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## Political Economy Perspectives on the Sagebrush Rebellion

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# POLITICAL ECONOMY PERSPECTIVES ON THE SAGEBRUSH REBELLION

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## I. INTRODUCTION

For the past ten years, associates of the Center for Political Economy and Natural Resources at Montana State University have systematically analyzed governmental management of natural resources on the public lands. Working with federal agencies, such as the United States Forest Service and the Bureau of Land Management (BLM), private foundations, and economists and policy analysts, the Center has carefully examined the federal government's management of timber, grazing, minerals, energy resources, wildlife, and recreation. The Center was one of the first organizations to speak out against the profligate use and nonuse of these resources and to arrive at viable management alternatives—alternatives that are both economically and environmentally sound.<sup>1</sup> One concern was the growing discontent in the West that blossomed and grew into the Sagebrush Rebellion. Although the Rebellion no longer has the emotional or local political sup-

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1. See e.g., J. BADEN & R. STROUP, *BUREAUCRACY VS. ENVIRONMENT: THE ENVIRONMENTAL COSTS OF BUREAUCRATIC GOVERNANCE* (1981); J. Baden & R. Stroup, *Property Rights and Natural Resource Management*, *LITERATURE OF LIBERTY*, Oct.-Dec. 1979, at 5; J. Baden & R. Stroup, *Private Rights, Public Choices, and the Management of National Forests*, *WESTERN WILDLANDS*, Aut. 1975, at 5; J. Baden & R. Stroup, *Externality, Property Rights and the Management of Our National Forests*, *J.L. & ECON.* (Apr. 1974); R. STROUP & J. BADEN, *Property Rights, Environmental Quality, and the Management of National Forests*, *MANAGING THE COMMONS* (1977).

port that it did a year or so ago, the conditions that prompted its genesis are still with us and solutions are still required.

To ask if one supports the Sagebrush Rebellion is roughly analogous to asking if one supports changes in the American health care system. The answer, of course, depends on the consequences of the changes advocated. In supporting reforms of the United States health care system, one would not necessarily advocate voodoo health care, faith healing, snake handling, or socialized medicine. In much the same way, one must consider the likely outcomes of the changes advocated by the Sagebrush rebels. While the reforms most commonly advanced by supporters of the Rebellion will not guarantee increased efficiency, improved environmental quality, or increased equity, reforms that take the Rebellion's arguments one step further are decidedly more promising, especially those that are feared the most, such as privatization.

The Sagebrush Rebellion had its roots in Nevada, where the federal government owns and manages 87 percent of the land. In July 1979, an angry state legislature passed a law giving the state control of 49 million acres of federal land, the federal government refused to relinquish control, and the Sagebrush Rebellion was born. Since then, other Western states have considered similar legislation, encouraged and supported by those who felt a growing frustration with federal bureaucratic regulations and restrictions.<sup>2</sup>

Recently, however, supporters of the Rebellion have backed away from the fight, content to let the conservatives in Congress and the White House work their will. Many believe that with Ronald Reagan in the White House (before the election, an open supporter of the Rebellion) and James Watt in the Department of Interior, the Sagebrush Rebellion should dissemble. They contend that the movement is no longer needed to lobby for change. Those who support such a conclusion are seriously mistaken.

The Sagebrush Rebellion developed because of a generalized disenchantment with the management of federally owned and managed resources. Economic and environmental abuses generated by federal agencies are common throughout the West, and they affect a great many people, including ranchers, farmers, loggers, and recreationists. The Forest Service practice of chaining and clearcutting large areas of the national forests is an alarmingly vivid example. Others include Bureau of Reclamation water projects, deficit timber sales, many silvicultural and road-building activities, relatively arcane and technical

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2. See *The Angry West vs. the Rest*, NEWSWEEK, Sept. 17, 1979, at 31; *The Rebel Slows*, Great Falls Tribune, Nov. 2, 1979, at 14; *Rebellion or Greed?*, Los Angeles Times, Sept. 10, 1979, pt. II, at 6; *Decolonizing the West*, Wall St. J., Oct. 15, 1979, at 22.

schemes such as rest-rotation grazing and the allowable cut effect, and the nondeclining even-flow constraint on federal timber management.<sup>3</sup>

Unfortunately, the fundamental, structural characteristics that precipitated current problems have been either incorrectly diagnosed or ignored. Until these institutional proclivities are addressed and reformed, the basic causes of the Sagebrush Rebellion will continue to generate conflict, although probably with a different constituency.

Some have confidently claimed that the conditions that prompted the Sagebrush Rebellion were generated by bad people. Now that the good guys are in charge, we are told, the problems will soon be resolved or at least substantially ameliorated. This attitude is a dangerous example of political naivete and economic ignorance. The problems cannot be solved until institutions force decision makers to face the true benefits and opportunity costs (that is, the best available alternative foregone) of alternative actions and the comparative values of alternative mixes of joint products. There must also be incentives to act on this information.

We will temporarily digress here to defend the personnel in the Forest Service, the BLM, and other agencies charged with managing natural resources. Although our impressions are based on casual empiricism, they are well founded. It has been our experience that the most promising graduates of natural resource programs tend to pursue graduate work or to find employment with the Forest Service or the BLM. While political appointees may be of a different stripe, those on the ground are likely to be both competent and well intended. The problem, therefore, is not one of bad people, but one of institutional design.

## II. CONSTITUENCY OF THE SAGEBRUSH REBELLION

Although American citizens have been blessed with an especially benign political environment, many of them are beginning to understand that government is the most efficient engine ever designed for the generation of plunder. Among the most vocal groups currently condemning governmental management and control is the Libertarian Party. The Libertarians have a growing political base that is increasingly placing their people on national and local ballots.<sup>4</sup> Their belief in the private rights of all citizens (excluding that governmental interven-

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3. For a more detailed discussion of these practices, see BADEN & STROUP, *BUREAUCRACY Vs. ENVIRONMENT*, *supra* note 1.

4. U.S. DEPT. OF COMM., BUREAU OF STAT., *STATISTICAL ABSTRACTS* 498 (101st ed. 1980). For example, in 1976, Roger McBride, presidential candidate for the Libertarian Party received only 173,011 votes. Ed Clark, the 1980 Libertarian presidential candidate received 876,557 votes.

tion necessary to insure physical safety and the protection of those rights) goes a step beyond the states' rights advocated by the Sagebrush rebels, but the movement was spawned by the same high incidence of governmental mismanagement.<sup>5</sup> Bipartisan groups have also gained support. The National Taxpayers' Union, for example, has helped to persuade at least 27 state legislatures that a balanced budget and a constitutional convention are necessary for the public good.<sup>6</sup>

When the government provides a context of law and order and an institutional infrastructure that enables individuals to concentrate on cooperative and productive rather than on either offensive or defensive transfer activities, the net social product can be dramatically enhanced. Anderson and Hill, in *BIRTH OF A TRANSFER SOCIETY*, define transfer activities as those that "add to the wealth of specific individuals or groups of individuals but reduce the wealth of other individuals or groups in the society."<sup>7</sup> Fortunately, there are entrepreneurs, sometimes called speculators, in the private arena who benefit society—and themselves—by systematically moving resources to more highly valued uses, providing a source of growth, prosperity, and enhanced social welfare. Unfortunately, entrepreneurs also operate in the government sector.

The United States Constitution has given us the best recipe ever written for improving social welfare. Over the past century, beginning with *Munn v. Illinois* in 1876,<sup>8</sup> political entrepreneurs (that is, bureaucratic managers and decision makers) have moved us from a society where "getting ahead" required productivity to a different one where some of the best investments lie in transferring wealth from one group, without their consent, to another or in defending oneself against such attempts. The government apparatus is used freely to support this transfer society. Anderson and Hill put it this way: "[p]roductive activity is a positive-sum game, or social interaction, that enlarges the pie. Transfer activity, on the other hand, is a negative-sum game—a series of social interactions that decreases the size of the pie. There is less after the social interaction than before."<sup>9</sup>

Lester Thurow, the MIT economist most noted for *THE ZERO SUM*

5. Libertarian Party, *1980 Platform* (adopted in convention, Los Angeles, Cal., Sept. 6-9, 1979).

6. *Shades of the Founding Fathers: The Drive for a New Constitutional Convention*, 113 *TIME*, Feb. 17, 1979, at 18.

7. T. ANDERSON & P. HILL, *THE BIRTH OF A TRANSFER SOCIETY* 3 (1980).

8. *Munn v. Illinois*, 94 U.S. 113 (1876), stood for the proposition that "under the powers inherent in the sovereignty, a government may regulate the conduct of its citizens toward each other, and when necessary for the public good, the manner in which each shall use his own property."

9. T. ANDERSON & P. HILL, *supra* note 7, at 3.

SOCIETY, tells us that "a zero-sum game is any game where the losses exactly equal the winnings,"<sup>10</sup> and that we are now living in a zero-sum, or no-growth, society. Further, "where at least some of our energies were previously used to enlarge the economic pie, all of our energies can now be devoted to dividing a pie that has stopped growing."<sup>11</sup> What Thurow fails to recognize is that allocations made by the political sector are negative-sum rather than zero-sum. When the government allocates resources, special interests invest their resources in efforts to change the rules of the political game in their favor or to defend against such changes. Rather than being productive, these activities control production and contribute to the wasteful use of limited resources. The Sagebrush Rebellion is best understood in this context.

The supporters of the Sagebrush Rebellion believe that their share of the allocations of resources would be enhanced if the management and control of federal lands were transferred to state jurisdiction. They are probably correct. Bureaucrats in the state capital are likely to be more accessible and responsive to local interests and lobbyists than those who operate out of the remote labyrinth of local, regional, or national BLM offices. Depending on the probabilities of success, investments made in promoting the Sagebrush Rebellion may have been rational in terms of first order consequences and almost surely in terms of second order consequences.

When decisions are made in the political arena, however, protracted and vitriolic conflict can be expected. The long, drawn out fight over the Tellico Dam and the supposed extinction of the snail darter, for example, was extraordinarily costly for all parties involved.<sup>12</sup> Both sides were convinced of the rightness of their position and yielding ground was out of the question, so enormous resources were devoted to oppose or defend the building of the dam. When politicians and bureaucrats control the public lands, any proposed use can become a battleground for a clash of special interests.

The active supporters of the Sagebrush Rebellion have been predominantly cattlemen and sheepmen, oil and other energy opera-

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10. L. THUROW, *THE ZERO SUM SOCIETY* 11 (1980).

11. *Id.* at 117.

12. *Hill v. Tennessee Valley Authority*, 419 F. Supp. 753 (E.D. Tenn 1976). Environmental groups and other parties brought an action under the Endangered Species Act of 1973 to enjoin the Tennessee Valley Authority [hereinafter cited as TVA] from completing a dam and impounding a section of the Little Tennessee River. The U.S. Court of Appeals, (6th Cir.) on appeal reversed the lower court and granted injunctive relief even though eighty percent of the project was completed and over ninety million dollars had been expended. The court found that TVA had failed to comply with the provisions of the Endangered Species Act by not addressing the impact on the tiny snail darter, an endangered species. *Hill v. Tennessee Valley Authority*, 549 F.2d 1064 (6th Cir. 1977). On appeal from that decision, the Supreme Court affirmed the injunction. *TVA v. Hill*, 437 U.S. 153 (1978).

tors, miners, and representatives of several other commodity groups. For example, those attending the 1980 meetings of the League for the Advancement of States' Equal Rights (a forum for supporters of the Sagebrush Rebellion) included representatives of the National Inholders Association, the California Coastal Council, Safari Club International, the International Association of Fish and Wildlife Agencies, Chevron Oil, the National Cattlemen's Association, and the American Institute of Professional Geologists.<sup>13</sup> Notably absent from the Rebellion's ranks have been representatives of the forest products industry, perhaps because of the peculiarities of federal timber management and the implicit subsidies obtained by these firms under the constraints of even-flow nondeclining yield and the allowable cut effect.<sup>14</sup>

There has also been a decided lack of environmentalist support for the Sagebrush Rebellion, which is initially quite puzzling. It is, after all, obvious that despite reasonable intentions bureaucratic entrepreneurs in the Forest Service, the BLM, the Bureau of Reclamation, the Army Corps of Engineers, and the Bureau of Indian Affairs have consistently and systematically used the federal treasury to subsidize the destruction of environmental quality. Examples of such abuse are legion.

The Forest Service, which controls 187 million acres of public land, was established in 1905 to bring scientific, businesslike management to United States forests. It has employed science, but it has shown little regard for economy or efficiency as it has gone about mismanaging vast tracts of forest and wilderness. For example, the Forest Service has terraced significant portions of our national forests, planned recreational developments in wilderness areas, and arranged deficit timber sales. As Hyde states in *LAND ALLOCATION AND ECONOMIC EFFICIENCY*, ". . . multiple use requirements, restrictions on clearcutting . . . , and high logging road standards all increase harvest costs on the . . . public lands. . . . Together these factors have made forest management, particularly forest management on public lands, one of the more controversial areas in all resource and environmental management."<sup>15</sup> In general, the Forest Service has roaded and logged forests that are *de facto* wilderness areas, using methods that would fail the cost versus revenue calculations of Weyerhaeuser or Boise

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13. LASER, *AGENDA FOR THE '80S: A NEW FEDERAL LAND POLICY* (Proceedings of the National Conference on States Rights, the Sagebrush Rebellion, and Federal Land Policy, Salt Lake City, Utah, Nov. 20-24, 1980).

14. See B. Dowdle, *An Institutional Dinosaur with an Ace: Or, How to Piddle Away Public Timber Wealth and Foul the Environment in the Process*, J. BADEN & R. STROUP, *BUREAUCRACY VS. ENVIRONMENT*, *supra* note 1, at 170-85.

15. W.F. HYDE, *TIMBER SUPPLY, LAND ALLOCATION, AND ECONOMIC EFFICIENCY 2* (1980).

Cascade.<sup>16</sup>

The BLM's record is no less discouraging. The agency has chained and has scheduled for chaining millions of acres of pinyon-juniper ecosystems in the "Elfin Forests" of the southwest.<sup>17</sup> It has also designed controversial rest-rotation programs for use on 87 percent of its grazing areas.<sup>18</sup> The Bureau of Reclamation has destroyed winter range by building the Teton Dam and other projects that can be justified only at two or three or four percent interest rates, while ignoring the negative externalities—those costs that accrue to parties other than the decision maker—imposed by these projects.<sup>19</sup> The Bureau of Indian Affairs has outlawed the traditional checks on overgrazing, fostering the development of the worst range conditions ever experienced in the United States and impoverishing Indians in the name of communal ownership.<sup>20</sup> At the same time, the Army Corps of Engineers has attempted to justify the expansion of its activities by referring to an energy crisis that was generated primarily by governmental policies.<sup>21</sup>

Environmentalists, fiscal conservatives, and individuals who value liberty agree that the current system consistently displays poor judgment when these programs are supported. Yet, to date, the Sagebrush Rebellion has failed to unite these groups. A failure to understand and conceptualize the real source of the problem has caused many to label the Sagebrush Rebellion the "Sagebrush Ripoff." The charge is not without merit.

While marginal improvement could be made by transferring federal lands to the states, there are a few *a priori* reasons to expect any significant improvements just because control is transferred from one bureaucracy to another. In terms of environmental quality, equity, efficiency, and enhanced cooperation, a workable solution to the problem lies in a reliance on private property rights and the rule of willing consent. Only when land users face the true costs and benefits of their actions will productivity and environmental concern prevail. And only then can individuals be allowed to do as they wish. In other words,

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16. See B. Dowdle, *supra* note 14, and M. Clawson, *The National Forests*, 191 SCIENCE 1976, at 762-67.

17. R.M. Lanner, *Chained to the Bottom*, in J. BADEN & R. STROUP, BUREAUCRACY VS. ENVIRONMENT, *supra* note 1, at 154-69.

18. See Sabine Kremp, *A Perspective on BLM Grazing Policy*, in J. BADEN & R. STROUP, BUREAUCRACY VS. ENVIRONMENT, *supra* note 1, at 124-53.

19. See B. Shanks, *Dams and Disasters: The Social Problems of Water Development Policies*, in J. BADEN & R. STROUP, BUREAUCRACY VS. ENVIRONMENT, *supra* note 1, at 108-23.

20. See G.D. Libecap & R.N. Johnson, *The Navajo and Too Many Sheep*, in J. BADEN & R. STROUP, BUREAUCRACY VS. ENVIRONMENT, *supra* note 1, at 87-107.

21. See Shanks, *supra* note 19.

accountability is a prerequisite to productive behavior, environmental sensitivity, and individual freedom.

In the private sector, the asset value of the land is the voice of the future. It holds the owner's wealth hostage to good management. Any erosion of productive land, any scarring of scenic land, or any destruction of unique habitat valued by scientists or clubs (for example, the Audubon Society and The Nature Conservancy) will hurt society over the long run. Such irresponsible behavior also hurts the owner's wealth by lowering the land's asset value. Land values—that is, the present capitalized value of *all* future services from the land—hold the owner accountable.<sup>22</sup>

### III. THE FUNDAMENTAL ECONOMIC PROBLEMS OF SOCIETY

Resources have been scarce since the Garden of Eden. Some things of value—that is, some combination of time, effort, and money—must be given up to obtain scarce resources. Such things have an economic value. Thus, to assert that something has an economic value is merely to claim that people are willing to trade off other things of value to obtain them. It is important to understand that economic values include more than goods that carry a price tag.<sup>23</sup>

Given that some resources are scarce in all societies, the first problem of social organization is how to use the available mix of resources to yield the highest assortment of ends. As Hayek states in *INDIVIDUALISM AND THE ECONOMIC ORDER*, "It is rather a problem of how to secure the best use of resources known to any of the members of society, for ends whose relative importance only these individuals know."<sup>24</sup>

We can see that the fundamental problem of forest management is one of planning. To produce the social optimum, the planners must know (1) how badly people want each product, (2) how to most efficiently produce each product, and (3) how to motivate people to efficiently produce each product. Unless answers to these questions are known and implemented, optimal production will occur only by accident—and it is probably safe to assume that such accidents are exceedingly rare.

The important question is simply stated: By what method may answers to these questions best be generated in a constantly changing environment? Both preferences and opportunities are in continual flux. Given that it is exceedingly difficult for a large bureaucracy to be time

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22. T. SOWELL, *KNOWLEDGE & DECISIONS* 122-26 (1980).

23. A.A. ALCHIAN & W.R. ALLEN, *UNIVERSITY ECONOMICS: ELEMENTS OF INQUIRY* Ch. 4 (3d ed. 1972).

24. F.A. HAYEK, *INDIVIDUALISM AND ECONOMIC ORDER* 78 (1972).

and place specific, we can begin to appreciate the problems that even the most competent public land managers must confront.

It is obvious that some form of decentralization is required if production is to be optimized. The Forest Service is divided into nine regions and subdivided into 125 national forests, and each forest is further divided into ranger districts.<sup>25</sup> This arrangement, however, is not good enough. To be responsive to changing demands and opportunities (e.g., the demand for lumber is down while that for hiking trails is up), the decision maker must know the relative changes in preferences and opportunities.

When all items carry a price that correctly states their opportunity costs, individuals in a market system based on property rights and willing exchange will systematically move resources to their most highly valued uses. In a market, data automatically come to decision makers in the form of bid and asked prices, and the sincerity of the bidder never needs to be questioned. No such mechanism is available without the use of pricing and private, transferable rights. As Hyde states, "Only public agencies, such as the Forest Service, can ignore prices and at the same time isolate themselves from questions of market entry or exit. Even . . . private landowners who apply some [Forest Service practice] . . . must be price responsive. Their continued existence depends on a degree of price competitiveness."<sup>26</sup>

When the relevant facts are distributed among many people, prices foster the coordination of a vast number of people. For example, assume that tomorrow a new use is found for Port Orford cedar, a tree used to produce wooden pencils. A Druid religious sect has received a revelation instructing its believers to construct temples of Port Orford cedar all over the world. With an increase in demand and a set supply, the price will increase. Current users need not know about Druids, or even that they exist, but merely that the relative price of cedar has increased.

This shift in relative prices provides the information that the wood is more scarce. It also provides incentives to economize on the use of

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25. Information Office, United States Forest Service Headquarters, Bozeman, Montana. See Also U.S.F.S., AN ASSESSMENT OF THE FOREST AND RANGE LAND SITUATION IN THE UNITED STATES x-xiv (1980). In 1977, 1.7 billion acres, about 71 percent of the nation's area, was classified as forest and range land and water. About 820 million acres of that mass is rangeland. Another 737 million acres is classified as forest land of which about 482 million acres is commercial timberland. The remaining 107 million acres is water, primarily lakes, reservoirs, ponds, streams and estuaries. The bulk, about 53 percent, of these forest and rangelands is privately owned. Nevertheless, the federal and state governments own and control vast areas of highly valued resource land. The majority of the 286 million acres of publicly owned forest land, mostly federal, is concentrated in the western states. It is management of these lands which has stirred so much controversy in recent years.

26. HYDE, *supra* note 15, at 29.

cedar and to intensify the search for substitutes. Some users may know all the facts, others may believe that students have started smoking cedar shavings due to its aphrodisiac properties, while others may believe that Mount St. Helens buried the forest under 100 feet of ash. From the users' perspective, however, the cause of increased scarcity is irrelevant. Prices minimize the amount of information required for intelligent decision making.

In marked contrast, centralized bureaucracies maximize information requirements. In terms of social welfare, it is important to understand that the impact of the scarcity is diffused to everyone affected in production and consumption. Producers of cedar substitutes will confront higher demands, as will the makers of mechanical pencils and ballpoint pens. The market is such that this process of adjustment occurs in the absence of centralized plans. Knowledge is automatically produced and acted upon. Thus, the price system generates and disperses relevant information that is voluntarily taken into account.

Thus far we have spoken of economic efficiency and the bureaucratic pathologies involved in the reduction of environmental quality. The next question is how an institutional reformation may serve the interests of the preservationists-environmentalists and at the same time increase the efficiency of resource utilization and the sensitivity with which resources are harvested or extracted.

#### IV. PROPERTY RIGHTS, SENSITIVITY, AND ENVIRONMENTAL STEWARDSHIP

Environmentalists fought the Sagebrush Rebellion knowing that a successful rebellion would conflict with their interests.<sup>27</sup> They realized that timber sheds are also amenity sheds, and uses are often uncomplimentary. Resource development and extraction are the problems; and despite its record of environmental atrocities, federal management was viewed as preferable to state control. This faith in existing institutions was and is unfounded. America's dependence on foreign sources for strategic minerals provides a good beginning for a discussion of how private property rights could advantage the cause of wilderness advocates and preservationists.

America is almost totally dependent on foreign sources for at least a dozen essential minerals and for more than 50 percent of a half a dozen other essential minerals.<sup>28</sup> Over 90 percent of the columbite,

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27. B. Cunningham, *The Sagebrush Rebellion: A Threat to Our Western Heritage* (Address to the Montana Cattlemen's Association Annual Meeting, Helena, Montana, January 29, 1981).

28. U.S. NEWS AND WORLD REPORT, Nov. 12, 1979, at 75. See also Background Papers: Draft for Public Review and Comment of the Report on Nonfuel Minerals Policy

strontium, titanium, manganese, chromite, and cobalt are almost completely supplied by sources outside the United States. Further, most of the sources of these minerals are politically unstable or potentially hostile countries. Manganese, for example, comes mainly from the Soviet Union and South Africa. Cobalt is imported primarily from Zaire, where 65 percent of the noncommunist world reserve is located. The major chromium deposits are in South Africa, Zimbabwe, and the Soviet Union. Given the limited short-run potentials for substitution, our high technology society is extremely dependent on these strategic minerals.<sup>29</sup>

While this situation may delight those who revel in the fantasies of ECOTOPIA<sup>30</sup> and who find in *Mother Earth News* (a publication aimed at back-to-nature advocates) their analogue to the *Wall Street Journal*, Congress is unlikely to be so sympathetic. Representative James Santini (D.-Nev.), chairman of the House Committee on Mines and Minerals, believes that "a chrome embargo by the Soviet Union and Zimbabwe would bring the entire industrial world to its knees in just six months."<sup>31</sup> William Dresher, Dean of the College of Mines at the University of Arizona and former chairman of the National Academy of Sciences Committee on Nonrenewable Resources, documents and amplifies Santini's concerns.<sup>32</sup> John P. Morgan Jr., chief staff officer of the United States Bureau of Mines, states, "The U.S. could be virtually self-sufficient in all but a few minerals, such as chromite."<sup>33</sup> This view is shared by Senator Harrison Schmitt of New Mexico, a geologist and former astronaut, who says, "Nature endowed us with unbelievably vast resources, most of which have not been tapped."<sup>34</sup>

A relatively high percentage of the land in mineral-rich states is in the public domain; 95 percent in Alaska, 86 percent in Nevada, 66 percent in Utah, and 64 percent in Idaho.<sup>35</sup> In 1977, the Department of Interior reported that 42 percent of the public lands was closed to hard rock mineral activity, 16 percent was severely restricted, and another 10

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Review (Wash. D.C.: U.S. Dept. of the Interior, Aug. 1979); COMPTROLLER GENERAL REPORT TO CONGRESS, THE U.S. MINING AND MINERAL-PROCESSING INDUSTRY: AN ANALYSIS OF TRENDS AND IMPLICATIONS (G.A.O. 1979), and MILLER, FINE & MCMICHAEL, THE RESOURCE WAR IN 3-D: DEPENDENCY, DIPLOMACY, DEFENSE (1980).

29. Wall St. J., Feb. 26, 1979, at 24.

30. E. CALLENBACH, ECOTOPIA (1975).

31. Rep. James Santini, quoted by T. Velocci, *Minerals: The Resource Gap*, 68 NATION'S BUSINESS 36 (Oct. 1980).

32. *Id.* at 34; W. DRESHER, RAW MATERIALS FOR INDUSTRY: OUR NEXT MAJOR CRISIS 5 (1979).

33. J.P. Morgan, quoted by Velocci, *supra* note 31, at 36.

34. Sen. Harrison Schmitt, quote by Velocci, *supra* note 31, at 36.

35. PUBLIC LAND LAW REVIEW COMMISSION, ONE-THIRD OF THE NATION'S LAND 121-38 (1970).

percent was moderately restricted.<sup>36</sup> One of the major problems with this trend, as seen by J. Allen Overton, president of the American Mining Congress, is that "the overwhelming part of these lands was never adequately evaluated for mineral potential."<sup>37</sup>

In the case of wilderness designation, there could be significant opportunity costs involved. When minerals are not extracted from protected lands, society pays the price in goods that are not produced and in higher prices for goods that are produced. Wilderness designation is a transfer activity that is similar to any other governmental program involving a redistribution of wealth. In this case, society pays the opportunity costs so that the individuals who enjoy the wilderness can reap the benefits.

Environmentalists, preservationists, and wilderness buffs see the Sagebrush Rebellion as a threat rather than as an opportunity. The danger for wilderness advocates is that national policy could change drastically in the face of politically induced constraints on the supply of strategic minerals. Senator Schmitt, aware of these ecologic and economic concerns, has suggested the possibility of basic changes being made in national land policy. He says, "As Soviet and other forces in the world gradually restrict or control our access to world energy and mineral resources, the question that wilderness advocates must answer is: Will they then advocate reopening Alaska and other federally controlled lands for rapid exploration and development in the national interest, when the national interest so dictates?"<sup>38</sup>

Those who remember the oil shortage that began in November 1973 realize that environmental concerns can be quickly swept away when the United States runs low on vital resources. Even with the current abundance of oil on the market, there is still pressure to open some wilderness areas to exploration. The political railroading of the Alaskan pipeline in a frantic, but uneconomical and environmentally hazardous effort to move oil to the Midwest is still a troubling memory for many. Ideally, the economic costs of any ecologically motivated action would be taken into account, but the ecological cost of any economically motivated action should also be entered into our calculus. The best hope of fulfilling both of these objectives lies precisely in the institution of private property rights.

The National Audubon Society is concerned with environmental quality in general and wildlife habitat in particular.<sup>39</sup> In addition to a

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36. COMPTROLLER GENERAL REPORT, *supra* note 28.

37. J. Overton, quoted by Velocci, *supra* note 31.

38. *Supra* note 34.

39. For more on this see J. Baden & R. Stroup, *Saving the Wilderness: A Radical Proposal*, 13 REASON 28-36 (July 1981).

substantial educational and publishing operation, the Society also owns 75 wildlife sanctuaries.<sup>40</sup> The Paul J. Rainey Wildlife Sanctuary in Vermilion Parish, Louisiana, is a 26,000-acre bird refuge that is so sensitive that tourists are unwelcome. Even unmonitored bird watchers are forbidden entry. The refuge is carefully controlled and managed for otter, mink, deer, reptiles, hundreds of thousands of birds—and oil and natural gas wells.

Because the Rainey Preserve is in private hands, there is every incentive to use the resource efficiently. The timing, placement, operation, and structure of the oil operation is carefully programmed with the seasonal habitat requirements of the wildlife residents. In the Audubon Society's description of the Rainey Sanctuary, they make the following statement: "There are oil wells in Rainey which are potential sources of pollution. Yet Audubon's experience during the past few decades indicated that oil can be extracted without measurable damage to the marsh. Extra precautions to prevent pollution have proven effective."<sup>41</sup>

Revenue derived from the wells is used to buy additional preserves and achieve Audubon Society goals. This is clearly a positive-sum game. All participants win: the birds and wildlife have their habitat preserved, the public gets its oil, and Audubon receives revenues to purchase additional preserves. The outcome is a function of property rights that lead to cooperative and efficient behavior.

Contrast Audubon's actions on their own lands with their pronouncements against exploration on the public lands. The difference in harmony between political and market decision making is extreme. In a recent "Emergency Dispatch" to Audubon Society members, President Russell Peterson stated: "The National Audubon Society is entering a battle. A battle we must win. If we lose, we will witness the irrevocable destruction of much of America's natural heritage."<sup>42</sup> Another memo to members complains: "Secretary [of Interior] Watt has undertaken a program involving land exchanges and transfers to the detriment of federal holdings, and has supported the divestiture or transfer of federal responsibility over the nation's public lands—a program which will ultimately lead to over-exploration by indiscriminate private interests."<sup>43</sup>

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40. There are also approximately 100 refuges operated by local chapters of the Audubon Society. See NATIONAL AUDUBON SOCIETY, PAMPHLET, ISLANDS OF LIFE: THE NATIONAL AUDUBON SOCIETY SANCTUARIES; and NATIONAL AUDUBON SOCIETY, PAMPHLET, 1981 FACT SHEET (1981).

41. *Id.*, ISLANDS OF LIFE at 19.

42. R. Peterson, *Emergency Dispatch* (addressed to National Audubon Society members).

43. Memo to R. Peterson from B. Butler, distributed to National Audubon Society

## V. AN ALTERNATIVE

We propose here, as we did to Representative Santini's Committee on Mines and Mining, that wilderness lands be transferred in fee simple terms to environmental groups. Although such an action would generate a tremendous windfall gain to groups not noted for their disadvantaged status, it may be a tolerable price to pay for the benefits that would be generated. It is important to remember that the incentives faced by the professional managers of these organizations as owners and residual claimants are dramatically different than those faced by the same individuals as political adversaries.<sup>44</sup>

By its very nature, the mining of strategic minerals must be concentrated if it is to pay. Less than one million acres have been mined for nonfuel minerals in the last fifty years in the United States, and 90 percent of the free world's mineral requirements are supplied by less than 1,200 mines.<sup>45</sup> A small area of wilderness land used for mineral production might make a tremendous difference in terms of America's mineral independence. It is clearly inefficient to lock up such areas when a relatively insignificant portion of that land could yield huge mineral wealth and possibly strengthen national security. When it is reported that the federal government has withdrawn two-thirds of the nation's land from mining entry,<sup>46</sup> politically active representatives, such as James Santini, become increasingly agitated.<sup>47</sup>

It is unlikely that many large mineral deposits would be located in areas of critical environmental concern. Those lands that have a high economic but a low ecological value should clearly be made available for development. Conversely, those with a high ecological but a low economic value should be left alone in a market setting. It would be especially beneficial if areas with both ecological and economic importance were managed by groups with the expertise to weigh the potential damage to the environment against the potential profits. The obvious way to accomplish this is to make environmental groups the owners of

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Members 2. See also NATIONAL AUDUBON SOCIETY, 1981 ANNUAL REPORT; NATIONAL AUDUBON SOCIETY, PAMPHLET, A DOUBLE BILL: COMING SOON TO YOUR PUBLIC LANDS; and R. Peterson, *No Mandate to Destroy Environmental Laws*, Bozeman Daily Chronicle, Aug. 13, 1981, at 4.

44. There is such a variety of distribution plans that might be used under such a system that the subject cannot be properly addressed in this article, but see J. Baden, *Diversity, Stability, and Adaptability in Economic and Ecological Systems* (paper presented at conference on Politics vs. Policy: The Public Lands Dilemma, Utah State University, Logan, Utah, Apr. 21-23, 1982).

45. COMPTROLLER GENERAL REPORT, *supra* note 28.

46. G. Bennethum & L. Courtland Lee, *Is Our Account Overdrawn?* MINING CONG. J., Sept. 1975, at 33.

47. *Hearings on National Defense Stockpile, 1981*, (Hearings before House of Rep. Comm. on Armed Services, 97th Cong. 1st Sess. (1981)).

the holdings; that is, residual claimants able to garner any benefits they generate via added resource values. Under these conditions, it is likely that other environmental interest groups would emulate the Audubon Society on the Rainey Sanctuary.

Assume that wilderness and restricted land is transferred in fee simple terms to an environmental interest group. The organization would then have the opportunity to lease the mineral rights and obtain the royalties. How would the organization behave? Given that the managers and directors of the interest group are intelligent and dedicated, they will attempt, in accord with their values, to maximize the potential value of the resource. Assuming that they have a general interest in wilderness values and are not oriented toward any specific land area, they will carefully evaluate the contribution that this land could make to their goals.

For example, if the area has a titanium deposit that is expected to yield a million dollars worth of net benefits, they would consider developing it. They would confront three basic questions: First, how much profit would such an activity yield? Second, how much additional wilderness land or services could be bought with that profit? Third, is there a way to manage these lands that will permit mineral extraction while minimizing the impact on the wilderness features of the land; that is, how can the value of the joint products be maximized?

With fee simple title to the land, the wilderness group is forced by its own criteria to consider the opportunity costs of total nondevelopment. Rather than blindly opposing the extraction of commercially valuable resources from the land, they must focus on obtaining these resources while maintaining to an optimal degree the wilderness character of the area. Different incentives lead to different behavior.

This change in the rules of the federal mineral game could yield enormous benefits. With land in private hands, all interested parties would become more constructive in their thinking and in their language. Instead of discrediting the goals of others, they would be concerned with how desired ends could be best achieved at the least cost to others. The owners think this way in order to capture more revenues, selling off the highest valued package of rights that is consistent with their own goods. Similarly, a buyer of mining rights or of conservation easements wants to purchase his valued package at the least cost to the seller and thus to himself. In addition, the unlimited wants of every party are forced into priority classes. The *most important* land rights will be purchased and declarations that every contested acre is priceless become suitably absurd.

Even people in single-minded pursuit of profits or of narrow wilderness goals will act *as if* other social goals mattered. Indeed, they

may *seek out* higher valued uses of their own acreage, using profits to obtain new means to satisfy their own narrow goals. After all, it is their actions, not the worthiness of their goals, that should concern the rest of society.