One of the things that we are not able to legislate is a criminal act that is vague. The Constitution has been interpreted to say that any criminal law cannot be vague. In other words, the man on the street has to know what the law is so that if he does commit the crime he does know at the time that he is committing a crime.

Now, my qustion with the bill that is before us today deals in that area and section II says "any act by branch or agency of the federal government purporting to group a state or states into a 'so-called region' is void in Indiana" and then the penalties come afterward.

My question is, can anybody please describe for us, and the list may go on and on and on, but, what is a so-called region so that the citizens of the State of Indiana and the elected officials would know when they are treading upon this criminal activity.

MR. HORTON: I think that in the front of the April '78 issue of the Committee of Correspondence of the Committee to Restore the Constitution, you will find identified in the broad black lines the various regions that are referred to in Executive Order 11647 and it means that if you have an effort after Senate Bill 100 becomes law, for example, in Region V, I believe it is, for governmental powers to be exercised that have an effect in Indiana, even though they may have an effect in Illinois, where they may not object to it, or in Wisconsin where they may not object to it. If it has an effect in Indiana to this precise extent, the Constitution is being violated because the states, in spite of its prohibition, are being combined to that precise extent. In that respect it is an additional violation of the Constitution.

Now, that would be prohibitive conduct. Examples of it will depend upon what they are trying to do. But if they are trying to, by means of Executive Order 11647, exercise any kind of governmental power on a regionalistic basis then they had better stay out of Indiana.

Now, so far as whether or not to modify Senate Bill 100 in order to limit its scope. This concern of not having specifically defined criminal acts set out, is something that can be handled very nicely by using, let's say, an OSHA modification. You can have an EPA modification if they are giving you some trouble there.

I learned at the first meeting of the interim committee that you were even having a public land problem. We've got a dandy bill in Nevada that will do the trick beautifully.

The important thing is not that all bases be covered, but that a base start to be covered. Once the state starts to use its legislative powers to correct constitutional infractions, the writing will be plainly on the wall. I anticipate that if, let's say, the Public Lands Bill goes through in Nevada, that our BLM bureaucrats who try to control 86% of the State will come to the office, if they don't transfer them out, which is option number one. They will take the phone off the hook, they will lock the door behind them and they will sit there and read funny papers rather than run the risk of being accused of the prohibitive conduct that is in the proposed Senate Bill 398.

Now, this is perfectly precise enough to stop the type of prohibited conduct that you are trying to arrest. We haven't tried, even in the Lands Bill, to cover all of the areas that public lands are involved in. We left out the so-called 'green hornets'. The Forest Service. But it was thought to be technically completely immaterial whether they were put in or weren't put in, because they would realize that in the definition of what lands this bill applies to. Two words alone would be needed in the event the Forest Service continued to get out of line.

So if you make a start and cover one base, take any base you want, if you make a start and start to correct the constitutional infractions in any area, you will find that the benefits of that permeate the entire state and a lot of your problems won't arise.

REP. BECKER: You would agree then that this is vague. As the bill is written here.

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MR. HORTON: I don't feel that it's vague because if you look at 11647 and see what they are trying to do and you lay that along side of...

REP. BECKER: Excuse me, this bill doesn't... preamble... But the law itself, that part that the elected officials are going to be held accountable for says "any act by a branch or agency of the federal government purporting to group a state or states into a so-called region" and anybody that is an elected official that purports to enforce or uphold, which I think would mean anybody that has a dealing with that, would be committing a crime in the State of Indiana.

Now, I would tend to agree with what you are saying at the last, and maybe we would be better off picking a few examples and saying that is bad and unconstitutional and we're not going to support that in the State of Indiana. I personally have a problem with the language being too vague and that if we do anything we end up being declared unconstitutional to begin with.

MR. HORTON: What ever you feel comfortable with is the thing to go with. The important thing is not to try to fix all infractions in one fell swoop. The important thing is to start and if you start in one little corner you will find that the whole picture begins to improve.

SENATOR EDWARDS: Senator Peterson.

SENATOR PETERSON: Senator Edwards, ladies and gentlemen, I appreciate your testimony very much. I am not sure who may want to answer the question, whomever feels that it is most appropriate.

I think all of us share your concern for bureaucracy whether it be at the federal level or the state level. I think all of us encounter bureaucracy at the local level. Senator Edwards and Representative Becker's questions are very much legal points that I think are well taken and should be well considered by your group.

I'd like to ask you a question about the thrust of your philosophical approach. Mr. Dodd's remarks concern me somewhat. I think there will be legislation passed in this General Assembly that may well be unconstitutional and there may be aspects of what you are fighting against that may well at some time be unconstitutional. Yet, I don't think there is a legislator in this General Assembly who is involved in any conspiracy to destroy mayors or county commissioners. Isn't it possible that what you are fighting against is a difference in philosophy? But when you come to us and find a conspiracy dating back to prior, to World War I, to destroy our government, beginning with the various foundations, do you consider the various Presidents from Wilson forward to be a part of that conspiracy or do you consider them duped by that conspiracy? Or is it possible that it is not a conspiracy, that within our great government, exist people who differ in philosophy and at one time or another we have the federal government or local governments or even state government extending themselves beyond their constitutional limits?

MR. HORTON: I think you are going to get two barrels on this. Col. Roberts has indicated he wants seconds.

I would say that it is not entirely by any means the result of a conspiracy. Many things happened that are not a result of a conspiracy. However, I think the best way to gauge what they are up to is by what they say themselves. In this case the Carnegie-Hiss Foundation, they call it the Carnegie Peace Foundation, but as Mr. Dodd has pointed out to you they were engaged in other activities that explain not just the original objectives of those who formed it, but some of the very anomalous conduct of such presidents as Nicholas Murray Butler and various others who have preceded to use this grant-making power in a way where I think it could best be described as a conspiracy.

However, this is immaterial as to whether or not the state can or should do something about it. The basic question is what is the end result. If the result is something that goes against the basic structure of constitutional limitation and the authority and responsibility of elected officials to keep their powers, not because we locals are perfect, but because we are more accountable and also we are more lawful. A state legislature is a plenary body. It has all legislative powers unless it is prohibited by either the state or the federal Constitution. The exact reciprocal is the case with Congress. Yet we find the Congress legislating in all kinds of different areas. Or pretending to. They [illegible] any other state as long as the body having the authority to speak for the state in its highest sovereign capacity, does nothing. They don't need any authority under the Constitution because they can get all the authority they need from usurpation.

But usurpation is a bilateral act and it is not necessarily the result of conspiracy. Even when good-meaning people and sometimes they are the most dangerous, come forward and undertake to exercise governmental powers that are prohibited under the Constitution, because they have such pure motives and humanitarian aims. Sometimes they can do a lot more damage than the actual scoundrel who is merely trying to line his pocket. I'd a lot rather deal in law enforcement with a scoundrel than with a fool.

Similarly, when it comes to determining whether it is a philosophical difference or whether it is the result of people putting their heads together, conspirators curiously enough, tend not to let us in on their secrets until after it is too late to remedy the deprivations. Consequently, even the law of conspiracy is governed by inferences, circumstantial evidence that you can't use in other types of crimes, for example. Because of the covert nature of it. But from the legislative standpoint, it is completely immaterial as to whether it is the result of a conspiracy or not. The question is does it violate the terms of the compact and if it does, do you want to continue to ratify it?

I'll pass this over to the Colonel.

COL. ROBERTS: Mr. Chairman, I would respectfully recommend the refocusing of the members of this Committee on the reality that now confronts us, namely, that we are involved in a revolution.

I do not believe that it is pertinent to discuss the detail as to whether or not this body, at this point, has authority to deal with revolution. I believe that it is clearly the responsibility of this body to deal with the revolution called federal regionalism. It is obviously going to deteriorate into a much more serious aspect unless something is done. The fact that federal regionalism itself is a conspiracy, I think, is evident. It is evident from not only the material that we have provided this evening, but in the documents that are presented to the two Committees.

One of these is the Newstates Constitution. The Newstates Constitution is the result of ten years of study by the Center for the Study of Democratic Institutions in Santa Barbara, California. That study was funded by the Ford Foundation in the amount of two and a half million dollars a year for ten years, an investment of twenty-five million dollars. The preparation of this Newstates Constitution, which is to replace the Constitution of the United States, is prima facia evidence that we are dealing with a revolution of such magnitude that it cannot be ignored by this or any other state legislative body. It is a conspiracy. It is funded by those agencies which do have vast financial resources and political authority available to them. Namely, the vast reservoirs of money collected under the tax exempt foundations.

It is therefore the responsibility of courageous men and women in this legislative body to challenge the conspiracy, to call a halt to the march toward dictatorship. To expose and to explain that this Newstates Constitution is a reality and that it is the objective to call a constitutional convention in the Congres of the United States for the purpose of introducing this Newstates Constitution.

This Newstates Constitution, incidentally, is taken out of "The Emerging Constitution" by Rexford G. Tugwell, who is the principal author of the Newstates Constitution. Those of you who are familiar with Rexford G. Tugwell, realize that he is a Socialist and that this new Constitution does reflect a Socialist government for the United States of America to replace elected officials in the Congress with appointees under regional government. To give color of law, to validate the regional concept by the merger of the states into the ten federal regions.

These are conspiracy movements. They are funded, as Mr. Dodd so eloquently pointed out, by the tax-exempt foundation families who began this conspiracy at the turn of the century.

It is within your powers to reverse this revolution and to restore control of government to the people of Indiana where it properly belongs.

end

ALTERNATE FUEL BILL HEADS FOR CONGRESS

A major bill requiring utilities to switch from oil and gas to alternatives such as coal and nuclear power will be sent by the Administration to Congress, says Deputy Energy Sec. Sawhill. He says the measure will call for $12 billion in grants and subsidies to utilities in its initial form to ease the financial burden of converting electric power plants to alternative fules.

The bill also is expected to compensate utilities that must shut down existing oil and gas plants and build new facilities using other fuels. Sawhill said the Administration's efforts on energy are now concentrated in four areas: discouraging the use of oil by utilities, building a natural gas pipeline from Alaska, promoting residential and commercial energy conservation, and speeding up offshore oil and gas leasing.

If the Administration does not forward the proposed legislation, the Senate Coal Caucus says it intends to move forward with a bill of its own.

Twenty members of the Coal Caucus joined in signing a strongly-worded telegram to the President which expressed a growing frustration with the lack of Administration action. The telegram noted that time is running out if a bill is to be considered this year.

In a seperate development, Sen. Robert G. Byrd (D-WV) urged Carter not impose "unrealistic environmental restraints" on utilities wishing to switch to coal. Byrd, in a telegram to the President, said that such restraints "could seriously jeopardize the passage" of any coal conversion legislation by Congress this year.

BUREAU OF MINES ISSUES NEW COPPER REPORT

The Bureau of Mines released a report February 9th estimating the domestic copper reserve at 92 million metric tons, with about 74 million tons recoverable using current technology. The report is the first in a series of Minerals Availability Studies (MAS) to be published by the bureau, and it is intended to be used to analyze the supply of foreign and domestic minerals and to "provide data for the formulation of mineral policy." The report notes that "provide data for the formulation of mineral policy." The report notes that the U.S. is importing increasing amounts of copper, "largely because copper prices are not high enough to permit continued operation of many American mines." It concludes that "a copper price of $2.07 per pound would be required if all properties, producing and nonproducing, were at least to break even"

POND DESIGN RULES NEED MORE TIME

The Joint NCA/AMC Committee on Surface Mining Regulations this week urged OSM to defer development of design criteria for sediment ponds until EPA develops additional technical data relating to effluent limitations for total suspended solids.

NATIVE CORPORATIONS

Continued from page 9

In the area of resource development support activity, a joint venture agreement nearing completion at press time will link CIRI and Grandmet Development Co. Ltd., an English catering and housekeeping firm. Grandmet has experience in serving oil-related fields worldwide, particulary in the Middle East and the North Sea. The joint venture plans to bid for contracts in connection with such projects as the Prudhoe Bay oil field, Alpetco, Pacific Alaska, LNG, as well as local work.

In April 1979, CIRI formed a business venture with Homes and Narver, Inc., a large international planning, design and civil engineering firm. The agreement was to combine efforts in offering development, construction and management services on Alaska land and natural resource-related projects. In addition to look at CIRI's own holdings holdings, the venture offers its services to other Native corporations, private enterprise and government agencies.

The first major contract for Holmes and Narver/CIRI agreement was signed in early January with Acres American, the firm conducting the three-year Susitna dam feasibility study for the State of Alaska. The CIRI/Holmes and Narver subcontract will include logistics and construction and support of the camp as well as basic civil work. Folded into CIRI's involvement is an agreement with the villages of Knik and Tyonek to provide labor and management for construction and maintenance of the camp.

In 1980, the CIRI/Holmes and Narver joint ventures will focus on Northwest Alaska's pipeline camp maintenance and operation needs. Alpetco's civil planning, engineering and design needs, Pacific Alaska LNG's planning needs, particularly in the required pipeline feeder systems, and Arco's maintenance and operations needs in the Kuparuk oil field.

CIRI-selected lands contain a significant limestone deposit, chrome,

Continued page 14

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STATES MOVE ON 'SAGEBRUSH REBELLION'

While Washington attempts to discourage talk of the 'Sagebrush Rebellion, several Western states are preparing to join Nevada in challenging federal ownership of public lands.

Utah is expected to be the next state to pass legislation, probably within 10 days. The legislature has voted by over a two-thirds margin to consider the measure, an indication the bill has enough support to pass. And Gov. Scott Matheson (Utah) has endorsed it after receiving an economic feasibility study saying state ownership of public lands would be wise in the long run.

Bills have been or are about to be introduced in Arizona, New Mexico, and Wyoming. Study bills may move in California and Idaho. In the latter state, the Senate passed a study bill January 31 by 19-16. However, Gov. Thomas Judge (D) opposes the concept, which doesn't bode well for the measure.

The California legislators passed a study bill last year but it was vetoed by Gov. Jerry Brown (D). He may get another chance.

Meanwhile the staffs of key Congressional Democrats and administration officials continue to talk negatively of the chances of the state challenges. They believe the Nevada challenge founded on an eventual Supreme Court decision has little substantive merit. And they are almost certain Congress will not pass legislation to transfer federal lands to states.

But that doesn't mean the Sagebrush Rebellion isn't taking its toll. Supporters of the rebellion admit a principal – if not the principal – reason for the rebellion is to make federal agencies go overboard in meeting the rebel's complaints. No doubt that is working.

And Bureau of Land Management (BLM) Director Frank Gregg revealed frankly the Interior Department's nervousness to the National Public Lands Advisory Council January 29. Gregg said the department has debated whether to take the initiative and seek a declaratory judgement against the Nevada law to forestall an eventual Supreme Court challenge.

"The feds are pretty confident about how the case would come out," said Gregg. "But they are worried what would happen if a court made its decision on a procedural issue."

Arguing before the public lands council for the states was Nevada state legislator Dean Rhoads, one of the principal architects of the state bill. Rhoads characterized the state move as "not a seizure of land but an orderly legal challenge."

Rhoads said the state would have its next legal maneuver figured out by the end of the year when the state legislature may be asked to finance the next step in the challenge.

Meanwhile, legislation (S 1680) introduced in the Senate by Sen. Orrin Hatch (R-Utah) is apparently going nowhere this year. In the long term Senate Energy Committee staff member Mike Harvey held out little hope for the measure. He said the Western states, excluding California, only provided 32 votes in the House. Why, he asked, would House members from other areas want to give up those lands?

Although the Nevada law does not specifically lay claim to national forest land, other states are expected to. At any rate a successful legal challenge by Nevada on BLM lands would automatically apply to national forests.

208 PROGRAM

Continued from page 10

A Forest Practices Training Program for the timber industry and government is also outlined and the final project is for an industrial sludge disposal program.

YOU MAY STILL HAVE TIME TO ATTEND PLACER CONFERENCE

By the time you receive this issue of The Miner, you may still have time to attend the Second Annual Conference on Alaska Placer Mining, April 7 and 8 at the University of Alaska Campus at Fairbanks.

Registration is $20, dormitory rooms may still be available at $15 and $20 and there are two luncheons and a banquet scheduled at a cost of $32.

Monday's session calls for talks on Geology of Placer Deposits; Classifi-

Continued page 13

APPLICATION OR RENEWAL FOR MEMBERSHIP
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509 W. 3rd Avenue, Suite 17, Anchorage, Alaska 99501
(907) 276-0347

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PHONE (   ) ____________

DATE ____________

If operator or corporate, designate two officers: ____________________

____

____ Individual $20.00
____ Professional $50.00
____ Mining Operator $100.00
____ Corporate: Local or Service Industry $100.00

Introduced: 1/16/80
Referred: State Affairs and Finance

IN THE SENATE BY HACKNEY AND ZIEGLER

SENATE CONCURRENT RESOLUTION NO. 42

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

Urging the Governor to support Nevada's legal challenge to federal control of public land in that state.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS over 90 per cent of all federal land is located in 12 western states; and

WHEREAS federal land in the western states is subject to overregulation and undue restrictions imposed on its use by the federal government; and

WHEREAS the constant changes in federal regulations and the resulting confusion have created arbitrary and unreasonable limits to community growth, agricultural, mineral, energy and recreational resource development; and

WHEREAS the western states were not admitted to the Union on an equal footing with the original 13 states which retained a majority of their land in state ownership; and

WHEREAS the State of Nevada has initiated a proper course of action leading to a responsible legal challenge to federal land policies by enacting legislation which declares state ownership of certain federal land; and

WHEREAS the State of Alaska is in a similar position to the State of Nevada, since, apart from Native-owned land, less than one third of one per cent of Alaska's land is in private ownership;

BE IT RESOLVED by the Alaska State Legislature that it supports the concept of the Nevada challenge to federal control of its land; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully urges the Governor to join Nevada as a "friend of the court" if a federal court test of the Nevada statute is initiated.

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DANIEL W. WESTERBURG

*ADMITTED IN D.C.

January 3, 1980

Myrton R. Charney, Esq.
Executive Director
Legislative Affairs Agency
Pouch Y - State Capitol
Juneau, Alaska 99811

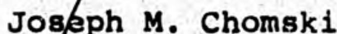
Dear Myrt:

We are well into the "Sagebrush Rebellion" report that we are completing under contract to the Legislature. The report is due on or about the day the next Legislature convenes, but we would like to request an extension to January 28. This short extension would allow us to have the report in a polished form that we believe will be in everyone's best interest. If need be, we can produce a report by mid-January, but once again, our preference would be to add the extra time. Please respond as to this request.

Thank you for your consideration.

Warmest personal regards and
Happy New Year,

BIRCH, HORTON, BITTNER & MONROE



Joseph M. Chomski

cc: Honorable Mike Colletta
Honorable Bill Miles
Honorable Joe Hayes

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*ADMITTED IN D.C.

January 3, 1980

The Honorable Patrick Rodey
Alaska State Senate
601 W. 5th Avenue, Suite 820
Anchorage, Alaska 99501

Dear Pat:

We are well into the "Sagebrush Rebellion" report that we are completing under contract to the Legislature. The report is due on or about the day the next Legislature convenes, but we would like to request an extension to January 28. This short extension would allow us to have the report in a polished form that we believe will be in everyone's best interest. If need be, we can produce a report by mid-January, but once again, our preference would be to add the extra time. Please respond as to this request.

Thank you for your consideration.

Warmest personal regards and
Happy New Year,

BIRCH, HORTON, BITTNER & MONROE

Joseph M. Chomski

cc: Honorable Mike Colletta
Honorable Bill Miles
Honorable Joe Hayes

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January 25, 1980

The Honorable George H. Hohman
Chairman
Alaska Legislative Council
Pouch Y
Juneau, Alaska 99811

Dear Senator Hohman:

Pursuant to our contract with the Legislative Affairs Agency, we are hereby tendering our report on the "Sagebrush Rebellion". The report should reach you on January 28, 1980, which is the amended deadline for its submission. We hope the report is satisfactory and adequately describes the issues covered in the Statement of Work clause of the Contract.

During the period in which we were conducting our research, a question arose as to whether or not the report should include a section covering the following issue: What rights do the State of Alaska, the Alaska Legislature and/or individual legislators have to intervene in existing Sagebrush Rebellion litigation commenced by other states? The Alaska Attorney General's office felt that our opinion should not be included in this report, but some opposite sentiment existed in the Legislature. It is my opinion that an honest misunderstanding or omission occurred during the writing of the contract that caused this disagreement. We have resolved the conflict thusly: we have not included our analysis in the bound copy of the report, but we are submitting with the report a memorandum to the Legislative Council that contains our conclusions on the subject (see attached memorandum). We hope this solution satisfies all parties.

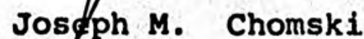
We have honored the "confidentiality of communications" section of the contract by releasing no copies of the report other than those attached. We will hold the report confidential until it is made public by the Legislative Council and distribution is permitted. We have had requests from the attorney general offices of several western states for a copy of the report upon completion, but will not provide it to them until so authorized by the Legislative Council.

I believe this completes our responsibilities under the contract and will assume so unless informed otherwise by you.

We appreciate your granting us the two week extension and your understanding in resolving some prior communications problems. We have enjoyed working on this matter and stand ready to assist the Legislative Council in any future matters upon request.

Cordially,

BIRCH, HORTON, BITTNER & MONROE



Joseph M. Chomski

JMC:brk

Encls.

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MEMORANDUM

To: ALASKA LEGISLATIVE COUNCIL   Date: January 28, 1980

SAGEBRUSH LITIGATION INTERVENTION

Assuming Nevada or another western state initiates litigation (or has initiated litigation) against the United States to determine the status of unappropriated federal lands, the question arises as to whether the State of Alaska, the Alaska Legislative Council, or individual legislators would be permitted to intervene in the suit.

There is no federal statute providing any of the potential intervenors the right to intervene. Federal Civil Rule 24(a)(2) reads as follows:

> . . . anyone shall be permitted to intervene . . . when the applicant claims an interest relating to the property . . . which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. [emphasis added].

Since none of the potential Alaska intervenors has a specific interest in the public lands of Nevada, no right to intervene would exist. However, Civil Rule 24(b) provides for permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common."

The rule also provides that the court, in exercising its discretion to allow intervention, shall consider whether the intervention would unduly delay the original action. If the court felt the presence of intervenors would be helpful to it, and that there would be no prejudice to the original parties, the question of intervention might be decided favorably, although it must be emphasized that this is a matter almost entirely within the trial judge's discretion.

The "standing" of the intervening parties poses a more difficult question. Many of the western public land states, including Alaska and Nevada, are in the Ninth Judicial Circuit. The U.S. Court of Appeals for the Ninth Circuit ruled in U.S. v. Imperial Irrigation District, 559 F.2d 509 (9th Cir. 1977), that the intervenors need not have the standing necessary to have initiated the original lawsuit; however, most jurisdictions require standing before intervention is allowed, and standing is required even in the Ninth Circuit to participate in an appeal.

"Standing" is generally defined as a "direct personal stake in the outcome of the controversy" so that its resolution focuses on the party seeking relief, and not the issues to be decided. By these standards, it is probable that the State of Alaska would have standing to intervene as a proprietor, in order to have its claim to unappropriated federal lands within Alaska decided in the same court action as the original suit. On the other hand, the State of Alaska may not want a district court judge in Nevada or Utah deciding the ownership of land in Alaska.

The standing of individual legislators to intervene as legislators (rather than as citizens) is more problematical. Standing is always granted when a legislator asserts injury to a right granted to legislators, such as the right to be seated after election. The U.S. Supreme Court has ruled that while the more indirect and derivative injuries commonly alleged do not necessarily preclude standing, they "may make it substantially more difficult to meet the minimal requirements" for standing.

While the constitutional duty of developing or conserving natural resources in Alaska is given to the Legislature, the day-to-day responsibility has been statutorily delegated to the Executive Branch. Previous federal cases have held that the right to operate "effectively" as a legislator does not confer standing. Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977). It is likely that the Alaska Legislature's constitutional mandate would be found to be too subjective and prospective to give individual legislators standing to intervene in the action presently pending in Nevada, or in similar cases which are being contemplated.

In Croft v. Thomas, C.A. 76-997, the Superior Court in Juneau ruled that the Alaska Legislative Council lacked the authority to sue without a specific authorization by legislative resolution. Even armed with a resolution, the Legislative Council would have no better standing than the Legislature as an institution. Thus, the constraints noted above would probably result in a ruling of no standing.

It is common practice for courts to allow parties who lack standing to participate as amicus curiae ("friend of the court"). In matters of public concern, the courts usually allow amicus participation in the form of briefs and memoranda, and sometimes oral argument. The ultimate decision does not bind the amicus party, but it stands as judicial precedent and, if rendered by the U.S. Supreme Court, substantially binds any trial court which would later hear the claim of the amicus party.

We conclude that there is little likelihood that the courts would allow the Alaska Legislature, individual legislators, or the Alaska Legislative Council to intervene in the Sagebrush Rebellion litigation, but that amicus participation might well be ruled in order.

A more detailed legal analysis is available on request.

BIRCH, HORTON, BITTNER & MONROE

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NEW YORK, N. Y.
MONTHLY 194,000

SAGA

FEBRUARY 1980

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D-2 Land

THE SAGEBRUSH REBELLION

For over 100 years, more than 60 percent of all the land west of the Rockies has been owned by the federal government. A recent tightening of Washington's grip on this land has some states talking secession from the Union.

By Bill Endicott

Elected public officials from across the West gathered in Reno, Nev., not long ago to map strategy for what U.S. Sen. Orrin G. Hatch of Utah told them would go down in history as the "second American Revolution"—destined to emancipate the West from "economic and political control" by Washington.

Hatch can be excused a bit of hyperbole—he was, after all, playing to his fellow westerners—but there is no question that his comments reflect a strongly populist, anti-Washington fever that is sweeping across the West like a wind-whipped prairie fire.

At the heart of the discontent is land—lots of it. The federal government has it. The states want it. And they have put together what has become popularly known as a "Sagebrush Rebellion" to get it.

"Throw off the shackles," Hatch told the officials, "in which the federal government now holds the destiny of the West—ownership of the public domain."

What has triggered the rebellion is a growing maze of federal rules and regulations, implemented and enforced by the Bureau of Land Management, that has sharply restricted access to federal lands by ranchers, loggers, and miners.

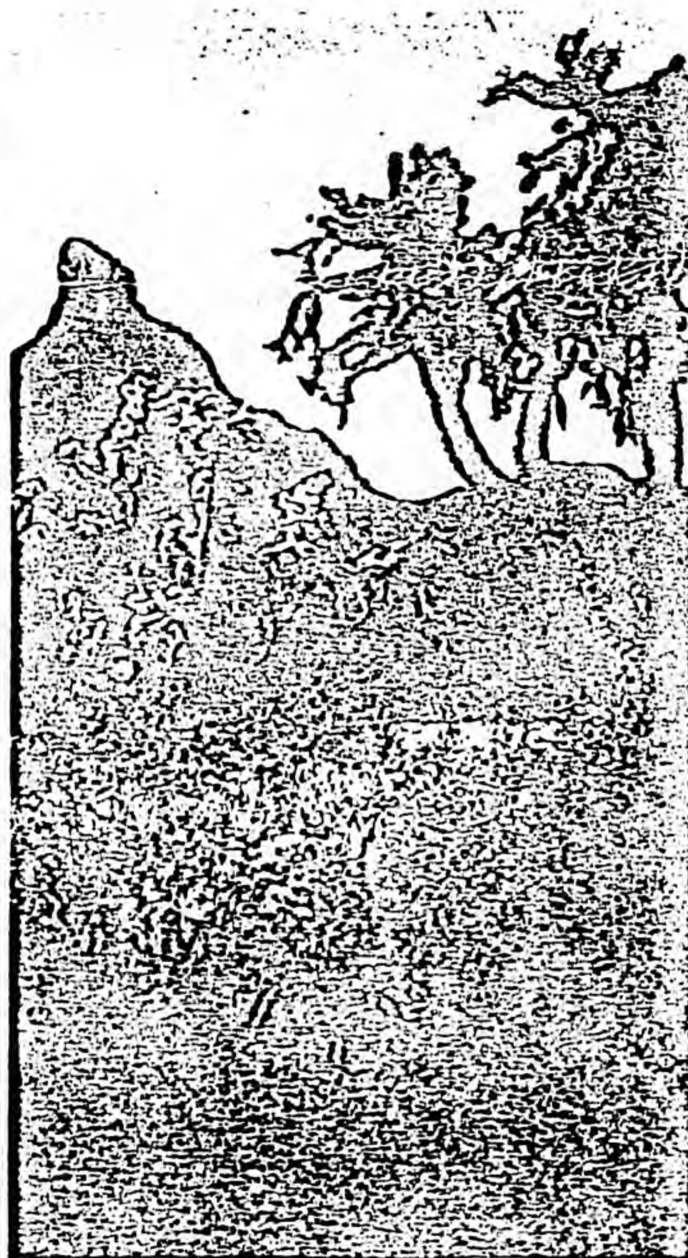


Photo by Shelly Grossman/Woodfin Camp

In southern Utah, for example, a cattleman who has leased federal land for grazing is told that next year he will get no grazing allotment.

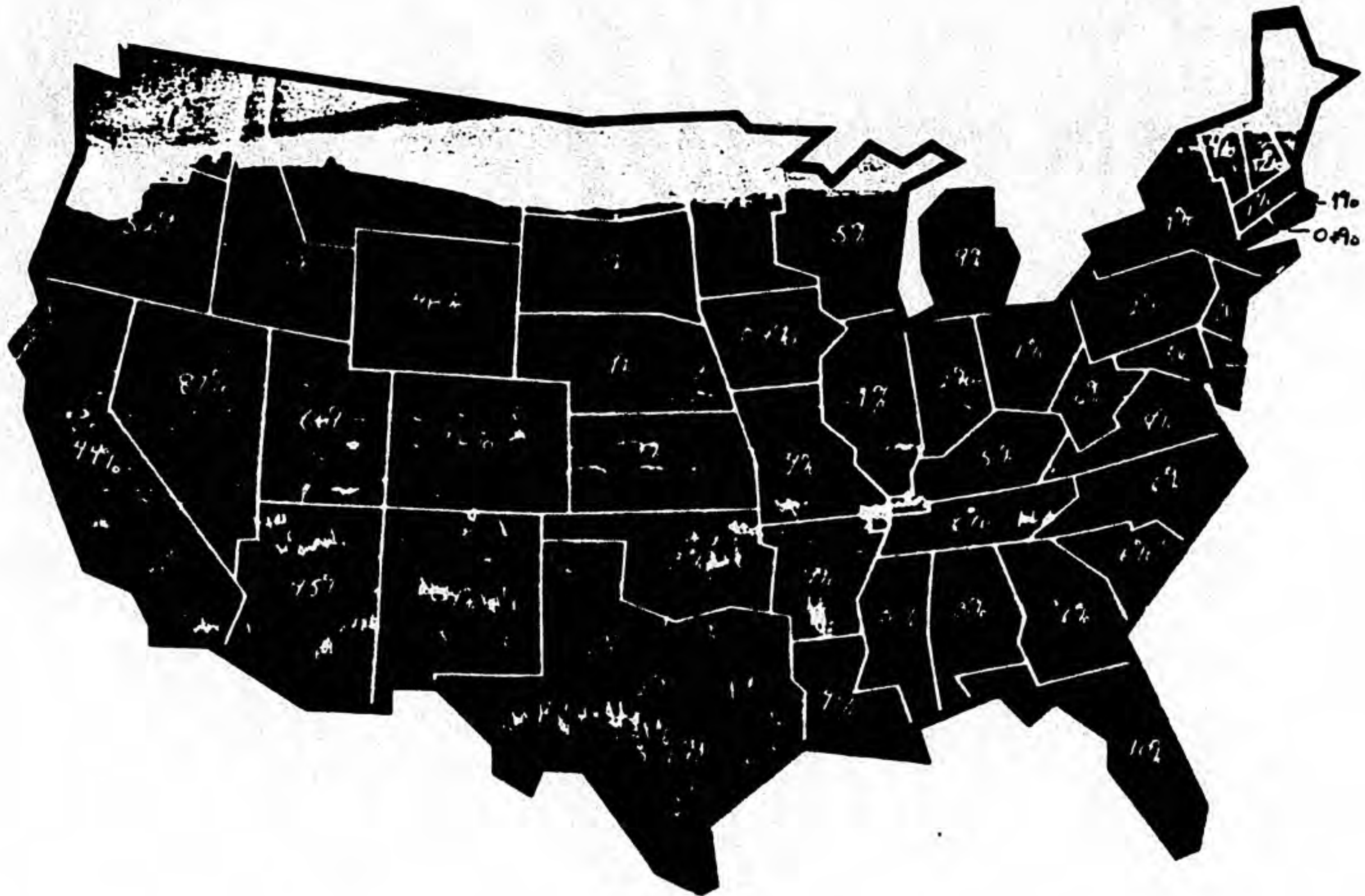
An Alaskan mining company, after sinking millions of dollars into a patented mining claim, is shut off from its claim by a wilderness review ordered by a federal court thousands of miles away.

In Idaho, a rancher who is losing his cattle to coyotes is told by the federal Environmental Protection Agency that he cannot poison the coyotes.

"It is time," said Nevada State Sen. Norman Glaser, a rancher, "to wrest the land from the perfidious absentee landlord who resides along the banks of the Potomac. Nobody can convince me we couldn't do a better job and couldn't be better stewards of the land ...than they can in Washington."

The increased national emphasis on synthetic fuels and the raw materials that are especially abundant in the West for producing them has fed the states-right revolt in recent months but it actually had its genesis in the passage by Congress in 1976 of the Federal Land Policy and Management Act.

FEDERAL LAND OWNERSHIP, STATE BY STATE



That act directed the Bureau of Land Management to hold public land "in perpetuity" instead of systematically disposing of it—unless a sale would be in the national interest—and mandates the use of public lands to benefit all Americans—vacationers and wildlife enthusiasts as well as ranchers, miners, and loggers.

Compounding the problem—adding insult to injury, the westerners would say—was the U.S. Forest Service's institution of an inventory of land under its jurisdiction with the goal of recommending to President Carter and Congress how much of its acreage should be set aside in wilderness preserves, in the meantime placing the lands under study off-limits to resource development and other uses.

Sagebrush rebels began their campaign earlier this year in Nevada, where the state legislature passed, and Gov. Robert List signed into law, a bill asserting state sovereignty over millions of acres of federal land. But other western states since have embraced the concept and some have indicated they will join Nevada in attempting to provoke the U.S. government into a lawsuit over the issue.

List conceded it was difficult to assess the state's chances of making its legislation stick but said it at least would "provide an opportunity to place the matter of control of the public domain at issue... Generally, I endorse getting as much of the productive land as feasible into private ownership." And he said Nevadans deserved more input into use and control of federal lands "before the federal government places new rules and regulations into effect."

Across the West angry Nevadans have distributed big orange and black buttons with the spiteful words: "Welcome to the West. Property: U.S. Govt."

In Alaska, some frontier-spirited residents have formed a group called Alaskans for Independence and are promoting secession. Their slogan is "Alaska for Alaskans."

Bill Endicott is chief of the San Francisco bureau of the *Los Angeles Times*.

Photo by Shelly Grossman/Woodfin Camp

Alaska Lt. Gov. Terry Miller said recently that rebellious residents of his state, outraged by "ignorant and arrogant husbandry by a distant and often uncomprehending federal government," have gone so far as to threaten to shoot any federal agent who tries to stop them from hunting and fishing o land set aside by the President last yεar for national monuments.

"The Mason-Dixon line has shifted," Miller said. "It runs north-south now, separating the eastern states from an increasingly isolated, angry West. Alienated by federal policies on land, energy, and water, the West has won from the South its traditional title as America's regional underdog....

"Nobody disagrees that the vast open spaces and natural treasures of the West should be preserved for future generations. However, the race to save us from ourselves by federal bureaucrats, resulting in wholesale wilderness allotment, is punitive—to the land as well as to man."

There is no evidence, however, that the federal government intends to give up the land without a fight—and it would seem to have precedent, and the law, on its side.

When the western states started to trickle into the Union in the mid and late 1800s, one of the conditions for statehood imposed on them by the federal government was that they give up any future claims to the federal lands that were left within their borders.

There was so much land and so few people that nobody gave much thought to such agreements in those days and even when Alaska finally became a state just 20 years ago it compliantly wrote into its state constitution, just as other western states had done before it, a section forever disclaiming "all right and title in or to any property belonging to the United States...."

However, Nevada and its sister states now claim they were blackmailed into surrendering control of the land, something that was not required of eastern states. As a result, they did not enter the Union on an "equal footing," and that, they claim, was a violation of the federal Constitution.

At stake are an estimated 700 million acres (over one million square miles) of land—virtually everything the federal government owns in the West and Alaska that is not already set aside for military compounds, Indian reservations, and public parks—which constitute 93.5 percent of all land now controlled by Washington.

More than 86 percent of the land in Nevada is owned by the federal government. California is 45 percent federally owned, Arizona 43 percent, Colorado 36 percent, Idaho 64 percent, Montana 30 percent, New Mexico 34 percent, Oregon 53 percent, Utah 66 percent, Washington 29 percent, and Wyoming 48 percent. In Alaska, more than 96 percent of the land is in federal hands.

"I take the concerns that drive the Nevada action very seriously," Guy Martin, an Alaskan brought to Washington as Assistant Secretary of Interior for land and resources, told the Los Angeles *Times* recently, "because I understand there is a great deal of frustration. But it's very difficult for me to take the specific act (the Nevada sovereignty law) seriously. It's almost inconceivable that Nevada could prevail."

Martin and the Interior Department's associate solicitor for energy and resources, John D. Leshy, said it would take "a major reversal of past law" for Nevada—and thus the other states—to win its case.

"The Nevada Constitution says its people disclaim all rights and title to land other than what was deeded to it at statehood," Leshy said. "There is similar language in the constitutions of all western states. The Supreme Court traditionally has held those kinds of agreements are binding."

But New Mexico's chief deputy attorney general, Tom Dunigen, said the states have to make it clear to the federal government that if there is any chance at all of success "we're going to have to go ahead with it." And Hatch, the Republican senator from Utah, is attempting to help the movement along with a bill in Congress that would permit the western states to take title to the federal land.

Rep. Morris K. Udall, a Democrat from Arizona and chairman of the key House Interior Committee, has taken a dim view of the Hatch bill and recently had a discouraging word for the westerners. The Sagebrush Rebellion is not going anywhere in Congress, Udall said.

But Hatch had an answer for that. Any western congressman or senator who (Continued on page 71)

(Continued from page [illegible])

adopts such an attitude, "ignoring the will of the vast majority of people," the senator said, is in danger of "losing his position in government." The rebellion might go on for years, he said, but "we think it's a winable battle."

There is not complete unanimity in the states, however, and Gov. Edmund G. Brown, Jr. stymied the rebellion in California recently by vetoing a bill modeled after the Nevada legislation which had been sponsored by a southern California assemblyman. Brown said that before authorizing any effort by the state to take over federal lands in California there should be a review of state land management practices.

"The federal as well as the state management of land within California," he said, "is not what it should be. As stewards of the future, we should direct our attention to improving land management as we debate which jurisdiction should legally control."

Some public officials in Nevada and elsewhere also have spoken out against the rebellion. Among them is Nevada State Sen. Clifton Young, who reflected the sentiments of many environmentalists and others when he said he feared the worst if the states should suddenly find themselves the guardians of millions of acres of land — a land grab by developers and speculators.

Not only would Nevada forfeit an estimated $20 million it now gets annually from the federal government in lieu of taxes it otherwise would collect if the federal land was in private hands, the state might find costs of managing the land excessive in comparison with the income it would get from mining, grazing, and other fees and feel the pressure to sell off large tracts to developers.

"There is no pot of gold at the end of the rainbow," Young said. "My position is extremely unpopular. The way to get a ripple of applause in Nevada is to criticize the federal government or the Bureau of Land Management. Land is an issue that lends itself to a touch of demagoguery.

"But if it ever looked like the state was going to get that land, they'd (the developers) spring out of the desert like wildflowers. I just feel safer if the key's back there in Washington."

When the Nevada bill was wending its way through the legislature Young often was booed, hissed, and sometimes cursed when he would attempt to state his position. On one occasion, an elderly woman stood up, waved her finger at him and shouted, "You son of a bitch. We don't need your kind around here."

An analysis of costs and benefits if Nevada should take over the federal lands within its borders estimated state revenues from the land to include the sale of 30,000 acres of prime property in the Las Vegas Valley near the state's glittering, neon-dotted gambling capital. The estimated value of the Las Vegas land was $28,000 an acre.

Ironically, it is doubtful that the average citizen in most of the western states ever would realize any significant benefit from a land transfer, or even notice the difference. A few jobs might be created by development on what is now public land; there might be some tax reductions as land moved into private hands and came on to the tax rolls or as revenues from the newly state-owned land went into state coffers. For the most part, however, much of the groundswell of public support behind the rebellion seems symbolic — an indication of a general, and long-standing, resentment against Washington.

Alaska Gov. Jay Hammond said the land issue had so polarized the people in his state that "there are those that believe anything short of demanding secession from the Union is unacceptable capitulation to an oppressive federal government, while some others charge that anything short of instant wilderness for Anchorage is excessive environmental degradation."

Alaska's frustration over land, in fact, has less to do with whether it should be in state or federal hands than over how much of it should be set aside for parks, wilderness areas, wildlife refuges, and national forests, and that is a fight still being waged in Congress. There also is little doubt that Alaska environmentalists are very much in the minority.

When federal lawmakers failed to act last year on an Alaska lands bill, the President, on the recommendation of Secretary of Interior Cecil D. Andrus, invoked under the federal Antiquities Act an order setting aside 56 million acres in Alaska for national monuments. That touched off a storm of protest which culminated in a massive demonstration near Mt. McKinley National Park and a rally in Fairbanks at which the President was hanged in effigy.

Later, a Carter effigy was tossed into the water off the town's dock in the little southeastern Alaska fishing village of Ketchikan.

"Alaska is clearly the testing ground for the preservationists' land ethic," Ron Sheardown of the Citizens for Management of Alaska Lands, said. "If they win this battle, the public lands of every other western state will also fall under their domination and be lost to any practical economic usage."

[illegible] several citizen organizations, many of them heavily weighted with developers and mining and oil and gas interests, that have sprung up in the state to fight what they consider a "federal lock-up" of their lands. They differ only in degree of militancy.

Jerry Gilliland, the Interior secretary's assistant in Alaska, said there are several reasons why land is such an emotional issue in the state, and his is an explanation that is equally valid in Nevada and some of the other states.

"There is so little private land available," he said. "In the past 15 years, there has been no homesteading and prices are very high. The other part of it is that people moved up here with the romantic notion of getting a cabin in the woods on cheap land. They find it disillusioning when they can't fulfill that dream. And the big companies don't want to see any areas precluded from resource development."

Among the more militant Alaskans is Fairbanks real estate developer and miner Joseph E. Volger, who moved to the state in 1942 and now distributes bumper strips with messages such as "Independence Now" and "To Hell with the 48," a reference to the lower 48 states. He also has one that reads, "Government, Public Enemy No. 1."

Volger heads a group that wants to break away from the United States and form its own country, perhaps in concert with western Canada.

"There's only one thing I'm dedicated to," he said. "I want to die in a free country. The original 13 colonies got their land. There is unfair and unequal treatment of Alaska and other western states. There is total federal domination."

No one gives Volger's group much chance of succeeding. But ex-Alaska Gov. Walter J. Hickel, who served as Secretary of Interior under former President Richard M. Nixon, said he had "never seen the level of animosity toward the federal administration that there is here now." People, he said, just want the federal government "off their backs." ★

THE SUN
BALTIMORE, MD
JAN 11 1980

Shadowy British firm claims precious mineral in Alaska

Shadowy company outwits ecologists on Alaskan claim

By CURT MATTHEWS
Washington Bureau of The Sun

Washington—A British corporation little known in the United States is gearing up to haul off, without compensation to this country, a precious U.S. asset worth $7 billion.

The firm is Rio Tinto-Zinc Corporation Ltd., a worldwide mining conglomerate that has staked claim to a massive molybdenum deposit in southeast Alaska.

The mineral is used to harden steel, and demand for it is rising sharply among major steel-producing nations, particularly Japan and Germany. Over the next 20 years, Rio Tinto-Zinc plans to extract "moly" in Alaska with a value conservatively estimated at $7 billion.

Under the provisions of the federal mining law of 1872, Rio Tinto-Zinc can mine the valuable resource from federal lands, sell it to steelmakers and pay nothing in direct compensation to Alaska or the United States.

That any company could pull off such a financial coup in a world where nations are increasingly chauvinistic about their natural resources reflects a combination of good luck and careful corporate strategy.

It was good luck that, of the many corporate-sponsored geologists climbing the mountains of Alaska in 1974, one with ties to Rio Tinto-Zinc discovered the giant vein of molybdenum in the Misty Fjords area, 50 miles east of Ketchikan, near the tip of the state's southern panhandle.

And it was careful corporate strategy that last year produced a congressionally mandated exception allowing the company to develop its valuable find, even though it lies in an area conservationists seek to preserve as a wilderness.

Alaska's natural wealth first spawned the Klondike gold rush in the 1890s, followed by the oil boom of the past two decades. The next rush is expected to be over Alaska's largely untapped mineral lode.

The Misty Fjords molybdenum deposit, third largest in the world, has been a symbolic arena of confrontation between those who favor liberal development of the state's rich resources and those who support rigid government controls to protect America's last remaining wilderness areas.

Of particular concern to such groups as the Sierra Club, the Alaska Coalition and other conservationists was the location of the Misty Fjords deposit on high ground that drains into a complex of rivers producing about 20 percent of the salmon caught in southeast Alaska each year.

When Congress failed in 1978 to pass the Alaska lands bill, President Carter acted to set aside more than 150 million acres of federal land in Alaska as monuments and wilderness, including the Misty Fjords area. Many Alaskans, already upset at the way the federal government has blocked economic development in their state, were irritated further by Mr. Carter's bold move.

Although the battle has dragged on in Congress for more than two years, with the $7 billion fortunes of Rio Tinto-Zinc hanging in the balance, many representatives and senators drawn into the fray have never heard of the company.

That is because Rio Tinto-Zinc kept a low profile during the battle over future use of federal lands in Alaska.

The London-based mining conglomerate accomplished this by ducking behind a 100 percent-owned subsidiary—the United States Borax and Chemical Corporation—that led the charge in Congress to open Alaska's resources for development. That U.S. Borax is no longer "U.S." and is more interested in molybdenum than in borax were points largely overlooked on Capitol Hill and in Alaska.

One congressman who did probe the background of U.S. Borax and Rio Tinto-Zinc, Representative John R. Seiberling (D. Ohio), was not much impressed with what he found. He called the parent British firm "a multinational corporate shark."

Corporate shark or corporate fox, Rio Tinto-Zinc soon may emerge as the big winner in the long fight over how best to manage federal lands in Alaska. A compromise was worked out between conservationists and resource developers as Congress neared recess last month. It specifically provides access—a 9-mile mountain road—that will permit Rio Tinto-Zinc U.S. Borax to develop its big molybdenum find.

Alaska's two senators and lone representative in Congress generally were responsive to constituents in their state urging resource development as a means of boosting the state's lagging economy. The company says it will employ 750 persons directly in mining operations, generating 2,000 more support jobs in the area—a plus for Alaska's high unemployment problem.

Last May, the House of Representatives voted 268-157 to pass an Alaska lands bill that specifically recognized the legality of the Rio Tinto-Zinc-U.S. Borax molybdenum claim, but restricted access to the deposit and sharply limited development around it.

Representatives of U.S. Borax insisted in Congress that, unless more liberal development provisions were included in the bill, it would not be economically feasible to develop the Misty Fjords mine. They pressed their cause before members of the Senate Committee on Energy and Natural Resources.

Late in November, that committee agreed on a bill that guaranteed the 9-mile access road, opened more of the Misty Fjords area to mining operations and, to satisfy the conservationists, tightened administrative controls over mining on all federal lands in Alaska.

For Rio Tinto-Zinc and its wholly owned U.S. subsidiary, the most important provision of both the House and Senate versions of the Alaska lands bill is specific recognition that a road will be permitted across an otherwise protected wilderness area to allow development of a valuable resource.

Although the legislation has yet to gain full congressional approval, both sides say they intend to stick by the compromise version worked out by the Senate, and that new bills reflecting the compromise will be introduced in both House and Senate early in the coming session. Barring some unforeseen hitch, prompt passage of the Alaska lands bill is expected this year.

Congressional staff personnel in the House and the Senate who have followed the Alaska lands legislation agree that U.S. Borax got what it went after in the fight over development of federal lands in Alaska.

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"If they were not pleased, then the president of U.S. Borax should get an Oscar for his reaction and comments to me when the committee agreed to the compromise," Senator Tsongas said recently.

THE SUN
BALTIMORE, MD
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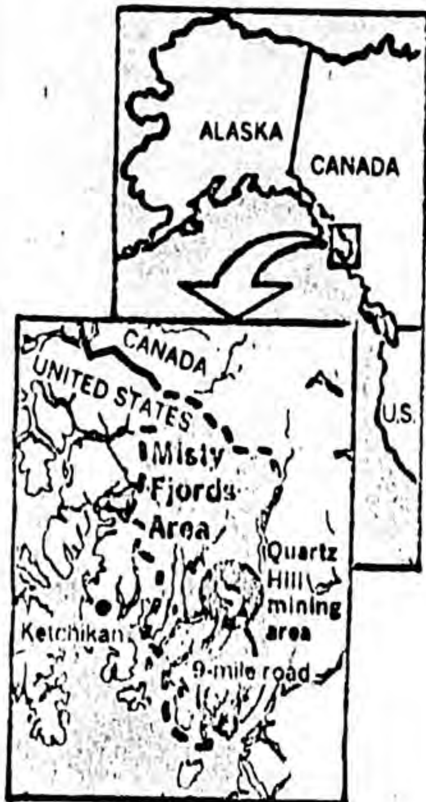
British firm claiming U.S. metal

FRONT PAGE



Senator Tsongas emerged as the principal Senate spokesman for environmental interests in Alaska in recent months. He did so, he has said, because it appeared to him at one point that U.S. Borax was attempting to dictate to Congress the terms of legislation regarding Alaska lands.

John Ferguson, a former top aide to Senator Ted Stevens (R, Alaska) and for the last 18 months the U.S. Borax representative in Washington, is somewhat uneasy with the idea that his client got what it wanted in the compromise worked out last year.

Mr. Ferguson says that U.S. Borax is concerned that because the molybdenum deposit is still within a designated wilderness area, permits for roads and other land infringements must be obtained from the U.S. Forest Service. Many regulations regarding mining on Alaska's federal lands are yet to be promulgated by state and federal officials, he adds.

Yet he repeats emphatically that the company intends to stand by the compromise and hopes that it holds up when Congress reconvenes. Both sides predict it will.

Carl Randolph, president of the U.S. Borax, told reporters in Alaska last year that the firm has already invested more than $7 million to develop its molybdenum find and, articulating a corporate policy that was carried out on Capitol Hill last year, said the firm intended to "hang tough" in the legislative fight over development restrictions.

Although Rio Tinto-Zinc, the company that looms as a potent force in Alaska's future, is little known in the United States, the company is well known internationally. There have been at least two highly critical assessments of the company's operations.

Mining in national parks or declared wilderness areas, such as the Misty Fjords region of Alaska, is not new to Rio Tinto-Zinc. Some years ago the firm came under sharp criticism in Britain when it surveyed for copper and gold in British national parks.

Richard West, who wrote a history of the firm in 1972 and noted its penchant for the low profile when dealing with sensitive legislative matters, said, "This anonymity helps to explain the feebleness of the protest against RTZ's hopes of mining in the national parks."

The other critical assessment of RTZ was produced by Diane Hooper, an independent British researcher, in 1977, and details the background of an attempt by Rio Tinto-Zinc and a number of other major mining and petroleum firms to control world supplies of uranium. That effort led to an antitrust suit against RTZ by Westinghouse Corporation, which was being sued itself for failure to deliver uranium it had contracted to sell.

The company prefers to operate in stable, white-ruled, conservative countries such as Australia, New Zealand, South Africa, Canada and Rhodesia.

In 1978, the most recent year for which figures are available, Rio Tinto-Zinc reported an operating profit of more than $220 million.

The Spanish-sounding portion of the firm's name, which translates to "clouded river," reportedly has its origins in a Spanish copper mine owned and operated by a predecessor firm that formed the core of the present company in 1954.

One reason Rio Tinto-Zinc's foothold in Alaska has gone largely unnoticed during the Alaska lands debate is that oil, not minerals, is seen both in Alaska and in Congress as the resource of greatest immediate value.

Early last month, a group of Alaska businessmen, frustrated at how slowly the federal government and the major oil companies were moving to develop Alaska's oil resources, presented a program in Washington to gain media attention regarding the situation.

The businessmen, led by two former governors, Walter J. Hickel and William A. Egan, released a report urging federal action to expedite the leasing of potential oil and gas reserves in Alaska for prompt development by major oil companies.

However, as important as petroleum is to the immediate economic well-being of Alaska and the United States, some experts on Alaska resources say that, in the long run, hard-rock minerals will prove even more important.

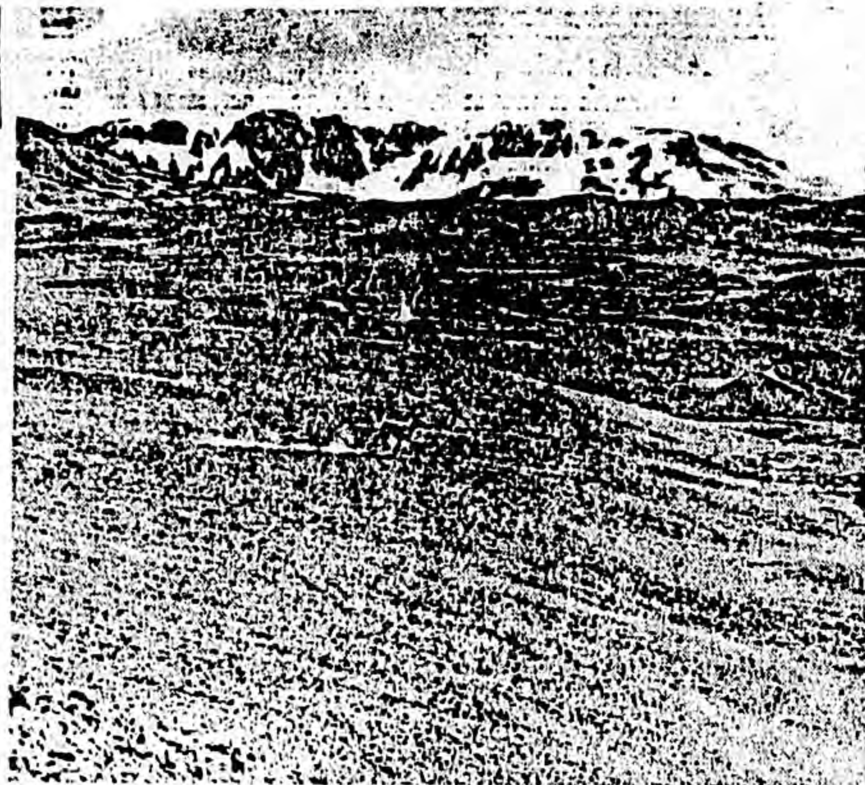
Patrick L. Dobey, a consulting geologist for the Alaska Coalition and former chief geologist for the State of Alaska, believes that the energy issues surrounding the Alaska lands legislation are a "smokescreen," and that the primary interest of the oil companies, like that of Rio Tinto-Zinc, is minerals.

Mr. Dobey says over 95 percent of the federal lands in Alaska with potential oil reserves already are open to exploration and development, and the real aim of resource developers is to open up as much of Alaska as possible to the mining of hard-rock minerals.

He and others have noted that the most visible lobbyist during debate over the Alaska lands legislation, aside from U.S. Borax, was the Atlantic Richfield Oil Company, the parent firm of Anaconda Copper, which has extensive mineral claims in Alaska. Sohio, another major U.S. oil company with mining divisions active in Alaska, also urged Congress to open federal lands to the type of development that Rio Tinto-Zinc sought in the Misty Fjords area.

Staten Island Advance
STATEN ISLAND, N. Y.
SUN. 77,504

JAN 9 1980



Alaska's unspoiled wilderness may be dotted with oil rigs.

Christian Science Monitor Photo

Special to the Advance
from Christian Science Monitor

WASHINGTON, D.C. — The untold quantity of oil beneath Alaska's vast wilderness acres is adding a provocative dimension to the debate between conservationists and developers over the future of the state's public lands.

But even as the 3-year-old congressional fight intensifies, both sides are looking for a speedy resolution. One key congressional observer believes a compromise could be hammered out by spring.

At stake are between 102.2 million and 127.5 million acres of Alaskan wilderness.

Three main issues separate environmentalists, whose bill won House approval last summer, and Alaskan businessmen, whose bill has been forwarded by the Senate Energy Committee:

- Whether to allow widespread oil exploration in the Arctic National Wildlife Range at the northeastern corner of the state.
- How best to protect southeastern Alaska's wilderness areas, where timber and minerals are key attractions to developers.
- How to configure and manage the dozens of new national parks, refugees, forests and wilderness areas.

The energy issue takes on a new currency with the recent constrictions in foreign oil supply and the upward spiral of oil prices.

By rapidly developing Alaska's subsurface energy, contends Commonwealth North — a group of Alaskan business leaders led by former governors Walter Hickel and William Eagan — the United States could reduce by nearly half its foreign oil imports.

In a study issued in early December, Commonwealth North says that the House version of the Alaska bill could "cripple the state's ability to help the nation."

But in rebuttal, the Alaska Coalition, a conservation lobby, says the energy question has been answered adequately in the House bill. The coalition calls the [illegible] sible" and "an attempt to mislead the public."

"This is another in a series of attempts to turn the Alaska lands bill into an energy issue..." says Alaska Coalition chairman Charles Clusen.

The Commonwealth North report says Alaska has reserves that "will range from 300 to 600 billion barrels" and easily could produce 4.5 million to 5 million barrels of oil a day. It recommends expedited exploration and leasing — especially in a section of the Arctic National Wildlife Range which "promises to contain a giant oil field, as big or bigger than Prudhoe Bay."

This arctic preserve is an important site to the Alaska Coalition because of its wildlife population.

Pat Dobey, formerly chief petroleum geologist for the State of Alaska and now affiliated with the coalition, says geologic studies of Alaska are highly variable, often exaggerated and ignorant of economic and logistical feasibility. Dobey maintains oil companies will have all the acreage they can use for exploration under the coalition-supported bills.

Hickel states that "in all likelihood, there would be very little adverse impact from the introduction of seismic work and test wells." But Clusen expresses concern that the "porcupine" caribou herd, one of the largest such herds in North America, would be hurt by oil activity in the Arctic preserve.

Who is right? The region is so vast and isolated — and the issue so emotionally charged — that no objective and conclusive studies have been made.

Which view will prevail? Environmentalists seem to have the edge in congressional support, but Alaska's two senators, Ted Stevens (R) and Mike Gravel (D), support the development-oriented bill and have indicated they might try to block any bill they do not favor.

FLAGSTAFF, ARIZ.
ARIZONA SUN
D. 8,350

JAN 13 1980

EDITORIAL

Udall's Right

Rep. Morris K. Udall of Arizona's 2nd Congressional District is right in believing his race for a 11th term may be one of the toughest of his political career.

Democrat Udall told a press conference that outside interests, such as Alaska businessmen and Texas oil interests, angered by his pro-environment positions, will be big contributors to his Republican challenger this year.

Udall has supported the Alaska Lands Bill which would create nine national parks and remove much Alaskan land from private use.

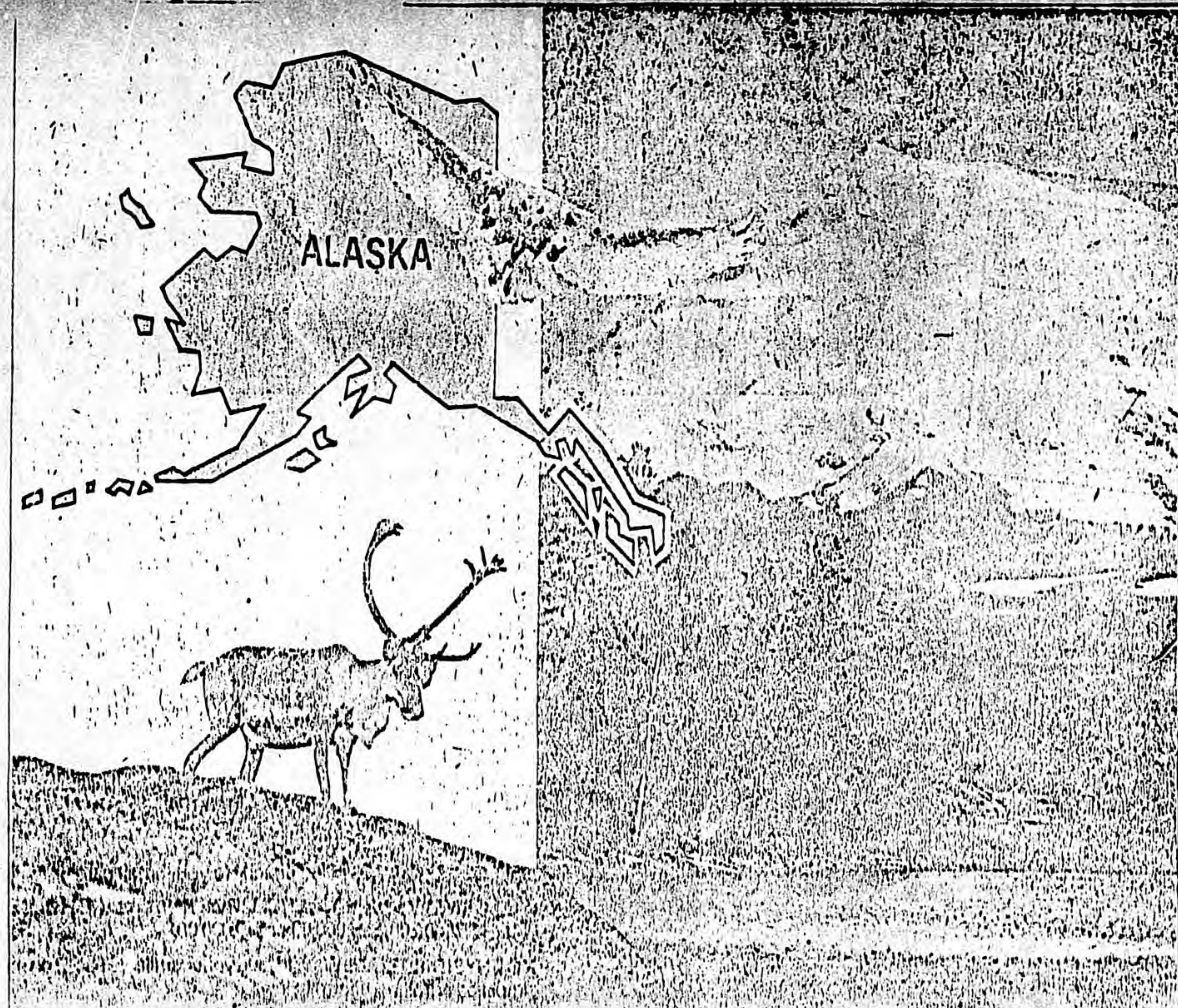
However, Udall admitted some of his financial support will also come from outside interests, including environmentalists, who support his congressional voting record.

Udall appears to be running scared but his press conference remark about Sen. Barry Goldwater was something he should have avoided.

Udall commented that Goldwater should take a look at his own statements in 1968 when he sought the Senate seat vacated by Sen. Carl Hayden.

As Goldwater attempted to get back into the Senate after giving up his seat to run for president in 1964, Udall said Goldwater advised the elderly Hayden, who was undecided about retiring, that he was "too old and younger blood was needed."

Udall isn't likely to pick up any votes in his 2nd District by chiding Goldwater.



HACKENSACK, N.J.
THE RECORD
[illegible]

JAN 15 1980

Unfortunately, the debate over the management of public lands in Alaska has shifted away from long-term, comprehensive planning to the immediate concerns of every special interest imaginable.

We have witnessed the results of unchecked development in much of the country. In Alaska, we have the chance to strike a balance, to set a wiser course for development. The Tsongas-Roth substitute meets this challenge.

HACKENSACK, N. J.
THE RECORD
D. [illegible] SUN. [illegible]

JAN 15 1980

Chuck Clusen is Chairman of the Alaska Coalition, a non-profit organization comprised of more than 50 environmental, labor and civic groups nationwide working to preserve Alaska's national interest wildlands.

By Charles M. Clusen

Once a land of wild seacoast, of rolling hills and hardwood forests, New Jersey is now the nation's eighth most populous state and a center of business and industrial activity. This familiar pattern of development, one that has recurred throughout the country, has left its mark on all but scattered pockets of land. Local residents have realized too late that with greater foresight the harmful effects of development could have been mitigated. The costs of random development have been too high, the areas saved too few, and the wilderness legacy for the future too small.

In New Jersey, the choices have been made. But in Alaska, we have one last chance. Alaskan natives — Indians, Eskimos and Aleuts — continue the rural subsistence tradition of their ancestors. Independent miners still search the streams for gold, and each year new log cabins appear in the wild. There are opportunities in Alaska for a way of life which exists nowhere else in America today.

Alaska's vast wilderness encompasses some of the nation's highest mountains, deepest canyons and largest glaciers. The bald eagle, in many states known only as a symbol, still thrives along Alaska's endless coastal shores. But the immensity of this great northern land is deceptive. Vegetation is often sparse, and large areas are needed to sustain wildlife. A single bear will range one hundred square miles in search of food.

In order to protect important wildlife habitat, whole ecosystems must be preserved. Congress must draw appropriate boundaries and designate management agencies with close attention to ecological principles. The lands thus saved will be a continuing resource not only for local wildlife but for subsistence and sport hunters, for photographers and visitors of all kinds, for the area's commercial fishermen, and most importantly, for the future.

We cannot afford to prohibit development. We cannot afford to reduce jobs or hamper economic growth. We cannot usurp Alaska's independence or dictate her goals. But we can choose to pattern development carefully and conscientiously on the federally owned lands in the state. Alaska's frontier spirit can be preserved without perpetuating the tradition of boom and bust development. This was the intent of the original Alaska National Interest Lands Conservation Act.

When the late Senator Lee Metcalf, D-Mont., first introduced the Alaska lands bill in the Senate in 1977, he called it "our nation's last chance to take bold and imaginative action to protect our most spectacular wildlife and wilderness resources." Since then, the senator's vision of a bill which would protect some of Alaska's rich natural heritage has been all but lost. The disappointing bill recently reported out of the Senate Energy and Natural Resources Committee more closely resembles a developer's dream come true.

A similar, development-oriented bill was reported out of the House Committee on Interior and Insular Affairs last spring. However, in an impressive display of strong, bi-partisan support the full House rejected the committee bill in favor of a substitute version which provided a careful balance of development and conservation. The entire New Jersey delegation voted with the majority in passing the substitute bill.

Senators Tsongas and Roth have taken the same courses in the Senate. The Tsongas-Roth substitute, cosponsored by twelve senators, offers the full Senate a clear alternative to the inadequate Senate committee bill. Based on the text of the House-passed bill, this bill incorporates significant compromises contained in the committee bill but retains vital concepts which form the heart of the legislation.

The proposals set forth in the House-passed bill and in the Tsongas-Roth substitute in the Senate are the product of years of public hearings, study, and debate. Conservation unit boundaries have been adjusted wherever possible to avoid conflicts with development interests, and countless revisions of the bill have been made to accommodate state, local, and private concerns.

Each of the areas proposed for protection contains wildlife and wilderness values of national significance. Accordingly, the Tsongas-Roth bill adds these areas to the national conservation system, placing each one under the jurisdiction of the agency best qualified to manage its particular resources. Thus the National Park Service will administer the areas of special scenic or historical significance, while prime wildlife habitat will be managed by the Fish and Wildlife Service. The result is a coherent land use plan which adequately protects key resources while allowing development to proceed in areas of high economic potential.

Unfortunately, the debate over the management of public lands in Alaska has shifted away from long-term, comprehensive planning to the immediate concerns of every special interest imaginable. Tactics employed by the Senate and private industry have at times been heavy-handed and misleading.

[illegible] pendence [illegible]. [illegible] charges are [illegible]crous. The State of Alaska received the largest land grant of its kind in U.S. history and was authorized to select its generous 104 million-acre entitlement from among all federal lands which were vacant, unreserved, and unappropriated at the time of selection. Although the state complains of delays in the transfer of lands, 65 percent of the grant — an area larger than the entire state of New Jersey — is already being leased, developed or managed by the state. Nothing in the proposed legislation would prevent the state from receiving its full entitlement or cause delays in the conveyance of state elections.

Once the transfers have been completed, the State of Alaska will have a tremendous land bank on which to base its economic growth. Lands already chosen by the state, such as Prudhoe Bay, contain some of the best resource potential in Alaska. Yet, through a nation-wide media campaign, the state is extolling Alaska's resources and implying that land preservation proposals will place them all off limits to development. One paid advertisement claims that Alaska's coal "could fuel America for 20 centuries." What the ad carefully neglects to mention is that there is in fact no conflict whatsoever between areas with coal potential and the Alaska lands bill. Under the Tsongas-Roth substitute, 100 percent of Alaska's coal potential could be available for development.

More disturbingly, the State of Alaska and private industry have attempted to portray the Alaska lands bill as a threat to oil and gas development. In view of recent events in Iran, the need for energy independence is a widespread and serious concern. But the Alaska lands bill has virtually no effect on the development of Alaska's energy resources. The bill cannot legitimately be cast as an energy issue.

Under the Tsongas-Roth bill, nearly all of Alaska could be available for oil and gas exploration and development. This includes all of Alaska's outer continental shelf, all proven reserves and all submerged lands, as well as 95 percent of the onshore lands identified by the U.S. Geological Survey as having high or favorable oil and gas potential.

The only area with oil potential which the Tsongas-Roth bill would set aside is the coastal plain of the existing Arctic National Wildlife Range, an area which encompasses the calving grounds of the internationally significant porcupine caribou herd. The House of Representatives designated key portions of the Wildlife Range as a wilderness area to ensure the survival of the caribou and of subsistence-based communities. Wilderness designation for the Range has been endorsed by all of the region's villages and by the Carter administration.

We have witnessed the results of unchecked development in much of the country. In Alaska, we have the chance to strike a balance, to set a wiser course for development. The Tsongas-Roth substitute meets this challenge. It is the only alternative currently before the Senate that is worthy of national support.

The lands at stake belong equally to all Americans. But New Jersey Senators Bradley and Williams remain uncommitted. If the national interest is to prevail in the Alaska lands debate, your voice must be heard. Please urge your senators to support the Tsongas-Roth substitute by calling or writing their offices today.

The Washington Post
WASHINGTON, D. C.
D. 553,371 SUN. 786,753

JAN 14 1980

GAO Says U.S. Agencies Acquire Too Much Land

By Joanne Omang
Washington Post Staff Writer

The federal government is land-happy and ought to admit it can protect the environment without taking possession of it, a General Accounting Office report said today.

The government already owns more than one-third of all U.S. land, including 86 percent of Nevada and 95 percent of Alaska, and plans to spend $10 billion in the next 11 years to buy more, the report said.

Yet there is no overall federal policy for land acquisition, which often is handled in ways that cause maximum friction with local authorities and residents, according to the GAO.

It found that the Forest Service, the Department of Agriculture and the Interior Department "generally followed the practice of acquiring as much land as possible without regard to need and alternatives to purchase."

Reporting at the request of Rep. Phillip Burton (D-Calif.), chairman of the House national parks subcommittee, the GAO said the government tends to buy land it doesn't need, without a coherent plan for its use and without examining other ways to protect it.

This often tends to make costs three of four times higher than expected, and to antagonize residents who want the land to stay on local tax rolls for agriculture, housing or resource development, the study continued.

Between 1970 and 1977, the government spend $606 million to buy 2.2 million acres under full or partial title, according to the GAO. Most of the 760 million acres under federal ownership have never been in private hands; only 60 million have been bought. More than 90 percent of the federal turf is in 13 Western states, and eight states are more than 40 percent government-owned.

Resistance to federal buying in these areas is growing rapidly. The "Sagebrush Rebellion" is mounting in western states against Bureau of Land Management land use rules, and there is considerable local pressure for state control. Much of the controversy over legislation on Alaska land use involves the extent of federal control.

The GAO suggests that zoning changes and the use of easements could often provide the same control as ownership more cheaply and with much less local friction. In Idaho, the Forest Service worked with local people to set up a plan to preserve 754,000 acres in the Sawtooth National Recreation Area, using a combination of acquisition and easements, the report related.

Much of the land stayed on local tax rolls and in private use through the issuance of certificates guaranteeing cooperation in scenic and resource preservation.

The GAO report recommended that a federal land acquisition policy be drawn up exploring alternatives to purchase.

Every acquisition should be coordinated with state and local officials and carried out only after alternatives are fully examined, the GAO said. It recommended that Congress keep an eye on the process.

Most of the agencies criticized in the GAO report said they agreed with many of the points raised or were already considering alternatives to purchase. The Interior Department, however, said much of its purchasing is at congressional order and that zoning and easements often are not suitable.

ECONOMIST
LONDON, ENGLAND
MONTHLY

NOV 17 1979

Both the president and congress would have to concur.

The house of representatives' version includes this provision, which Congressman Udall has called a formula for dismantling the existing health and safety laws. The senate bill excludes it. The administration did not ask for the board to be given so much power and says that it will ask the conferees to drop it. But it has not lobbied hard against it and Mr Carter declines to promise to veto a bill containing this provision.

Yet the president is reluctant to alienate the environmentalists as he has alienated the blacks and trade unionists. Twice in recent months he has insisted that he still stands with them. This is clearest over preservation of much of Alaska, which he calls the highest environmental priority of his administration. Last year the house approved a bill that would have set aside about 100m acres. The question of which acres are chosen is as important as how many, and the bill's choices were opposed bitterly, but unsuccessfully, by the mining, oil and timber industries. In the senate, however, a more modest bill was killed by the unpredictable Senator Mike Gravel of Alaska. Before its powers to protect the wilds expired, the interior department withdrew 110m acres from development for three years; President Carter then made about half of this set-aside permanent.

Alaskans are trying to make sure that last year's fiasco is not repeated. An advisory group appointed by the governor has concluded that a bill just approved by the senate finance committee represents about the least that the state will have to concede to get a bill through this year. It would set aside about 100m acres (compared with 128m in the new house bill) and would give timber and mining companies, and those exploring for oil and gas, access to national forests and "wilderness" areas (including those where the caribou calve).

The advisory committee has told both Alaska's senators, Mr Ted Stevens and Mr Gravel, that they must work together to see that this bill passes.

This is easier said than done, since the two have been conducting a running feud for years, and time is short before congress adjourns. An incentive for compromise has been provided, however, by Mr Andrus. If no bill is passed, he says that he will extend for 20 years the three-year withdrawals that he ordered last year. Mr Gravel's critics say that he wants to keep the lands issue alive until next year, when he has to fight a re-election campaign. But perhaps he will not want to be blamed for the freezing out of development in nearly a third of Alaska for nearly a generation.

SAN FRANCISCO, CAL.
MONTHLY 18,000

DEC 1979

Alaska Lands bill gets industry endorsement

IMAGINE a Senate committee just passed a bill tripling the current Wilderness refuge systems and doubling the national park system. Imagine further that industry hailed the bill as reasonable legislation. Of course it sounds crazy—it is. But these imaginings actually transpired last month when the Senate Energy Committee reported out its Alaska Lands bill, S. 9, which would set aside more than 96 million acres for conservation uses and 38 million acres for Wilderness—and industry endorsed it.

Industry's position seems daft until you see H.R. 39, the House version passed earlier this year. By comparison, S. 9 looks like a license to rape, ruin and run. H.R. 39 would withdraw 127 million acres for parks, scenic areas and refuges, and a whopping 67 million additional acres for Wilderness, the most restrictive use.

S. 9 permits oil exploration and mining in the Misty Fjords; the House bill imposes much stricter environmental safeguards by declaring the entire area Wilderness. S. 9 would allow private firms to explore the oil and gas potential of the Arctic National Wildlife Range beloved of the caribou; the House wants it all in Wilderness, closed to development.

For the forest industry, the most important feature of S. 9 is a provision for southeastern Alaska's timber resources. The bill sets an annual allowable harvest of 520 million bd ft on the Tongass National Forest, the wood reservoir of the state. The House bill makes no similar provision and thus, according to industry sources, toys with 2,000 jobs now dependent on timber processing.

On closer inspection, industry's faith in the Senate provision may be premature. For one thing, few expect the 520 million bd ft figure to survive the bruising conference with House members who are adamant about keeping vast areas of the Tongass in Wilderness. And the Administration and the environmentalist Alaska Coalition are bent on inserting their own amendments when the bill reaches the Senate floor, assuming it does.

Even if by some miracle the timber provision passes Congress intact, the Forest Service isn't certain it can sustain the 520 million bd ft allowable harvest for very long unless Congress agrees to place some of the "special management areas"—now off limits to logging for 10 years—back into multiple use. As it now stands, these areas can only be used to calculate the allowable harvest potential—they cannot be cut. Especially if the timber-rich Misty Fjords and Admiralty Island remain off limits, the Forest Service estimates it can annually harvest only 450 million bd ft, not 520.

In that case, the agency would be in its accustomed place, on the highwire. It must support the Administration position favoring the special areas and somehow finesse the higher cutting level if it becomes law. Agency officials suspect the Administration would then be forced to ask Congress either to reduce the c[illegible] or reduce the acreage in Wilderness. The alternative wo[illegible]d be serious overcutting.

But the 520 [illegible]el is necessary to sustain the economy, despite appeals that it is too high. Those arguing for a lower level expect native corporations in southeast Alaska to pick up the slack. But of the 150 million bd ft held by native corporations, only 36 million is expected to be processed domestically; the rest will likely go to Japan, a more lucrative log export market, and with the logs will go the jobs.

Now you can see why observers are calling the logging issue the most controversial in the bill. All other issues involve postponing future growth, but land-use questions in southeast Alaska involve current jobs. Small wonder that many expect blood on the floor when congressional conferees meet to hammer out a compromise—assuming they do, an assumption no more firm than Carter's reelection chances. Sen. Mike Gravel (D-Alaska) killed the bill last year and is threatening to filibuster it to death this year.

While Congress ponders the nation's interest in Alaska's future, it might also find interesting the views of Alaskans, whose preferences were recently solicited by the U.S. General Accounting Office.

In a survey to help federal land management agencies determine the types of recreational opportunities needed there, the GAO found that Alaskans want to be delivered from the Wilderness. From 4 to 49% wanted further development of already developed recreational areas and 74 to 91% want similar facilities installed in the lightly used national monuments the Administration created, and the same development in any national parks, forests and wildlife refuges that Congress may create.

LUKE POPOVICH
WASHINGTON CORRESPONDENT

To: Representative Barnes
From: Randall Moen, House Minority Counsel
Date: Feb. 11, 1980

Re: HB 398

HB 398/Status of land within Boundaries

Two legal theories can be used in defense of HB 398: Equal Footing and Trustee Theory. The Equal Footing Doctrine is a Judicial concept requiring that states entering the Union must be allowed to do so in terms of equal political sovereignty with the original thirteen states. The Trustee Theory holds that the Federal government, as trustee of public lands within a state's borders, cannot hold those lands in perpetuity.

Should litigation follow passage of HB 398, we can use the Equal Footing Doctrine and Trustee Theory to prove that:

> (A) The intent of the Constitution's framers and the language of the Constitution give the Federal government very limited control over lands within a state's boundary.
>
> (B) The disclaimer requirement that Alaska give up any claims to public land within its borders as a condition precedent to statehood was an act beyond the power of Congress.

Evidence in support of our above allegations (A & B) would include case law (Pollard's Lessee v. Hagan, 44 U.S., 3 How. 212 1845; Oregon v. Corvallis Sand and Gravel Co., ___U.S.___, 97 S.Ct. 582 1977) including historical and constitutional research demonstrating the harmful effects of Federal land ownership to Alaska's political sovereignty.

As a policy suggestion, a commission could be used to study numerous ramifications of Federal ownership of land in Alaska to demonstrate how this affects Alaska's political

sovereignty. It also may be used to look into whether Alaska has sovereign governmental authority equal to the original thirteen and all other states. Such a commission would be useful since our main argument would be that Federal ownership of public land in Alaska seriously impairs the ability of the state to exercise ordinary government power. If we can meet the substantial burden of proof of this point, the court would hold the disclaimer provision in the Statehood Act unconstitutional.

A procedural problem exists with initiating a lawsuit in pursuit of HB 398. Before one can sue the Federal government, consent must be granted. A 1972 Federal Statute (28 U.S.C., sec. 2409a) gives consent for Federal actions involving quiet title problems. It is uncertain as to whether this would apply to HB 398, however, the State of Nevada's Attorney General believes it does apply. It should be noted that there exists a twelve year statute of limitations within 28 U.S.C., sec. 2409a. This means that one may be barred from initiating such actions against the Federal government after 1985!

At present the State of Nevada has enacted into law AB413 which is identical in substance to HB 398. The Attorney General for Nevada believes that their bill presents a valid legal cause of action and has made its pursuit the number one priority for 1980. They expect to file suit early summer of this year.

Whether or not Nevada's AB413 or our HB 398 meets constitutional standards remains an open question, for a case involving such factual occurrences has not yet reached the U. S. Supreme Court. From a legal perspective, a case involving

these bills would present a classic Federal / State's Rights confrontation involving two hundred years of American history. Such a case would generate widespread national attention not only from a contitutional-historical interest, but from the potential repercussions of a decision in favor of a state.

At the very least, a court case involving HB 398 would present a national forum for airing Alaska's plight of Federal control and in time make Congress more receptive to lessening its Federal hold upon Alaska.

PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

Alaska State Senate

JUNEAU, ALASKA 99811

Sagebrush Reb.

MEMORANDUM

TO: Senator Mike Colletta

FROM: Senator Pat Rodey PMR

DATE: March 12, 1980

SUBJECT: "Sagebrush Rebellion"

The Legislative Council and the Subcommittee on Western Lands met in my office this morning. After some discussion, it was decided to continue our contract with Birch, Horton, et al, at an agreed upon fee of $2,000 per month at $80 per hour for six months. Their responsibility will be to bring Alaska up to date on matters which have transpired between the time of the . last report and our meeting and to provide us with the current status of continuing developments in the Western Coalition states, including those which have recently passed "Sagebrush Rebellion" legislation.

The Committee approved the negotiations for the contract with Bitner, Horton, et al. I am including a copy of this contract for your approval. I hope you are in agreement with what you find there.

In addition, I will be circulating a letter which would set forth, in some detail, the approach and part which Alaska will take in future developments regarding this issue.

I forgot to include these papers when I mailed Sen. Rodey's memo on the "Sagebrush Rebellion" to you.

I apologize.

Susan

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*NOT ADMITTED IN ALASKA

PROPOSAL: SAGEBRUSH REBELLION REPRESENTATION

Contract between

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811

and

BIRCH, HORTON, BITTNER, MONROE,
PESTINGER & ANDERSON
(Hereinafter the "Contractor")
1127 West Seventh Avenue
Anchorage, Alaska 99501

THE ABOVE PARTIES TO THIS CONTRACT, in consideration of the covenants hereinafter contained, hereby mutually agree to the terms and conditions hereinafter set forth:

CLAUSE I - STATEMENT OF WORK

(A) The Contractor shall submit monthly reports to the Chairman of the Legislative Council on the following Sagebrush Rebellion matters, which shall include analysis of: (1) the disposition of Sagebrush Rebellion-type legislation in western state legislatures; (2) any actions taken by the U.S. Congress on the Hatch Bill and companion bills to convey the public domain to the states, as well as any other legislation affecting public land matters in the western states; (3) developments relating to Sagebrush-related public land litigation brought by the western states, including Nevada's lawsuit against the Department of Interior to compel conveyance of the public domain to Nevada; and (4) administrative action and policies adopted by the Departments of Interior and Agriculture including rules, regulations

and agency management policies related to Sagebrush Rebellion issues; and challenges to said actions and policies initiated in western states.

(B) The Contractor shall also attend WAGLAC and Western Coalition Sagebrush meetings as a representative of the Alaska Legislature. Attendance at any other Sagebrush meetings or conferences shall be at the discretion of the Chairman.

CLAUSE II - PERIOD OF PERFORMANCE

(A) This Agreement shall commence on February 1, 1980, and continue through January 31, 1981. This Agreement may be terminated by either party on written notice to the other.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

(A) (1) The work conducted under Clause I shall be compensated by a flat retainer of $2,000 per month, inclusive of all costs except those delineated in paragraph (2) below.

(2) Contractor shall be reimbursed for actual out-of-pocket expenses incurred in traveling to and attending Sagebrush meetings described in Clause I, including accommodations and board. Said expenses shall comply with standard per diem and expense limitations imposed by the Legislative Affairs Agency.

(3) Payment for the work referenced in Clause I and described in the contract shall be due and payable to the Contractor upon tender of monthly invoices from the Contractor, approved by the Chairman of the Legislative Council.

CLAUSE IV - CONFIDENTIALITY OF COMMUNICATIONS

It is contemplated that all work done under this contract will be made public by the Legislature. However, all communications between the Legislative Council, the Legislature, or individual Legislators and the Contractor, including the final report, shall be held confidential by the Contractor until released by the legislative entity or individual Legislator to which they were addressed.

CLAUSE V - LOBBYING DISCLAIMER

The Agency and the Contractor agree that the only services to be provided under this contract are the provision of information,

analysis and advice to the Legislature; the Contractor is not authorized or permitted under this contract to represent the Legislature, its members, committees, or staff agencies before Congress or any other legislative, administrative, or judicial institution. However, nothing in this clause limits the Contractor's rights or responsibilities under any other agreement or prohibits the giving of testimony to the Alaska Legislature when that testimony is properly authorized.

CLAUSE VI - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have hereinafter set their hands and seals on the dates individually indicated.

BIRCH, HORTON, BITTNER, MONROE PESTINGER & ANDERSON Contractor	LEGISLATIVE AFFAIRS AGENCY Agency
 Joseph M. Chomski Date	M. R. Charney Date Executive Director
APPROVED:	APPROVED AS TO FORM:
Sen. George Hohman, Chairman Legislative Council	Billy G. Berrier Agency Legal Counsel
Date: ______	Date: ______

ALASKA LEGISLATIVE COUNCIL

—Minutes—

Meeting of

March 5, 1980

State Capitol - Juneau, Alaska

The meeting was convened by Chairman George Hohman in the Senate Finance Committee Room of the Capitol at 1:35 p.m., Wednesday, March 5, 1980.

Roll call was taken and all members of the Council were present. Staff members in attendance were Charney, Berg, Berrier, Ager, Andrews and Parker.

APPROVAL OF MINUTES

Mr. Charney pointed out that on page 2, line 5, the year 1981 should correctly be 1980. Senator Ray moved and asked unanimous consent that the further intent (which had been clarified earlier to both the Chairman and Executive Director) of his motion to authorize $6,274 for equipment purchase at the request of National Alert Patrol be reflected as an amendment to the minutes -- that being the funds would be made available only to the Department of Public Safety who would buy the equipment and be accountable for it as state property. No objection was voiced and the motion passed. Senator Ray then moved and asked unanimous consent that the minutes for the Council meeting of February 20, 1980, as amended above, be approved. No objection was voiced and the minutes, as amended, were approved.

EXECUTIVE DIRECTOR'S SALARY

Mr. Charney briefly recapped the history of this matter since 1975 when the Council established the policy that the Executive Director's salary should be the same as that for a Commissioner of an executive branch department and how that policy had been deviated from during the past several years. He explained that he was now dubious to proceed on the 1975 policy unless the Council reaffirmed the policy. Senator Ray moved and asked unanimous consent that the Council reaffirm the previous policy that the Executive Director be compensated the same as a Commissioner. No objection was voiced and the motion was adopted.

ADMINISTRATIVE REGULATION REVIEW

Senator Bennett, Chairman of the Administrative Regulation Review Committee, appeared before the Council to outline the problems created by

the recent Supreme Court Decision and asked the Council for their consensus recommendation on how to proceed until a constitutional amendment can be approved by the voters. After discussion, Representative Brown moved and asked unanimous consent that the Council go on record as suggesting that the Administrative Regulation Review Committee introduce actual bills to nullify regulations as it deems necessary. No objection was voiced and the motion passed.

After further discussion, Senator Ray moved and asked unanimous consent that the Council request a arification opinion from the Supreme Court regarding the unresolved problems created in their decision. Mr. Berrier stated that he was already preparing a resolution to that effect and Senator Ray agreed that that action would suffice the intent of his motion. No objection was voiced and the motion was adopted.

INTERIM REPORTS

Chairman Hohman brought to the attention of the Council that final reports had been received from Ms. Jennifer Wilke and Rowan and Associates on the Educational Television feasibility study and the d-2 survey results, respectively. Representative Brown noted that the final House Commerce Committee Interim report had also been delivered to the Agency.

Senator Ziegler requested the Council take action one way or another on the pending proposal from Birch, Horton, Bittner, et al, regarding follow-up activity on the Sagebrush Rebellion. After considerable discussion and various motions made and subsequently withdrawn by Representatives Brown and Gardiner, Senator Ray moved that $12,000 of d-2 funds be allocated to the Sagebrush Committee of the Council for their use as they see fit, and report back to the Council any action taken. By mutual consent, the vote was taken by a show of hands and the motion passed 8 to 3 by those present in the room at the time, with Senator Ziegler not voting. Senator Ziegler requested the Chairman inform the law firm of the action taken and Mr. Charney was requested to draft the letter.

EXECUTIVE SESSION

Representative Gardiner moved and asked unanimous consent that the Council go into Executive Session to discuss litigation matters on the basis that specific personalities and confidential financial matters may be discussed. No objection was voiced and the meeting was recessed in order that an Executive Session could be held.

ADMINISTRATIVE REPORT

The Chairman reconvened the meeting and requested Mr. Charney to give his report.

Mr. Charney referred the Council to memoranda from him to the Chairman, dated February 25, 1980 and February 26, 1980 (attached), which responded to the matters raised at the last meeting regarding authority for specific expenditures and allocations of fiscal year 1980 funds.

Mr. Charney then brought to the attention of the Council that a report had been received from the subcommittee appointed at the February 6, 1980 meeting to resolve the interim employee pay problem. However, it was felt that the authority given at that time to implement the solution arrived at had been withdrawn at the February 20, 1980 meeting since a transfer of fund allocations would be required. Representative Gardiner moved and asked unanimous consent that the funds necessary to implement the report be taken from the Research and Analysis budget allocation. Senator Hohman objected for the purpose of pointing out that the funds being allocated are 100% Senate funds, and then removed his objection. There being no further objection the motion passed.

ADJOURNMENT

Chairman Hohman indicated that the next meeting of the Council would be on March 18, 1980 at 4:00 p.m. for the specific purpose of receiving a report from Levy and Associates by Mr. Milton Lipton.

Without objection, Chairman Hohman adjourned the meeting at 3:08 p.m.

***

MAY 20 1980

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MEMORANDUM

To: SUBCOMMITTEE ON SAGEBRUSH REBELLION Alaska Legislative Council

Date: May 14, 1980

With the exception of Oregon and Montana (whose legislatures only meet in odd numbered years), Sagebrush Rebellion legislation was introduced in each western state. In the majority of states, pro-Sagebrush efforts were successful.

The legislative responses take several forms: resolutions in support of the Sagebrush Rebellion, mandates to the state attorney general to file amicus briefs in Sagebrush litigation, state constitutional amendments abolishing the disclaimer clause relinquishing all right, title and interest to federal land within its boundaries, or legislation similar to that which Nevada passed in 1979. The following summarizes, on a state by state basis, the actions taken. */

Arizona

The Arizona State Legislature passed a bill (S.B. 1012) declaring the state's strong moral, economic and legal claims to the public lands within its boundaries. The legislation adopted provides for state control of certain lands within the state boundaries and is virtually identical to the Nevada bill. Just as we had speculated in the report of January 28, Governor James Babbitt vetoed the bill on April 12. The Legislature then overrode that veto by a substantial margin.

Even more recently, the Arizona House passed a concurrent memorial (2004) in support of Senator Orrin Hatch's Sagebrush bill because Arizona has a right to be a state on equal footing with all other states and the federal government should only act as a trustee.

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*/ We have copies of most of the adopted measures. These are available upon request.

California

California's Legislature was less successful in overriding its governor's veto. Governor Jerry Brown vetoed the Sagebrush Rebellion bill in 1979. Assemblyman Hayes, who was the proponent of 1979 legislation, did introduce legislation again this year (A.B. 2302), but the proposal is being substantially amended. The first proposal by Hayes would require the State Land Commission, the Attorney General, the Office of Planning and Research and the Department of Fish and Game to conduct a study encompassing the following issues: assess the state's legal basis for claiming public land ownership, the federal budget necessary to support the land, the amount of revenue derived from the public lands, the financial requirements for continued public land productivity, the economic impact of federal ownership on the state, and the cost to the state if it assumed ownership. No action has yet been taken on this legislation. Ostensibly, it would be more palatable to Governor Brown than a straight Sagebrush bill.

Colorado

Despite the fact that the governor of Colorado, who controls the agenda of the state legislature for 1980, omitted any Sagebrush-related proposals, the Sagebrush Rebellion was addressed via a resolution (H.J.R. 1006), directing a legislative appropriation for FY 1980-81, to fund a multi-state public land study. The study, similar in concept to the California proposal, would assess the effect of transferring public land management from the federal government to the respective states. The resolution was recently adopted by the 52d General Assembly of the State of Colorado.

Idaho

Several Sagebrush Rebellion-related pieces of legislation were presented to the Idaho Legislature in 1980. Among them was a regular "Sagebrush" bill, which would have placed the public lands under the jurisdiction of the State Board of Land Commissioners. The State House adopted the bill, but it was defeated in the Senate. However, the legislature did adopt a resolution (S.C.R. 129), directing the attorney general, on behalf of the State of Idaho, to enter litigation concerning Sagebrush issues as an amicus. Likewise, the Attorney General is required to report to the first regular session of the legislature on recommended legal action on public land issues.

New Mexico

The New Mexico Legislature has enacted one Sagebrush measure and may yet enact at least one other. First, it passed H.R. 79, which mandates state control of certain public lands within the state, thereby providing additional revenues for state and local purposes from the public lands.

The legislature was also advised by the Office of the Attorney General to enact a joint resolution proposing the constitutional repeal of the disclaimer clause. Such a repeal of the disclaimer clause would then be presented to Congress for its consent. If Congress fails to consent, then the question would be placed before the voters in the next general election. This proposal is still under consideration.

Utah

The Utah Legislature adopted a Sagebrush Rebellion bill, similar to that of Nevada, which directs the state to assume control of the public lands within its boundaries, with the proviso that the public land would not be transferred to private ownership without specific legislative approval. Under this statute, federal officials interfering with Utah's dominion over public lands within its borders would be guilty of a felony. Additionally, the Office of the Attorney General is directed to study the legality of this legislation and to submit a report to the legislature in its next regular session.

Washington

Interest in the Sagebrush Rebellion has grown rapidly in the State of Washington. Washington initially appeared to have only a lukewarm interest in Sagebrush, but the Legislature expressed support for the movement by enacting two measures, S.J.R. 132 and S.B. 3593.

The resolution declares that at the next general election, the voters shall have the opportunity to approve an amendment to the State Constitution which would eliminate the disclaimer clause regarding unappropriated public lands lying within the state. If this resolution is passed by the voters, then Senate bill 3593, which is similar to the Nevada bill, would go into effect.

Wyoming

The Wyoming Legislature chose to follow a route very similar to that of New Mexico, in that their legislation purports to repeal the disclaimer clause in the state constitution. This matter will be presented to the voters of Wyoming as a constitutional amendment. In addition, the State of Wyoming is also asserting control over its public lands and directs the Board of Land Commissioners to manage these public lands. Despite speculation to the contrary, Governor Hershler signed the measure.

Outlook

The positive Sagebrush Rebellion activity in the western state legislatures was far greater than expected this year. It serves as ample proof that the rebellion is no longer a political fad, and demonstrates the determination of the western states to directly confront public land issues.

This summer, the National Association of Attorneys General will be meeting at Lake Tahoe June 8-11, 1980. The Western Conference of Attorneys General will submit a package of resolutions relating to Sagebrush Rebellion issues at that time. These resolutions support conveyance of federal land to the states, amending the National Environmental Policy Act to limit venue to the site of the controversy, and support for an amendment to the Federal Quiet Title Act to clarify the statute of limitations. This meeting coincides with the Western Governors meeting.

Only a week later (June 17-18), the Western Council on State Government's Task Force on Public Lands will meet to focus on the efforts of the state legislatures and methods to cooperate in furthering the goals of the western states.

Finally, the National Association of Counties will hold its 45th annual conference in Las Vegas, Nevada, June 29 - July 3. The Western Division of NACO has strongly supported the Sagebrush Rebellion and the conference will focus on public land issues as they affect state and local governments.

Litigation

The State of Nevada plans to file a new Sagebrush lawsuit with the United States Supreme Court that will attempt to extend to the public lands the doctrine of inherent state sovereignty over navigable water bottoms that was recognized in United States v. Oregon. The State of Nevada is actively soliciting the intervention or amici support of the other states. The complaint will only address questions of law and will leave the application of the law and suitable remedies for another day.

The single most important Sagebrush-related case pending before the Supreme Court is Utah v. Kleppe, which challenges the authority of the Department of Interior to classify land as not being available for state land selection. The case was argued before the Court on December 6, 1979. No opinion has been issued, but the Supreme Court is finishing its Spring term and the decision could come any day. The Utah case concerns a state land grant statute and a classification authority quite different from that of Alaska. Utah challenged the authority of the Secretary under Section 7 of the Taylor Grazing Act to classify land for grazing so as to preclude state land selection. The Taylor Grazing Act was adopted before Congress passed a supplemental Utah land grant act in 1964. Interior opposed Utah's selections made pursuant to the 1964 statute on the grounds that the state should not be entitled to equal acreage of land that was more valuable than the original township entitlement, and further contended that because the land was classified for grazing, it was exempt from state land selection. If the Supreme Court adopts the Department of Interior's claim to authority to limit Congressional land grants, then it might imply a similar power to preclude Alaska's land grants.

Individual states' efforts to adopt their own enforcement plans, as permitted in several of the federal environmental statutes, won a victory in the Tenth Circuit Court of Appeals last March. The trend has been for the federal agencies to override statutory provisions for state implementation of federal statutes, as in the case of the Clean Air Act Amendments of 1977.

On March 25, 1980, the state legislators of Colorado won their suit against the Environmental Protection Agency, which had threatened to impose cross-over sanctions because Colorado's program did not mirror the federal regulations. In this case, EPA would have withheld $300 million of Department of Transportation funds until the state implementation plan met EPA standards. The Colorado Legislature was embroiled in controversies over automobile inspection and maintenance legislation, which were a necessary part of the implementation plan. The court stayed EPA's proposed enforcement an opinion until May 1.

Litigation challenging the Forest Service's RARE II process continues in the States of Wyoming and California. The Mountain States Legal Foundation is leading the challenge to the RARE II process as it affected certain high oil potential lands in Wyoming and southern Montana, in the so-called Overthrust Belt. The theory of the suit is that the RARE II program, which is entirely administrative, constituted a de facto withdrawal which had never been approved by the express provisions in the Federal Land Policy and Management Act. Certain factual stipulations have been agreed to and a motion for summary judgment has been entered.

Likewise, in late December, the District Court for California held that the Forest Service's final environmental impact statement for the RARE II program as it affected California was inadequate and therefore violated the provisions of the National Environmental Policy Act. Judge Karlton's opinion rejected the EIS on the grounds that it was conclusory and factually insufficient. Thus, 47 study units in California, which had been classified for multiple use and further planning, were to be held in a no action status until the EIS was corrected. The case is on appeal to the Ninth Circuit.

In our opinion, Judge Karlton's opinion will probably be overruled because much of his decision assumed that the 1964 Wilderness Act mandated the Forest Service to study every area of the national forest system. A close reading of the Wilderness Act reveals that the Forest Service could, but did not have to, select wilderness areas within the system for study. There is no statutory requirement to study each and every forest acre. Since the judge's ruling incorrectly assumes that the provisions of the Wilderness Act are mandatory when in fact they are discretionary, his holding that the Forest Service violated the provisions of the Wilderness Act will probably fall.

The constitutionality of the Congressional act designating wilderness in the Boundary Waters Canoe Area of Minnesota, is about to be upheld. While Minnesota is not typically considered a public land state, the northern portion of the state is primarily national forest. The 94th Congress designated much of that area wilderness and mandated an end to the use of motorized vehicles and certain commercial tourist operations located within the boundaries. The inholders and recreational users filed suit in the U.S. District Court challenging the constitutionality of the law. An opinion should be issued toward the end of this month, upholding the constitutionality of the statute. It should be noted that in these cases, courts tend to find Congress' actions constitutional, but leave open the opportunity for the litigants to seek monetary damages for their losses.

Congress and the Interior Department

Congress has not taken any action on legislation related to Sagebrush Rebellion issues. While legislation has been introduced mandating conveyance of all federal lands to the respective states, no hearings have been held. Generally, the committee chairmen to which these bills have been referred are not sympathetic to the Sagebrush Rebellion and it is not expected that such hearings will be held in this Congress.

On May 7, the Senate Judiciary Committee accepted an amendment to alter venue rules for environmental litigation, which was recommended by the Subcommittee on Judicial Machinery. The proposed language combines the bills introduced by Senator Dennis DeConcini (D-Ariz.) and Senator Paul Laxalt (R-Nev.).

The law focuses on two separate venue issues. First, it changes the factors a court is to consider when reviewing a motion for change of venue in all cases. If the cause of action is determined to primarily have local or regional impact, then the court should find it in the interest of justice to send the case back to the local district. Under present law, convenience of the parties and interests of justice govern motions to change venue.

Secondly, in cases where: 1) the United States is a defendant, 2) the cause of action embraces a given locality, 3) concerns real property, or 4) involves environmental issues, there is a statutory presumption in favor of the transfer of the case to the local district. In addition, a motion for change of venue can be brought by the court sua sponte or an intervenor, rather than merely being the option of the defendant, as under present law. Moreover, the plaintiffs in these kinds of cases must notify up to five state attorneys general of the potentially affected states. No such notice requirement exists at the present time.

The general intent of this amendment is to preserve local districts' rights in litigation which is frequently brought in Washington, D.C. The Alaska wolf hunt case is a particularly appropriate example. The preservationists sued the Department of Interior in the District of Columbia and the Alaska State Attorney General was forced to come to Washington to argue a matter more appropriately resolved in Alaska.

Substantial support for the amendment is reported to exist. However, the House Regulatory Reform Bill differs substantially. Therefore, the venue reform has a distance to go before it becomes law.

Similarly, the Bumpers amendment is also attached to S. 262, the Judicial Improvements Bill, discussed above. It changes the burden of proof for challenges to agency actions. Originally, it was a rider to a budget authorization bill that passed in the Senate during the first session of this Congress. A modified amendment was added to the Judiciary Committee's omnibus regulatory reform law. Thus, the amendment is now carried in S. 262, which must go to the Senate Floor. The House Judiciary Committee has just taken up the regulatory reform matter, so no final committee print exists. However, neither the venue issue nor the Bumpers amendment is included.

The same is true for the amendments to the Surface Mining Reclamation Act, which would have clarified the right of the states to submit complying, but varying, surface mining programs. The amendment passed overwhelmingly in the Senate, but Representative Morris Udall has vowed that the amendment will never leave the Committee on Interior and Insular Affairs.

Mike

Other interesting developments have occurred in Washington. Secretary Cecil Andrus has made public his intent to resign after 1980. More importantly, Leo Krulitz, former Solicitor of Interior, has resigned, and Clyde Martz, well-known public land lawyer from Colorado, is taking his place. Mr. Martz has tremendous credibility with industry, having been involved in public land issues on behalf of mining companies, oil companies, and other multiple use clients. While a Solicitor cannot directly change Department of Interior policy, Martz is expected to be a knowledgeable and effective voice for the western states.

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For copy of report, see
Legislative Reference Library,
LLIB document no. 8000820

THE SAGEBRUSH REBELLION

A Concise Analysis of the History, the Law
and Politics of Public Land in the United States

Prepared for the State of Alaska

Legislative Affairs Agency

January 28, 1980

BIRCH, HORTON, BITTNER, MONROE,
PESTINGER & ANDERSON, P.C.

Joseph M. Chomski

Constance E. Brooks

FLASH!

NEVADA LEGISLATURE CLAIMS 49 MILLION ACRES OF "FEDERAL LAND" FOR STATE *

Nevada Governor Robert List signed into law a bill declaring state sovereignty over 87 percent of the entire State previously controlled by federal agencies.

Nevada's call to other states to join in its challenge is not going unheeded. Already Alaska's Legislature has passed a resolution commending Nevada's move, and Oregon lawmakers have it under consideration.

The "public lands" issue is of such mind-boggling magnitude that it makes the fuel and energy crisis picayune by comparison.

The original Nevada bill, drafted by District Attorney T. David Horton, Counsel, Committee to Restore the Constitution, Inc., a non-profit Colorado corporation, and legislative hearings preceeding enactment of the statute, are reported in "EMERGING STRUGGLE FOR STATE SOVEREIGNTY", a new book by Archibald Roberts, Lt, Col., AUS, ret., Director, Committee to Restore the Constitution.

"Emerging Struggle for State Sovereignty", $5.95 paperback, is available from BETSY ROSS PRESS, 480 Savings Building, Fort Collins, Colorado 80521

*** ROCKY MOUNTAIN NEWS editorial, Sunday, 10 June 1979, copy on request.**