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Bruce Babbitt

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Conference

Keynote Address: Public Lands, Private Gains

Keynote address by former Secretary of the Interior, Bruce Babbitt. Presented at the 26th Annual Public Land Law Conference, sponsored by The University of Montana School of Law's Public Lands & Resources Law Review and the Center for the Rocky Mountain West; Missoula, Montana, March 13, 2003.

I. INTRODUCTION

I was thinking, about all of my time in Montana. It took me back to 1993 when Pat Williams called me up and said, "Bruce, I want you to come and visit the Sweetgrass Hills." I, of course, had no idea where the Sweetgrass Hills were. All I knew was that there was a Sagebrush Rebellion out West and virtually everywhere I had went there had been a lynch mob awaiting me at the airport.

Pat says, "Bruce, they'll take care of you in Montana." I thought that was an ambiguous way of introducing me. Well, we went to the far north of Montana and spent most of the afternoon flying up to Sweetgrass Hills country. It's a fabulous place there. The first hint of the mountains to come, just sort of volcanic buttes out in this vast sweep of plains, and it was really an extraordinary place.

And then we came back and we drove into a town called Chester, Montana. It's one of those places where the entering and the leaving signs were on the same post. And to my astonishment, we went out to the park and so help me, there must have been five hundred people there. I don't know where they came from, but they were clearly not disposed to give me a friendly welcome.

I will never forget it, because your Congressman said, "Bruce, don't be nervous." He hauled out a picnic table into the middle of this crowd, stood up on the picnic table, and took this crowd on by way of explaining his history having grown up in the mines of Butte and his understanding of all the commodity, the extracted resource issues, and their concerns with commodity prices, and so help me, after an hour of taking that crowd on, I think he had won over a full twenty percent of it.

But we made it out of town and Pat, on the way out, handed me this thing, he said, "look, you've got to withdraw all of this land to protect it from heap leach mining," which I did gratefully and I believe the order still stands to the benefit, great benefit, of Montana.

Pat's introduction talked about my predecessors. It's always been a job that's kind of in this perpetual crossfire between the immediate sort of con-

cepts of resource extraction and the environmental conservation sustainable imperative. It's never been an easy job. The first person who became Secretary of the Interior in 1849, appointed by—who was president in 1849, somebody help me—Zachary Taylor, someone like that. But at any rate, this guy lasted for exactly thirteen days before he was committed to a mental institution. Another one of my distinguished predecessors, as Pat is holding forth here, was Albert Bacon Fall. He was the first cabinet officer in American history to go to federal prison for activities on the job.

The average tenure in the office, I think, has been about, you know, two and a half years. So I felt very grateful to last for a full eight years and have the opportunity to come back to Montana tonight to talk with you because it's an extraordinary state. It's really one of the most remarkable places on this continent, and the American West, indeed, in the world. It is an incredible combination of coming out of the high plains, moving on the mountain front, and then all of a sudden, just being swallowed up in the grandeur and the glory of creation. It is really wonderful to come back to this University under the leadership of people like Pat Williams and President Dennison.

Your literary Mayor, Dan Kemmis, I mean, what an amazing thing. I have never heard of a Western mayor who wrote books. Most Western mayors, you know, don't even read books. Well, okay, I guess we need to get down to business.

What I would like to do for about thirty minutes is to see if I can pursue this theme that Pat set out for you about the resource extractive past and this new and uncertain economic future that we are transitioning into. I'll talk about it a little bit and then see if we can just kind of have some discussion on top of that.

II. LAWS DESIGNED TO STIMULATE EXTRACTIVE USE OF PUBLIC LAND ARE INADEQUATE FOR THE FUTURE

Montana, as you all know, is in the midst of a historic transition. It's a difficult transition. It's creating a lot of new opportunity. It's leaving a lot of uncertainty. As the old ways disappear, some people are in danger of being left behind, creating a tremendous imperative for the role played by this University as you move into a knowledge, information, and leisure time and recreation-based economy. And posing some very difficult questions as we examine the past, which was the resource extraction economy.

It was a West, which of necessity, was thrown up for settlement on the premise that the people who came to settle have a personal entitlement to use the land for immediate economic return. And that played out through the homesteading movement across the high plains, into the mineral extraction industries, culminating in copper mines in Butte, the Montana timber industry, and in livestock everywhere.

The past is now undergoing tremendous transformation. It's never going to be revived in the old form. We now are part of the world economy in which commodity prices and availabilities are driven in ways that are beyond the ability of any community or any individual to make a predictable living. Looking back to the old insular and very much self-contained regional economies and, in fact, as we look back at the extractive economies of the West, we need to ask ourselves, how it's changed and what the imperatives are for the next generations and for the future.

And my theme tonight using three examples—grazing, mining and logging, our three great extractive industries—is simply going to be that the laws of the past century designed to stimulate private based extractive use of the public lands are not adequate for the future. And that the damage that the extractive use of the land in such intensity has caused in the past, while perhaps entirely understandable in the context of a developing frontier economy, is no longer acceptable. We are going to need to revisit those laws and assert a different set of priorities which speak of community, which speak of the needs of the education technology lifestyle based economy, and which say that the public lands really are a unique American phenomenon, must increasingly be seen as a community resource with a conservation base which, in turn, generates its own economic activity, but not by private extractive use. And in many cases, the new conservation based community commons is going to subordinate the old extractive uses both out of respect for creation, out of conservation imperatives, and to pass a sustainable future on to our children. Recognizing that increasingly it's these values that bring people and that create the basis for the coming transition of the next century.

A. *Grazing*

Let me start with grazing. The premise of the West as it was settled was that every acre of public land was meant for the smiling face of a Hereford or an Angus cow. And I don't mean that quite so flippantly, well yeah, I guess I do. No, that was a logical use of the land. The idea that the commons was available virtually without restriction for private grazing—it was enshrined in the Taylor Grazing Act in 1934—it survives to this day. The general proposition is that public lands must be available and must be grazed. If a cattle rancher chooses to relinquish the permit, it does not lapse. It cannot lapse; it must be put back up for mandatory presumptive grazing of public lands.

Now, in my time in Montana, I've had occasion to see the impacts on the land. When I floated down through the Missouri Breaks with Stephen Ambrose, we watched the banks of that extraordinary river and looked and saw the damage that has been done to that extraordinary riparian corridor. The mud banks are crumbling into the river where the cattle are standing in the water. You move back up on the banks, the cottonwood forests are go-

ing to disappear, because there are no young cottonwoods. They've been grazed. They do not regenerate. And these magnificent gallery forests, full of eagles and the sound of migrating birds, are dying away and are not being replaced.

We passed a little island at one point in the middle of the river, and it was like looking at a baseline of what was, and hopefully what can be. This island was a solid forest of willow and cottonwood. A great mass, it looked like something that might have come out of the Amazon. Absolute solid vegetation clear up to the sky, and the reason was there was no livestock on it. But the rest of the river, the bottoms have been grazed out. It comes at the price of the elk herds, all of the wildlife that inhabit those Breaks. And it's the result of a mindset and presumption that if it's public land it will be grazed.

It's not just Montana. In the deserts of the Southwest, the landscape has been permanently altered by the grazing presumption. I am now convinced after years on the land from a ranching family that livestock do not belong there because they are permanently altering and destroying the matrix, the vegetative matrix of the land. And so, am I here to say, "no grazing?" No. I'm here to say that the presumption that the extractive use of grazing must be carried out at all times and in all places is an artifact of the distant past. It should now be replaced by law, which says as follows:

The conservation values of the public lands for recreation, for wildlife, for clean water, for all, for the public, the commons, must be the first and presumptive use of that land, and grazing must be a subordinated use available only where it is consistent with the restoration of the riparian bottoms. It cannot be allowed in sensitive areas such as the high deserts of the Southwest, and it must be not the dominant use—but a subordinate use—to the dominant public use of the land.

There are many other examples. I think of my experience in Yellowstone. We spent months, quarrelling with the Montana livestock industry about whether or not bison should be allowed to migrate out of the high country in the National Park. Yellowstone National Park is summer range. Bison need winter range. And we had arrived at a public lands situation in this State of Montana where the bison inhabiting Yellowstone National Park were gunned down by uniformed marksmen under the sponsorship of the Montana Department of Livestock when they crossed an imaginary line separating Yellowstone National Park—your land—from the Gallatin National Forest—your land—because we are stuck in a presumption reinforced by that extractive culture of the past, the grazing of a few head of cattle. In West Yellowstone, I think, it was four permits of less than two hundred animals was sufficient to set up a system to slaughter bison moving

in accordance with the laws and rhythms of the natural landscape. That says to me, we've got to change the priority.

That's what the wolf debate was really all about. Is there room on the public's land for wolves? Can we reverse the presumption that there could not be wolves on the Western landscape because of the imperatives written in law for livestock grazing? Well, the answer must be no. The economic answer must be no. There are more dollars coming into the economy of this state. Go down to the Lamar Valley in Yellowstone at any time of year, and look what's going on down there in terms of the vision of the new economy and say, "are we going to compare this to a couple of grazing permits?" Well, that's the issue.

B. Mining

Let's talk a little bit about mining. The mining law that's in effect today is the General Mining Law of 1872. It has not been changed since. Now, the General Mining Law of 1872 was a pretty good deal in 1872, because the imperative was to settle the land, and the way to do that was to say to anyone who was willing to risk security and make the trek all the way across the high plains into the Rocky Mountains, well, that you had an automatic entitlement to the mineral deposit that you found. The government handed you the deed of the land. No questions asked. Pretty reasonable in 1872, but it created the big copper camps like Butte and Jerome, and Busby down south, and led to the settlement and industrial and extracted expansion of the West. In the twenty-first century, shouldn't there be some limits?

I read with great interest the heap leach controversy out on the river to the West. It was on the Blackfoot. This is the type of mining that we're now talking about in the West. It's called heap leach mining. You don't go after the ore by mining into the earth. You go after microscopic amounts of copper by doing what—by tearing down the entire landscape and running it through a crusher and dumping the tailings across these vast landscapes.

The answer of the people of Montana, as to Montana lands was, no. And you're right, because there's higher value in the land. And heap leach mining—dumping those tailings into rivers destroying the landscape for a small economic reward for an even smaller segment of society—runs absolutely contrary to the public interest and the economic future of your state of Montana.

That's really what the Sweetgrass Hills was about that Pat Williams took me to. Wonderful little communities on the land, ranching communities in a place very appropriate for ranching. There's a lot of rainfall up there, and sweetgrass is indeed the defining feature of the country. There are a bunch of heap leach speculators from Minneapolis staking out claims across the sacred mountains of the plains. They almost got away with it because of the presumption that there is an absolute entitlement. Well, the answer in a nut-

shell is that the mining laws need to be changed as well, in the same way as the grazing laws. Very simply, mining is possibly an appropriate extractive use subject to an analysis of the public interest in public lands and the other values with which it collides. And heap leaching is probably almost always going to lose because the destruction of the land, to the Lord of Creation, is out of all proportion to any conceivable economic analysis. That's the kind of law we need.

C. Timber Harvesting

I will finish with the timber industry, because it's the same kind of analogy. What has happened on this American continent is the timber cutting began in New England early on. New England was leveled. It moved across the Appalachians into the Upper Midwest, where the pine forests were entirely cut down. And then to the South, to the yellow pine, long leaf pine forest to the South. And then, finally, with the coming of the transcontinental railroads and the developments of the West Coast to the Rocky Mountains. And the Forest Service was set up on the same model as the mining industry and the livestock industry, and that was that forests are meant to be cut. And the Forest Service came up with a concept called "multiple use" to justify the logging of every landscape. It was an interesting kind of rationalization.

They said multiple use means that forests can be used for everything. Anybody who wants to do anything on a given acre of the national forest, be our guest. That's what multiple use is about. Take an acre, a homestead, whatever. We'll have the sheep industry here, they're terrific. Bring in the logging industry, let them cut trees; mining industry, well, you know, maybe they can work around the trees, maybe the sheep can graze the tailing piles. Somebody wants to have a picnic, fine It's public land, it's yours, it's open, and don't you see the problem?

The problem is that it's an invasion of reality, which is the land has limits, and we ultimately have to define what the priorities are. Multiple use—the land of many uses, as signs used to say, really the land of too many users—was a facade to avoid decision making about where the public interests lie. The public interests in the twenty-first century clearly lie in preserving the beauty, diversity, the ecological, and biological integrity of the land. That's what the old growth dispute was about in the Pacific Northwest. Ninety percent of the old growth forest had been cut. Many of them reduced to even age plantations of Christmas trees, Douglas firs. And the question was: can we preserve the remaining ten percent? And the spotted owl sent us a message, which said, if you don't, what we do is beginning to unravel the fabric of biological and wildlife diversity on the land.

And that discussion has now come home to Arizona, Colorado, Idaho, and Montana in the form of the Clinton Roadless Rule. The first problem with cutting forests is building roads. And building a road is a sure way to

begin the process of systemic degradation from all of the different kinds of uses. And the question simply was: roadless is surrogate for saying, "isn't it in the public interest to protect the remaining ten percent?" And to draft a law that says, as with grazing and mining, the National Forests are not about multiple use. They are about dominating public use. The public, the community, has the first priority in terms of the demands to wildlife, clean water, and the integrity of these glorious landscapes.

Does that mean no forest harvesting? Well, you can debate that. I don't think you need to go that far. I think if we could protect the remaining old growth forests, we would have a start toward saying we have met our obligation, an ethical obligation, to protect the integrity of western lodge pole, ponderosa, and mixed conifer forests.

III. CONCLUSION

Well, I suspect some of you figured I would come here and launch into an attack upon my successor and the politics of this administration. As much as I would like to do that and as much as they deserve it, the point I want to make is that it's very important for people who care about the next century in the West to sometimes step aside from the specific fight about a specific grazing allotment, timber sale, mining proposal, and ask the question: isn't it time to reframe the debate and to look for concepts and to say, "We're not just about this neighborhood dispute, we're about starting a movement to say, these public land laws served their purpose in their time." That time has passed. It is now time to look up, as earlier generations of conservationists did, and say it's time to redraw fundamental premises of assistance and favor conservation based on new presumptions that public lands are for community public interests.

