Summary: Wolf examines public land law from several perspectives. The first involved the initially poorly regulated "withdrawal" of public lands by the military and resulted in the Engalls Act to standardize regulation. The next involves regulating abuses of mining claims. Perhaps the largest impact revolves around the connection between the Public Land Law revision and the Wilderness Act, which were passed in the same time period. Wolf explains the relationship and how the personalities involved shaped those changes. Finally, he looks at the BLM land management process.

Hall: Okay, this is Wednesday, November 15th. We're in the archives of the Mansfield Library.

We're talking with Bob Wolf today and today's talk will be public land law. If you'd like to
Start ...

Brown: I guess we're going to start and perhaps the one that I'll ask you to deal with most briefly here would be the military land withdrawals.

Wolf: In the '50s there was a great deal of concern being expressed as the country expanded and as the military expanded also, instead of contracting. Branches of the military were taking public land for both secret and for non-secret things (the atomic work that was being done and for other things). These takings were mainly in the West and they mainly involved rangeland, and thus BLM lands. The ranchers in particular were objecting to having their grazing permits (revoked) because they had subsidized grazing, to being pushed off the land. Then Congressman Clare Engle of California took an active interest in this because of some events in California.
The military took the position that national security was involved and were reluctant to do anything. But Engle and later Aspinall and Congressman Miller from Nebraska pushed on the issue and they promoted the idea of regulating withdrawals in excess of 5,000 acres.

The term "withdrawals" itself has a negative connotation. It really is a classification of public land where certain uses are directed and others are avoided because they conflict. Withdrawals, as you know, have been used for a long time in the public lands. Finally the Engle Act, as it was known, got the "military withdrawal" language put into law and that's how that came into being. This was part of an emerging concern by those using public lands on a permit basis who felt that their rights, as they viewed them, (which weren't rights, but they viewed that their permit was a "right") even when the old law said that their permit was a "privilege" and could be canceled at any time -- they wanted it determined [inaudible] and they also wanted damages. It was as though you lease my house under a lease, which said that I could terminate it on thirty day's notice, and I gave you thirty day's notice, and then you demanded damages for terminating the lease.

Brown: Basically, the background was that 5,000 acres or more, Congress had to make that.

Wolf: Yes. Congress had to affirm it. Under 5,000 acres they permitted the executive [branch] to make the determination. But most of the withdrawals were for an excess of 5,000 acres, particularly the military ones. The military did, I must say, have a rather insatiable appetite because they like to perform a new version, and they often only needed the land part of the year, but they refused to agree that the other times of the year the land could be used for other things.
Brown: Then the second topic that I'm going to ask you about is, are those efforts, I take it, to reduce the numbers of improper dwellings and whatnot on mining claims. Was that done before 1962 legislation?

Wolf: Oh, yes. As I recall, that was 1962. That came about in a funny way. Back in 1952, the Department of Agriculture had made a mammoth study of illegal use of mining claims. People had all kinds of things on them: rentals, hotels, residences, businesses, and houses of prostitution. There was one on the Tonto National Forest that caused the Lone Ranger to get quite a play. [laughter] Senator Williams of Delaware, a Republican, who loved to raise these issues, as you said, had a field day describing the Lone Ranger [laughter] and the event he was plagued with. In 1955, the 1872 Mining Law was slightly revised to deal with some of the worst abuses, but not really the worst of them, some of the more flagrant ones, I would say. Gravel was made a common material, so-called, which could be leased rather than under a mining claim.

As you know, the mining claim allows you to file a claim, file it on the ground, file at the county courthouse, (and therefore Interior didn't know that it existed) and then proceed to explore for minerals by posting the boundaries and doing a certain amount of so-called assessment work each year, which Congress annually commuted, so you didn't even have to do that $100 worth of work. You could do all kinds of other things on that land claiming that you had a mining claim, and it was a complex procedure to stop your efforts. No sooner would your efforts be stopped than you could just turn around and re-file a mining claim, changing the dimensions a little bit. This was a significant problem. There's another law, which you're, I suspect, quite familiar with, called "Color of Title." It was passed in 1927. That law provides
that when someone resides on the land in good faith for 20 years and pays taxes, the Color of Title will be presumed to be the title, and that for $1.25 an acre they can get title to the land.

The people on mining claims couldn't use that. There were a number of such cases in California. People had bought mining claims from someone else thinking they were buying the title, sometimes honestly, sometimes not honestly. But there were a number who really thought they had bought a piece of patented real estate from somebody, built a house on it of some substance and then resided on it and paid taxes on it. In some cases they hadn't paid, but in many cases they had. They had a residence on a mining claim and then discovered that they didn't have title to the land, really, that all they'd gotten from John Jones was a quit deed. So the question was what to do about it.

It turned out that one person who had such a situation was in the state of Idaho and was an acquaintance of Frank Church, the Senator from Idaho. Frank was anxious to deal with this thing. I was working with the Senate Interior Committee. We developed a bill to deal with this issue. Senator Anderson, the chairman of the committee, insisted to me that the bill be very tightly drawn. He didn't want it to open a Pandora's box of giving public land away to people. I remember going out and investigating some of these on the ground floor to see what the bona fides were. There were some in California we looked at and some in Idaho and Oregon.

The bill started to work its way through, with Frank Church pushing it, and he was the chairman of the Public Lands Subcommittee at the time. But Anderson retained a tight rein on things in that committee and was always wary of public land bills that gave stuff away. At any rate, we had a hearing and an agency report and, as an aside to it, a fellow by the name of Frederick Fishman, who worked in Interior's General Counsel office, came up to talk with me about some changes that would loosen it up. I told him that I did not think that this would meet
with agreement by Senator Anderson. Fishman told me, "Well, that's all right. When it's passed, we'll do what we damned well please."

Well, I worked for Anderson, not for Fishman. [chuckle] I went and told Clint [Anderson] that, and when we sat down and wrote in a series of tightening amendments and Anderson said, "Now they won't be able to do that." I don't remember the exact sections of the words, but we tightened it up appreciably and Anderson insisted on the language with the House and that was the way it was enacted.

Brown: You had to live there for seven years prior and then you could [inaudible].

Wolf: Yes. We limited the acreage. You had to prove residence for a certain period and so forth, but there were a couple of other little technical tightenings we did that took care of this. I must say that my experience on the Hill, my view, was (and with the executive agencies) that you didn't have to like the law, you just had to carry it out the way it was intended to be carried out. You didn't have to look for ways to get around it. Whenever I found someone in the executive branch who seemed to have that desire, I always made sure that the people I worked for knew it so that they could tighten it up if they wanted to. Clint Anderson always wanted to tighten those things up.

Brown: In the time that you've been there, what percentage or proportion of the House and the Senate would you say are genuinely interested in and have an understanding of public land issues?
Wolf: Oh, somewhere between one and two percent.

Brown: OK. Thank you. [laughter]

Wolf: In the Senate it would be a little higher, you know, because of the makeup of the Senate.

Brown: You'd think it'd be a little higher than Indian issues. That's the other area in which I work, and I think we'd say 1/2 percent for one ... really interested in Indian issues. You'd think it'd be a little higher in public lands because our national parks and forests ...

Wolf: But in defense of the members of Congress, they usually serve on two or three committees. They represent their district or their state. They're importuned on all sorts of things and they're also pushed on a lot of issues that Congress never should even have to consider or no member of Congress should have to look at. They get some of the craziest requests from constituents. All this eats into their time, and so a member of Congress has his feet in two camps. One is, he's trying to legislate, and the other is, he's trying to get reelected and he has to serve his constituents. Then a lot of this stuff, of course, members delegate to their staffs. We have a vast body of law. Some of it's highly complex. Dr. Laurence Woodworth, who was a chief of staff on the Joint Committee on Taxation, once told me that out of the 33 or so members of the House Ways and Means Committee, he didn't think four really understood much tax law. [chuckles]

Brown: Does this earlier effort ...
Wolf: Advising the public [inaudible] ...

Brown: Precedes them.

Wolf: Karl Lendstrom had been on the House Interior Subcommittee prior to the election of President Kennedy, and had gone down to the Department of Interior as the director of the BLM in 1961. He was an economist who also had a law degree. He'd been a BLM resource economist, land economist in the Pacific Northwest and elsewhere. He had been a colonel in WWII and he was a very opinionated man. He's still alive and I know him well. He became the BLM director. He came out of the Marion Clauson School of Public Land Administration and genuinely believed that public land laws should be revised and improved, and he expressed an interest in doing it. I was working in the Senate. Senator Bible had become chairman of the Public Lands Subcommittee, and he and I had talked about revising the public land laws.

Working with people at BLM, I had produced a monograph on committee print on the public land laws and their condition. Senator Bible had agreed that what we ought to do is go at these, in effect, bloc by bloc, a small group of related laws at a time, and either modernize them or repeal them. At the same time, and unbeknownst to us in the Senate, John Carver, the assistant secretary for public lands, had been conducting private meetings with Congressman Wayne Aspinall of Colorado, who chaired the House Committee, which was his prerogative. Aspinall had the idea that what we needed was a public land law review commission. Since we were unaware of it in the Senate, and Carver had not discussed this with Senator Anderson or Senator Bible, or any other people such as Frank Church, for whom he had previously worked,
we were proceeding in our effort in good faith and Carver was working with Aspinall in good faith.

I drafted a series of public land law revision bills with the aid of Stewart French, the counsel for the Interior Committee, and one day Bible introduced them with some remarks about them after this monograph had come out. John Carver called me up all upset (we had a very heated conversation, in fact) accusing me of undercutting him. I was shocked, first by his tone of voice and by the very notion, because I was totally ignorant of what he was doing. I tell you it was a heated conversation, and he finally hung up the phone [chuckling]. I remember writing a letter to John telling him what I thought of the procedure, that that certainly wasn't the way to resolve this but that basically in the Senate what we were seeking to do was to work diligently at reforming the public land laws. He and I didn't kiss, but we made up. He apologized for his conduct, but John had a short fuse. He'd get excited needlessly about things.

The Aspinall stuff wasn't ready. Bible put the bills in and waited to see what would happen. But knowing that the administration was thinking of another approach, Bible said, "Well, let's wait and see what they do." I got a telephone call one day from Milton Pearl. He was counsel to Wayne Aspinall in the House. He invited me to come over to the House to hear the chairman make a major speech on the floor. Well, you know the difference between the House and the Senate. As far as I was concerned, Aspinall wasn't the chairman, he was chairman of the House Interior Committee, and he wasn't God.

I had other commitments and I told Milt that I would be unable to do it. This was going to occur later that day. But first thing in the next morning I got the record and looked at it, and Aspinall had put in a bill to create a public land law review commission. I looked at his remarks and I studied them, and I realized where things were and how they'd been shaping up.
My job, among other things, every morning, was to go see Senator Bible, Senator Jackson and Senator Anderson to discuss any business they might be interested in. I went to see Alan Bible and I told him. Bible's reaction was, "Public land law review commission! What do we need with a commission? That'll cost a lot of money. What's wrong with doing this in regular order? Just taking the subject by subject the way my bills would do it?" I said, "Well, this is what, apparently, Mr. Aspinall wants to do, and this is what the administration is looking at." Bible said, "Well, I don't like the idea."

Then I went over to see Senator Jackson. I went in. "Scoop," I said. "You ought to know that Wayne Aspinall has put in a public land review commission bill." [He said,] "That's a dumb idea." [chuckling] [I reminded him] every two years Senator Magnuson puts a bill in with your name on it to create a public land law review commission, and I happen to know that Milt Pearl and Wayne Aspinall think you believe in it. Scoop looked at me and said, "Bob, I told you not to let me on that damned bill of Maggy's." [laughing] I said, "Well, you know, every two years we tell them that. They go ahead and put the bill in. We get it. We don't do anything with it." He said, "That's that crazy idea of Burt Cole's." Burt was the chairman of the Public Land Commission in the state of Washington. Scoop said, "This bill isn't going anywhere."

Then I went up to see Clint Anderson. Clint listened to my description of it and then he looked at me and said, "Bob, do you think that Wayne Aspinall really wants a public land law review commission?" And I said, "Yes, Clint, I do. I believe he genuinely does. Anderson leaned back and put his hands behind his head, looked up into the ceiling and then looked at me and said, "And I want a wilderness bill." Ah ha! I went back down to my office, which I shared with Benton Stong. He was working on the Wilderness Bill. He was the principal guy on it. I went in to Ben and I said, "Ben, you're going to get a wilderness bill." And that's what happened.
You look at the dates of the enactment of those two pieces, the Public Land Law Review Commission, and the three bills which Interior developed out of what we had done in the Senate Interior Committee dealing with interim public land law administration. The Public Land Law Review Commission and the Wilderness Bill all got enacted within the same tight period of a month.

That's how it happened. Otherwise, in the Senate, the Republicans wouldn't have been interested in it. Bible and Jackson would have opposed it. That would have been enough for Anderson to say, "Well, what do we want to do this for?" But once Anderson concluded that Aspinall really wanted it; that became the trading stock. Afterwards, if you recall, Aspinall would not agree to any of the nominees for the chairman of the Public Land Law Review Commission. He wanted to chair it with Milt Pearl as the staff director.

I remember going by (by then I was assistant to the director of the BLM) to see Clint and talking with him about something, and I said, "I gather that you're going to have Aspinall chair the Public Land Law Review Commission." Clint said, "Yes, we've decided to do that. Wayne's going to kind of be like the father of a Mongolian idiot." That led me to conclude that Anderson wasn't going to have anything to do really with the Commission. If you go and look at the final report on the Commission, you'll notice that they all signed it, and then there's a sentence in there that their signature doesn't mean that any of them agree to anything. It's in the report. That's the way it played out. Aspinall and Milt Pearl put it all together and the staff did a lot of good work trying to develop studies and analyses of the public land laws, but the Senators just washed their hands of it because Aspinall made it his baby. As Clint said, it was a Mongolian idiot -- kind of a peculiar phrase for Clint to use. [chuckle] It wasn't until 1976 that [FLPMA] finally got enacted which dealt with that. That, plus PILT which came in '76.
You may recall when the commission report came out, Aspinall declared the most important thing was changing the payments to counties. [laughter] The report came out in ’67–68 and PILT wasn't enacted till ’76. But the three basic BLM laws that were enacted for the interim period were substantial modernizations of public land policy because they dealt with land classification, multiple use concept, and froze some of the worst laws except for the 1872 mining law, which still persists.

Brown: Did the BLM feel that it had multiple use mandate as of ’64?

Wolf: Yes. Internally it believed that. The law said it had it and that it was going to retain it. Anyone who worked in the administration of public land laws knew that the free gift laws (the homestead law, et cetera) weren't working because there was no agricultural land left. The public sale laws weren't working because of the adjoining owner aspect of it, which prohibited open sale of the land. Let me put it this way. In the Eisenhower administration, Ed Woozley, when he was director of BLM, decided that he would sell a bunch of land in the Mojave Desert area, California, for small tracts. And so he directed the BLM people of California to lay out these small tracts and sell them, which they did. They no sooner had completed the sale when the people who bought those tracts descended upon the county commissioners demanding roads, sewers, power, et cetera. I don't recall the lady who was one of the county commissioners, but she was very active in the National Association of Counties and I knew her. I remember because I was working on the Hill then. She and other members of the National Association of Counties (from urban type counties) came in and they gave the BLM people the devil. They came up and talked to people on the Hill and said they didn't want this policy carried forward one step further.
So what we had was the rural county commissioners always yelled that the BLM should get rid of this land and put it on the tax rolls. In the real world, county commissioners are saying, "Yeah, but then look what it does to the tax load." We don't have taxpayers, we have taxeaters, which made the subsequent Sagebrush Rebellion destined to fail also.

So what we had was some actions done in the mid-'50s that were forerunners of the Sagebrush Rebellion that fortunately got nipped in the bud, because Ed Woozley, who was from Idaho, and was a director of BLM, was smart enough to [see] that this ran counter, really, to what local governments [really] wanted done with these public lands. The last thing they wanted was to make them into taxeaters.

Brown: OK. Tell me what, until the temporary Classification Act of 1964 was dumped, what the whole thrust was until there's a more permanent classification.

Wolf: Those classifications technically were interim, temporary.

Brown: What did BLM actually do?

Wolf: Charles Stoddard by then was the director of BLM. He designated a fellow by the name of Robert Jones to head up the planning effort, and BLM went into an extensive, state by state effort to classify land into land that should be retained and land that should be disposed of either to another level of government or privately. Those classifications were reasonably coherent ones.
Brown: Say, timberlands, would the counties or the BLM just continue to manage them as timberlands?

Wolf: Yes. Now the O and C lands were a special category in Oregon. Those were exempt from this and the Coos Bay-Wagonroad lands that were associated with them. The intermingled public domain was integrated into the BLM, O and C and Coos Bay-Wagonroad lands. There had been some extensive studies by BLM and the Forest Service on land adjustments. The Forest Service had taken the position that the BLM didn't have multiple use authority. That was before these three acts were passed, and even after they took the position that it was temporary authority. So these efforts to adjust patterns of land use didn't work because of interagency feuding. After Stoddard left as director of BLM and Boyd Rasmussen became director, we had the results of these analyses by our two

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... uneconomical for BLM to administer [them]. [We should] give [them] to the Forest Service, not asking them for anything. We'll give them the lands but not the people and the money → lands intermingled with theirs, and there is quite a bunch of it. Boyd's reaction was, he had come from the Forest Service where he had been assistant chief for state/private forestry, and he said, "Bob, if I did that, people in BLM would think I was pro Forest Service. So I'm not going to do it." So we didn't. But it was almost impossible at the field level, to get the people in these two agencies to realize these were federal lands not personally held.
Brown: What about, say, there was a place that was a nesting ground or something. Would there be a recommendation that this should be a wildlife refuge?

Wolf: A place that was, ?

Brown: Say that it was a breeding ground for waterfowl or something. Out of that classification would there then be a recommendation that a wildlife refuge be created here?

Wolf: Yes. The BLM people were quite willing. The bureaucratic tendency of the BLM was that they didn't want to dispose of the lands to anyone else. Stoddard and Rasmussen fought this battle internally, saying, "We don't need to keep every acre. Other agencies might manage it better."

We had a real problem here in Montana over wildlife refuge with the local BLM people fighting with the Fish and Wildlife people.

Brown: This is up in the Charles Russell?

Wolf: Yeah. Acting as though it was their real estate. This is a not uncommon bureaucratic problem.

Brown: Oh, I know.
Wolf: And an unfortunate one.


Wolf: Efforts that Boyd and I made to get our people to look at things differently were not really very fruitful.

Brown: But in your view, then, does multiple use in the Classification Act of '64, that really holds until we get to '76 and then telling them "plan" and "classify."

Wolf: Yeah.

Brown: OK.

Wolf: The BLM went ahead as though it had permanent authority to manage the lands effectively, more effectively than it had. Of course we had the '68 Grazing Fee controversy precipitated by OMB [Office of Management and the Budget] that said the Forest Service and the BLM should have uniform grazing fees. The net result of that was to reduce the Forest Service fees but raise the BLM fees when what they should have done was raise all of them. The grazing controversies have never really been settled, and still persist.

Brown: I see that. There are some bills in right now. Marlinee says "keep the same," and somebody else says "fair market value." But that's been going on now for a while, hasn't it?
Wolf: Yes, and so we haven't resolved that. The other issue of public use and access is another.

The ranchers acting as though they have a right when even the Taylor Act says that all they have is a privilege.

Brown: Yes. It's an interesting field of law, and your insights are wonderfully helpful. I mean, your experience is wonderfully helpful. This'll be a valuable source. We'll probably come back and listen to it.

Hall: Thank you.

[End tape]