American Federal Lands and Environmental Politics: Politics as Usual or a New Ball Game?

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AMERICAN FEDERAL LANDS AND ENVIRONMENTAL POLITICS: POLITICS AS USUAL OR A NEW BALL GAME?

Charles Davis*

INTRODUCTION

An analysis of federal lands programs dealing with hardrock mineral, timber and rangeland resources throughout the West reveals a captive form of governance characterized by policy subgovernments for much of the twentieth century. Subgovernments represent a relatively closed system of policymaking for distinct program beneficiaries, e.g., ranchers benefitting from grazing subsidies. These policies receive little media coverage, and participation on key decisions is often restricted to a tripartite alliance consisting of executive branch agencies, legislative committees with jurisdiction over affected programs, and interest groups with an economic stake in decisional outcomes. Thus, public land subgovernments typically include trade associations (such as the National Cattlemens’ Association) representing program beneficiaries, western legislators serving in the U.S. House and Senate Interior Committees and administrators working for the U.S. Forest Service (headquartered in the U.S. Agriculture Department) and the Interior Department.¹ The result has been the enactment of policies focusing on the development of natural resources, notably the Hardrock Mining Law of 1872, the Knudson-Vandenburg Act of 1930 and the Taylor Grazing Act of 1934. These laws provide benefits to a relatively small number of extractive user groups while spreading the costs to U.S. taxpayers writ large.

Noticeably absent from the policy debates was a viable environmental constituency to present an ecological perspective on land use options. In general, a philosophical orientation toward land use that emphasized the development of natural resources was compatible with national policy goals such as the settlement of the West and the provision of economic opportunities for incoming residents.² Organizational representatives of

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² By enacting homesteading laws during the middle of the nineteenth century that made it possible for families to acquire land at minimal cost, Congress attempted to encourage the migration of people to the West. Legislators realized that a commitment to stay was more likely if settlers were given opportunities to make a living off the land. Irrigated agriculture was viewed as one of the more
traditional user groups, including ranchers, mining firms, and timber companies, hoped that much of the land would eventually be either turned back to the states or sold to private interests, a goal that was thwarted by the enactment of the Federal Land Policy and Management Act of 1976 which called for the United States to retain ownership of its public lands in perpetuity.\textsuperscript{3}

However, things began to change in the 1960s. Public support for a more ecologically balanced approach to public lands management resulted in the enactment of statutes designed to accommodate a wider range of uses. Some of the more notable examples of environmental legislation included the Wilderness Act of 1964 which created a process for designating roadless areas within national forests as wilderness with minimal or no commodity production, the Federal Land Policy and Management Act of 1976 which provided the U.S. Bureau of Land Management (BLM) with statutory authorization, a multiple use management mandate and the authority to set aside lands within its jurisdiction for wilderness, and the National Forest Management Act which balanced periodic timber harvest quotas for each national forest with increased opportunities for public involvement in land management decisions.\textsuperscript{4}

While some programs were significantly influenced by these changes (such as timber harvesting in national forests), others, such as hardrock mining and livestock grazing on public rangelands, were less affected by environmental initiatives. How can we account for these differences over the past thirty years? What factors contribute to the breakup of subgovernments within some issue areas or to the retention of a strong subgovernment approach in others? Despite increasing scholarly interest with public land policy, most of the extant literature focuses on single issues.\textsuperscript{5}

This paper offers an analysis of environmental policies affecting mining, grazing and timber programs on western federal lands from 1960 to the present. Changes are evaluated within the context of subgovernmental politics. Considered here are several important factors desirable options since there was insufficient rainfall to support dryland agriculture. In 1902, Congress passed the Newlands Act resulting in the creation of the Bureau of Reclamation and the subsequent construction of numerous dams throughout the American West. Newlands Act of 1902, ch. 1093, 32 Stat. 388 (June 17, 1902) (codified as amended in scattered sections of 43 U.S.C.). See Samuel P Hays, Conservation and the Gospel of Efficiency 9-15 (1959); Samuel T. Dana and Sally Fairfax, Forest and Range Policy 364-65 (2d ed. 1980).

that can jeopardize the political health of subgovernments as well as factors that contribute to an effective defense of existing programs by traditional land use constituencies. Information was obtained from both documentary sources and a synthesis of recent scholarship.

**The Creation of Public Lands Subgovernments**

Perhaps the single most revealing feature of the close political ties found between traditional constituencies, federal land management agencies and Congress is the longevity of statutes pertaining to hardrock mining, timber and livestock grazing on public lands. The most venerable of these is the Mining Law of 1872 which granted public land access to miners prospecting for minerals such as gold, silver or aluminum. To mine a particular site on federal land, an individual or company needed only to file a claim with the county (and later with the BLM). This simple process provided a measure of security to the miner knowing that he would reap the financial benefits from his labor without sudden shifts in land use ownership or policy.\(^6\)

In addition, miners could obtain a patent to the land (i.e., title) for both surface and mineral rights for a price of $2.50 to $5 per acre, depending on the claim. Since the federal government had neither the desire nor the resources to actively manage federal lands in the post Civil War era, the law had no regulatory requirements such as the issuance of permits or land reclamation standards.\(^7\) Nor were miners required to pay a royalty to the federal government based on the value of minerals extracted from the site. Since 1872, there have been few significant changes to the Mining Law other than the exclusion of some resources (i.e., energy, sand and gravel) from statutory coverage. The mining industry has received significant financial benefits, and state and federal lawmakers in the West have strongly resisted efforts to repeal or amend the policy.\(^8\) The chief

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7. During the post Civil War era, western public lands fell under the jurisdiction of the General Land Office (GLO) housed within the U.S. Department of the Interior. The GLO employed a small number of clerks to process land claims but had no permanent staff responsible for supervising departmental lands. Federal property interests, including timber and mineral resources, received a minimal degree of protection, not from the GLO but from the U.S. Army. Land management agencies such as the Geological Survey, the Bureau of Reclamation and the Bureau of Land Management did not emerge until much later. Thus, early policy initiatives such as the Mining Law of 1872, were enacted largely to encourage the development of mineral resources but depended more on the efforts of miners and county clerks to implement the law than federal administrative resources. See **Christopher McGrory Klyza**, *Who Controls Public Public Lands: Mining, Forestry and Grazing Policies 1870-1990* 35-37 (1996).

8. Resistance to mining reform in Congress among western legislators is revealed in an analysis of public land policy voting in the early 1990s. See **Charles Davis**, *Public Lands Policy Change:*
spokesman for industry interests has been the American Mining Congress while additional support has emerged in recent years from the Public Lands Council and from groups affiliated with the wise use movement.\(^9\) Within governmental circles, program jurisdiction has remained with the Interior Committees of the U.S. Congress (later renamed the House Resources Committee and the Senate Energy and Natural Resources Committee). Historically, members of Congress from western states have held a disproportionate number of seats on these committees thus reinforcing regional economic interests.\(^10\)

The link between national forest policy and the primacy of timber industry interests is also steeped in tradition. Since the creation of the Forest Service in the early 1900s, the agency has followed guidelines established within the 1897 Organic Act which established timber production as the dominant use of national forest resources.\(^11\) This view was unchallenged for several decades since national markets for forest products were supplied by the private sector.\(^12\) However, a post World War II housing boom coupled with dwindling wood supplies from industry sources led to a sizeable increase in the demand for timber from national forests. Forest Service officials were more than willing to increase annual harvests to meet these demands.\(^13\)

A pro-commodity development bias was supported by members of Congress serving on the Agricultural Committees in both chambers as well as the forest program subcommittees within the House and Senate Appropriations Committees. Firms involved in the extraction and processing of

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\(^9\) The American Mining Congress has been the primary industry voice in Congress for preserving the Mining Law in its current state. In 1995, group members along with the wise use movement pushed to keep reform legislation bottled up within committees. See **Jacqueline Vaughn Switzer**, *Green Backlash* 220-21 (1997).

\(^10\) **Culhane**, *supra* note 5, at 322. From 1965 to 1970, every member but one in the Senate Committee on Interior and Insular Affairs represented a western state. In the House Interior Committee, the proportion ranged from 17 western representatives to 10 non-western representatives in 1965, and 22 to 9 in 1969. For example, states represented in the Senate Interior Committee in 1970 were: Alas\(\text{ka}\) (2); Arizona, Colorado, Idaho (2); Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming with one senator from Wisconsin. See 1970 U.S.C.A.A.N. XXIII-XLVII.


\(^12\) From the early 1900s until the beginning of World War II, the annual timber harvest from national forests was relatively small since firms were able to meet national demand for lumber from privately owned forests. However, private supplies were largely depleted during the war because of military needs for both wood and paper. See **Charles Wilkinson**, *Crossing the Next Meridian: Land, Water & the American West* 131-36 (1992).

\(^13\) Id. at 136-37. See also **Charles F. Wilkinson & H. Michael Anderson**, *Land and Resource Planning in the National Forests* 136-38 (1987) (explaining the increased demand for timber because of the housing boom following World War II; timber sales tripled twice in the decade from 1946-56).
lumber products benefit greatly from a low cost supply of trees readily available from national forests and are politically active through trade groups such as the National Forest Products Association. Counties with national forests in their jurisdiction are another client group particularly motivated to use any means at their disposal to encourage high timber yields since they receive revenue from the sale of timber in lieu of property taxes.

The Forest Service was given a significant economic incentive to increase timber harvests at the expense of other resource uses by the Knutson-Vandenberg Act of 1930. The Act effectively altered the normal budgeting process at work in most federal domestic programs by allowing agency officials to keep a share of the receipts obtained from the sale of timber (hereafter referred to as K-V funds) for reforestation costs. In 1976, this Act was amended by the National Forest Management Act (NFMA) to give the Forest Service substantially greater latitude to use K-V funds for a variety of management purposes. However, agency administrators could exercise discretionary authority in spending these funds only if timber was actually harvested.

Another influential subgovernment revolves around a federal grazing program that has been in place for over a half century. While livestock grazing has been regulated on federal lands since 1906 by the Forest Service, public rangelands within the western states remained substantially unregulated until 1934. Congress enacted the Taylor Grazing Act which granted access for livestock operators to lands administered by the

14. Federal law permits the Forest Service to hold periodic timber sales within national forests to achieve policy objectives such as thinning or road construction. See 16 U.S.C. § 472a (1994) (Secretary of Agriculture "may sell" timber located in National forest). Firms offer bids to harvest a given number of trees from the forest at a price that is usually lower than contracts with privately owned timberland operators. This is usually justified by arguing that timber firms ought to obtain a break on stumpage prices since they contribute to a number of forest policy objectives through activities such as thinning, road building, etc. This relationship also benefits other constituencies such as hunters (who use timber roads to obtain better access to game animals) and county officials who receive a portion of the timber sale receipts.


17. Id.


19. Id.

20. RANDAL O'TOOLE, REFORMING THE FOREST SERVICE 132-33 (1988); see also 16 U.S.C. § 1606(2)(d) (expenditures for Reforestation Trust Fund may include administrative costs).

21. Foss, supra note 5, at 3-7.

Interior Department. Permits were issued to ranchers, allowing them to graze a certain number of livestock on a given parcel of land over a period of time (up to ten years) depending on existing rangeland conditions. Each permittee was also assessed a grazing fee for each animal unit month or AUM.

The objective of the Taylor Grazing Act was to enhance economic stability for western ranchers. This was achieved by creating organizational arrangements to ensure that the number of livestock on a given parcel of land did not exceed the amount of available forage, i.e., the carrying capacity of the land. However, Congress was quite responsive to industry pleas for less regulation and administrative decentralization. Under this statute, grazing fees were kept to a minimum, livestock operators using public rangelands received priority attention in the allocation of leases, and local advisory boards were created to give advice to BLM administrators through range surveys that routinely inflated the number of livestock that could graze land tracts.

Ranchers have been represented well by stockgrowers associations--the National Cattlemens' Association, the Public Lands Council and, more recently, by "wise use" organizations. Like mining companies, livestock industry interests have maintained a close working relationship with the Interior Committees of the U.S. Congress. These organizations took advantage of an understaffed and politically weak BLM to successfully resist administrative efforts to reduce livestock numbers on rangelands that were deteriorating from overgrazing and to slow efforts to raise grazing fees to levels that more closely approximate the economic value of the resource.

THE CONTEXT OF CHANGE

Change within policy areas controlled by a subgovernment can occur only when there are major external forces that bring public attention to low visibility issues or a significant shift in personnel (or their attitudes) within the subsystem. A notable trend associated with the decade of the 1960's was the growing popularity of the environmental movement within the general public along with a corresponding rise in the number of political organizations formed to advance the goals of natural resource conservation or pollution control. Several members of Congress took notice,
as did Interior Secretary Stewart Udall, a well-known conservationist who served under Presidents John F. Kennedy and Lyndon Johnson. Udall, and pro-environmental members of Congress, pushed a number of policy initiatives designed to challenge the view that extractive users such as miners, ranchers and loggers had a superior claim to resource use.  

A second trend that contributed to demands for change was a shift in public land use patterns over time. The relative importance of metal mining as a source of wealth and employment within the western states has declined steadily. Similarly, the number of permits issued to ranchers for livestock grazing by land management agencies has decreased. While the amount of timber harvested within the national forests (including the BLM’s holdings in western Oregon) increased steadily from the 1960s through the late 1980s, the volume of timber actually harvested has been reduced by approximately fifty percent since then due to logging restrictions in the Pacific Northwest designed to preserve old growth habitat for the northern spotted owl.

On the other hand, recreation on lands administered by federal agencies (measured in terms of visitor days) has risen steadily from 1977 through 1993, a trend that includes visitation to (or use of) national forests and rangelands as well as parks, wildlife refuges and wilderness areas. This increase in visitation was accompanied by a dramatic increase in the population of most western cities over the past three decades. This influx brought many new residents with higher levels of income and education who were more inclined to join environmental groups and to voice greater support for recreational uses on the public lands. Consequently, urban-rural differences have become more pronounced because of land use disputes involving competing demands. Indeed, public awareness of western public land issues such as the spotted owl controversy is associated with media coverage of the human element linked to change in natural resource dependent communities.

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Mental Policy in the 1990s 31-50 (Norman Vig and Michael Kraft eds., 1994).
34. Id. at 232.
EXPLAINING PUBLIC LAND POLICY CHANGE

Pro-environmental shifts within the public lands policy arena can be attributed to a number of factors. These include political actions initiated by higher level officials within the Executive Branch or Congress, interest group strategies aimed at expanding the scope and level of conflict, and changes within the subgovernment such as the mix of participants supporting the status quo versus policy reforms. Political shifts are facilitated by public support, changing land use patterns, and the availability of procedural policy tools to ease the use of federal courts as a venue for policy decisions.

On the other hand, subgovernmental participants wishing to preserve existing program benefits focus on maintaining a low public profile, retaining jurisdictional control over land use programs within a single committee, and keeping a majority of western legislators on key committees and subcommittees. Traditional constituency groups have received a political booster shot from the emergence of the "wise use" movement, a coalition of anti-environmental groups. These organizations have adopted strategies from the environmentalists through their use of media sources to emphasize the costs imposed by federal environmental regulations on the availability of jobs, community stability and private property rights.

Let us now consider how these factors have influenced the evolution of min-

36. The Wilderness Act of 1964, 16 U.S.C. §§ 1131-36 (1994), was pushed by Senator Hubert Humphrey (D-MN) and was strongly supported by Interior Secretary Stewart Udall as well. See William R. Lowry, National Park Policy in Western Public Lands & Environmental Politics 150, 153 (Charles Davis ed., 1997).

37. A good example of an interest group effectively pushing for public land policy change is the Natural Resources Defense Council which worked hard to reform grazing policy in the mid-1970's. See Paul J. Culhane, Public Land Politics: Interest Group Influence on the Forest Service and the Bureau of Land Management 95 (1981). Group leaders helped persuade members of Congress to give the BLM a multiple use management mandate within the Federal Land Policy and Management Act of 1976 which included wildlife preservation and recreation as policy goals to be considered along with livestock grazing and watershed protection.

38. In the late 1980s and early 1990s, the House Natural Resources Committee (formerly known as the Interior Committee) became more sympathetic to several public land policy reforms because of pro-environmental committee chairs like Morris Udall (D-AZ) and George Miller (D-CA). Bills aimed at reducing subsidies contained within the federal grazing and mining laws were passed in the House of Representatives only to be defeated in the Senate. See Western Public Lands and Environmental Politics supra note 36, at 74, 86.


40. "Wise use" groups refer to a number of umbrella organizations that have found common cause in their opposition to environmental regulations that represent unwanted restrictions on property rights or an increase in compliance costs that results in a loss of jobs formerly tied to natural resource industries. See Jacqueline Vaughn Switzer, Green Backlash 217, 222 (1997).

ing, grazing and timber harvesting policies since the 1960s.

GRAZING POLICY SHIFTS

Efforts to reform grazing policies began with the enactment of the Classification and Multiple Use Act in 1964. This statute represented a small but significant step toward range reform that was promoted by BLM officials and Interior Secretary Stewart Udall. The statute gave the BLM temporary authority to manage rangeland resources under multiple-use management principles, thereby reducing the dominant use demands of the livestock operators. While this change was not a substantial one, it did offer a source of encouragement to agency administrators seeking the same type of decision-making autonomy that the Forest Service had achieved under the Multiple Use and Sustained Yield Act of 1960.42

While early range reform efforts were aimed at achieving a firmer legal basis for agency action, other policy actors sought change for economic reasons. In 1964, the Bureau of the Budget issued a report dealing with natural resource user fees.43 The report concluded that the sale or lease of federally owned resources should follow pricing or fee setting guidelines that approximated fair market value; that is, fees could be established through appraisal or competitive bidding practices, taking comparable fees charged by state government or the private sector into account.44 This foreshadowed a major theme that would emerge in the arguments of range reform advocates: that grazing permits on BLM lands had been underpriced and that fees should be raised to ensure that the government received a fair rate of return.

Meanwhile, a task force consisting of analysts from the Departments of Agriculture and Interior undertook a major research project to provide information about the costs of ranching operations on public and private lands. The results of this project were used in the preparation of a new grazing fee formula that was unveiled by both departments in November, 1968.45 Proposed fee levels were based on the principle that average total

42. CULHANE, supra note 5, at 93-94.
43. User fees refer to the prices individuals pay for direct services furnished by a unit of government such as college tuition or public transportation. Those who pay a fee will receive the service while services are denied to individuals who do not pay.
44. Fair market value for grazing fees has typically been determined through an appraisal process known as the comparable sales approach. Under this method, fees that ranchers pay to private land owners are adjusted by subtracting the cost of services that are not offered by federal land management agencies such as stock ponds or fences. The adjusted price is considered to be a reasonable approximation of fair market value. See JON SOUDER AND SALLY FAIRFAX, STATE TRUST LANDS 109-10 (1996).
costs incurred by ranchers leasing public lands for grazing purposes should be approximately the same as costs associated with leasing pasture lands from landowners within the private sector. Livestock production costs were also taken into account. To ease the financial burden on permittees, administrators proposed that fee increases be phased in gradually over a ten year period.46

The political fallout from the proposed fee increase was both intense and predictable. Both the House and Senate Interior Committees scheduled hearings in early 1969 to allow feedback from affected constituents. Testimony from western legislators, livestock associations and individual ranchers placed emphasis on the inability of many small ranchers to afford fee increases as well as the negative economic impacts on nearby communities. A typical response from a grazing board representative chastized federal land management agencies for “pricing and managing many ranching units out of business which is directly contrary to the Taylor Grazing Act. By economically crippling the ranching family you preclude young people from taking an interest in ranching and staying in the family livestock business.”47

A smaller number of spokesmen representing the BLM, the Forest Service and environmental organizations argued in favor of the proposed fee hike citing the unfairness of existing fee structures. Representatives of wildlife organizations also attempted to link deteriorating rangeland health with low grazing fees. According to Al Schiavon of the California Wildlife Federation, “low fees encourage stockmen to graze larger numbers of livestock, resulting in soil erosion and destruction of wildlife habitat.”48

Ultimately, the political influence of traditional constituencies won out over proponents of the proposed fee increase. Under pressure from Congress, Departments of Agriculture and Interior officials imposed a moratorium on fee increases in 1970 citing difficult economic times in the cattle industry and drought conditions in the West. Other range policy initiatives requiring the BLM to give greater weight to environmental criteria in land management decisions were also introduced in the early 1970s. However, all were rejected because of opposition from livestock associations and western legislators.

Environmentalists were discouraged by their lack of success on the executive and legislative fronts but did not give up. The Natural Resources

47. GRAZING FEES ON PUBLIC LANDS: HEARINGS BEFORE THE SENATE COMMITTEE ON INTERIOR & INSULAR AFFAIRS, 91ST CONG., at 236 (February 27-28, 1969).
48. Id. at 443.
Defense Council (NRDC) turned to the courts to regain political momentum and succeeded. Environmental lawyers made strategic use of the National Environmental Policy Act (NEPA) to force an alteration of the BLM's administrative procedures. The federal district court ruled that the BLM's use of a single draft environmental impact statement (EIS) to review and evaluate its entire grazing program in the western United States was an inadequate means of addressing local environmental impacts arising from overgrazing or other poor management practices.

Invigorated by this decision, range reform advocates turned their attention to legislative activities. After considerable debate Congress enacted the Federal Land Policy and Management Act (FLPMA) in 1976. This was widely known as the BLM's organic act and made permanent the multiple use management scheme coveted by agency officials. Much to the disdain of traditional constituency groups, the new law amended the Taylor Grazing Act by replacing the provision identifying livestock grazing as the predominant use of public rangelands with a much broader set of policy goals that included outdoor recreation and the protection of wildlife habitat. Other features of this statute included the incorporation of planning requirements prior to resource allocation decisions and an opportunity for public participation through testimony on resource management plans and judicial review.

While these sections were clearly welcomed by environmental groups, other parts of FLPMA were designed to allay the fears of ranchers. The law did not abolish either the permit system or the grazing advisory boards. It added yet another moratorium on fee increases. However, environmentalists were generally satisfied by the removal of the dominant use clause that had benefitted livestock producers over the years.

The dust had scarcely cleared from the passage of FLPMA when Congress enacted yet another policy affecting the BLM's administration of public rangelands in 1978. The Public Range Improvement Act (PRIA), like FLPMA, contained sections to satisfy divergent constituencies. Environmentalists were encouraged by the inclusion of a section assigning greater management priority to the improvement of range conditions.

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51. DANA, supra note 2, at 337-40.
53. CAWLEY, supra note 29, at 37.
55. 34 CQ ALMANAC 543 (1978).
However, remaining provisions of PRIA did much to "lock in" existing program benefits. The key change was the inclusion of an adjusted grazing fee formula that kept fees lower than the amount charged on comparable private lands by factoring in livestock prices and production costs. Assurances that permittees would receive security of tenure were also made, a promise that enhanced the property value of private ranches adjacent to public lands. Finally, Congress accepted a last minute amendment by Senator James McClure (R-ID) calling for a "phased-in approach" to any reductions in livestock deemed necessary for the reconstruction of healthy rangelands.56

Perhaps the most visible form of discontent over public land use changes occurred in the late 1970s as Interior Secretary Cecil Andrus began to implement FLPMA through a combination of intensive management initiatives and livestock reduction plans. Irate ranchers contacted friendly state lawmakers in western states to propose legislation calling for the transfer of BLM and Forest Service lands to the states, a series of actions that was dubbed the "Sagebrush Rebellion."57

The Sagebrush Rebellion epitomized the clash in values between ranchers and other traditional beneficiaries of public lands policy and environmentalists, with an occasional assist from ideological conservatives. In 1980, a self proclaimed Sagebrush Rebel, Ronald Reagan, was elected President and he promptly rewarded his sizeable core of western supporters by selecting James Watt to become the new Interior Secretary and Robert Burford as the new BLM Director. Both men were determined to reverse the direction of range policy by moving away from the "environmental excesses" of the Carter Administration to a "good neighbor" policy which placed greater emphasis on the economic health of extractive industries such as ranching.58

Early policy initiatives such as privatization of public lands were more controversial. The idea that selling off public lands made good sense financially, as well as administratively, was advanced by economists within the Reagan Administration. They contended that public land managers had been unable to manage natural resources well because of an incentive structure that placed greater emphasis on political influence peddling than economic rationality. An obvious cure for this problem was the placement of previously public lands in private ownership, thereby ensuring greater

58. Sally Fairfax, Beyond the Sagebrush Rebellion: The BLM as Neighbor and Manager in the Western States, in WESTERN PUBLIC LANDS 85 (John G. Francis & Richard Ganzel eds., 1984).
efficiency in resource allocation decisions.59

This proposal received strong support from Presidential Counselor Edwin Meese and OMB Director David Stockman; on February 25, 1982, President Reagan signed an executive order creating a Property Review Board that would report directly to the White House. Shortly thereafter, the new Board instructed the Interior Department and other federal agencies to develop plans for the sale of land and property based on a three-part classification scheme that determined whether prospective lands should be retained or sold.

However, the political response to this issue was both immediate and negative. Stockman proclaimed that one of the basic objectives of the program was to raise money for the government and estimated that as much as $17 billion could be obtained by selling federal property, including public lands, over a five year period.60 This created two serious problems for program advocates. One was the incompatibility between two policy values, efficiency and maximizing revenue to aid in deficit reduction. Small public land tracts surrounded by private property could conceivably be identified as prime candidates for the marketplace on efficiency grounds but might rank fairly low in comparison to larger parcels in terms of monetary gain.61

Second, the privatization initiative put Interior Secretary James Watt at odds with many public land user groups like miners, ranchers, loggers and energy companies that formed his political support base. Several subsidy programs benefitting traditional public land constituencies grazing, logging and mining would be affected since privatization clearly implied that natural resource payments from program beneficiaries would rise to more closely approximate "fair market value."62 Such actions were viewed as untenable and potentially catastrophic by smaller firms or individuals operating on the margins of profitability as well as most trade associations representing their interests and elected officials throughout the West.63

The Reagan Administration quietly backed off from the decision to consider public land sales on a larger scale. Thereafter, Secretary Watt and successors William Clark and Donald Hodel essentially wrote off legislative initiatives as impractical and sought to influence policy through ad-

60. Id. at 23.
62. Culhane, supra note 57, at 299-300.
63. CAWLEY, supra note 29, at Ch. 6.
ministrative decision-making. BLM's budget was repeatedly slashed, and a pro-grazing orientation was maintained through personnel policies that emphasized a reduction in environmental positions, such as wildlife biologist, to accommodate an increase in the number of positions aimed at maximizing commodity production. President Bush and his Interior Secretary Manuel Lujan followed a similar policy path, although BLM Director Cy Jameson did tilt slightly in the direction of increased recreational use on public lands.

A renewed effort to revamp public range laws was launched in the late 1980s within the House Interior Committee. Bills calling for a dramatic increase in grazing fees were pushed by Representatives Mike Synar (D-OK) and Buddy Darden (D-GA) with considerable support from other non-western legislators. Members of the range reform coalition including the NRDC and the National Wildlife Federation sought to fold range policy within the larger context of deficit politics, arguing that an end to grazing subsidies made sense on both economic and ecological grounds. Reform advocates also directed attention to environmental quality problems such as the loss of habitat for wildlife (other than coyotes) as well as the link between overgrazing on public rangelands and subsequent damage to riparian areas. Supporters of the status quo, including the Bush Administration and members of the pro-grazing coalition, were strongly opposed to these bills, suggesting that the true purpose of the legislation was the virtual elimination of livestock grazing on public lands. Moreover, they argued that more expensive private sector leases often included improvements not found on BLM or Forest Service lands such as fences and stock ponds.

Several western legislators led by Representative Ben Campbell
(D-CO) co-sponsored a rival bill which called for a much smaller fee increase while maintaining the basic formula established under PRIA.

Range reform advocates were cheered by the election of Bill Clinton as President in 1992 and his subsequent appointment of Bruce Babbitt as Interior Secretary and Jim Baca as BLM Director. Both Babbitt and Baca had held elective office in a western state and were known to favor reforms that would reduce program benefits held by “the lords of yesterday.” Proposed legislation was soon developed that combined higher grazing fees with a partial rebate for permittees that subsequently demonstrated good environmental management practices. As had occurred under former Congresses and Administrations, the new proposal encountered fierce resistance from western senators.

Under pressure, the Clinton Administration dropped the grazing fee proposal from the 1994 budget act when several western Democrats threatened to vote against the closely contested package. The proposal was then introduced as a separate piece of legislation but the pro-grazing coalition held firm against the bill. In an effort to break legislative gridlock, Secretary Babbit threw his support to a compromise bill sponsored by Senator Harry Reid (D-NV) which maintained most reform provisions but called for a lower ceiling on fee increases. Once again, their efforts were unsuccessful. The bill was defeated in November 1993 after the Senate waged a successful filibuster.

Conceding that a legislative solution was unlikely to work, Secretary Babbitt adopted an administrative approach focusing on consensus building among affected parties to achieve desired policy goals. The product of these efforts was a new package titled Rangeland Reform '94 which remains as the centerpiece of his grazing policy agenda. Again, the emphasis was on reform that combined fee increases for permittees with a rebate for evidence of good environmental stewardship. An additional part of the package was the creation of a new multiple use advisory board to replace rancher dominated grazing advisory boards. Babbitt argued that advice offered by newly constituted grazing advisory boards. Babbitt argued that advice offered by newly constituted grazing advisory boards should be given considerable weight by public land managers, particularly in working out implementation details.

73. Wilkinson, supra note 12, at Ch. 1.
77. Id.
In short, shifts in public range policy have clearly occurred but program benefits originally incorporated within the Taylor Grazing Act have remained largely intact. There has been little change within the grazing policy subsystem, programmatic control remains within the House Resources and Senate Energy and Natural Resources Committees and traditional constituency organization continue to exercise influence bolstered by the efforts of the wise use movement. Nevertheless, environmentalists have achieved some gains, notably the enactment of FLPMA which allows BLM managers to use environmental criteria as well as livestock production in making land use decisions. Important sources of change include efforts by Democratic presidential administrations to appeal to environmentalists and outdoor recreationists. In addition, environmental organizations such as NRDC effectively worked in the courts and in Congress for more conservation oriented range policies.

TIMBER POLICY SHIFTS

The simultaneous rise of two competing trends—high yield timber production and recreational and environmental values—led to pressures for change in the hallways of Congress. From 1960 to the present, forest policy gradually evolved in three distinct phases. The first phase covered the years between 1960 and 1976, beginning with the enactment of the Multiple-Use Sustained-Yield Act (MUSY) in 1960. This statute required that the Forest Service consider resource values other than timber production. Importantly, MUSY also preserved agency autonomy. The new law ostensibly gave equal statutory weight to recreation, fish and wildlife habitat, range, timber, and watershed protection without establishing priorities. Once again, Congress gave Forest Service officials the discretion to determine how these competing values should be balanced.

Two important events occurred during this period. The first event was the clearcutting and terracing controversy in Montana's Bitterroot National Forest which led Senator Lee Metcalf (D-MT) to appoint a commission to study Forest Service administrative methods. The committee's resulting

399-405 (1994).
81. WILKINSON, supra note 12, at 137.
82. In the 1950's, the Forest Service accelerated the harvest of timber in the Bitterroot National Forest in response to increasing national demand for wood. At the same time, the agency created terracing on steep mountain slopes to facilitate the operation of tree planting machines. These practices were criticized by local media sources and some Forest Service personnel as a violation of sustained yield principles, i.e., cutting trees at a rate that would leave relatively little timber for subsequent generations of loggers to harvest. Ranchers also complained that extensive clearcuts resulted in earlier snowmelt which meant that less water was available for irrigation purposes later in the summer. See Luke Popovich, The Bitterroot Remembrance of Things Past, 73 J. OF FORESTRY 791-93 (1975).
report, known as the Bolle Report, was a scathing document that was highly critical of Forest Service management practices in general and clearcutting practices in particular.

A second important event was the issuance of the Church Report in 1972 which criticized Forest Service clearcutting in West Virginia’s Monongahela National Forest. Issued under the auspices of the Senate Interior Committee, the Church Report provided a set of guidelines specifying where timber harvesting in general should be avoided, i.e., on “highly scenic land, land with fragile soils, land with low reforestation potential, and land where reforestation or environmentally acceptable harvesting would be uneconomical.” Thus, a window of opportunity for administrative reform lay at hand. However, after the publicity died down, Congress simply handed national forest policy back to the Forest Service with instructions to undertake “remedial action” based on the recommendations contained in the reports. However, both issues could be considered to be focusing events that received considerable media attention and eventually contributed to a more skeptical view of Forest Service timber management practices.

Consequently, these two events might have passed into oblivion with little real change if environmentalists had not altered their game plan. Once again, environmental groups turned to the federal courts. In *Isaak Walton League v. Butz*, a district court ruled that clearcutting as a management strategy was constitutionally impermissible within most of the nation’s national forests based on a narrow interpretation of the 1897 Organic Act. Upon losing its subsequent appeal of the case, there was only one course of action for members of the timber policy subsystem: “the Forest Service, the timber industry, and their congressional allies began drafting legislation to repeal or revise the 1897 Act.”

The second period of forest policy change began in 1976 with passage of the National Forest Management Act (NFMA) and ended in 1987 NFMA’s stated purpose was to strengthen national forest planning processes by improving “the quality of multiple use management planning on the national forests and to achieve better integration of management needs with funding.” However, NFMA could also be interpreted as a congressional end-run around the court mandated restrictions on

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83. WILKINSON, supra note 12, at 142.
84. Id.
89. DANA, supra note 2, at 309.
clearcutting. While environmental groups succeeded in obtaining biological diversity and public participation clauses within the legislation, NFMA's primary effect reinstated clearcutting within the national forests.\(^9\) Members of the timber policy subsystem were generally pleased by NFMA's inclusion of annual timber harvesting goals to be met under multi-year forest management plans. But there was a price attached to the lure of a larger allowable cut within the national forests in the form of an expanding role for Congress in the decision-making process.\(^9\)

While environmental leaders were pleased to obtain some procedural concessions within NFMA, they recognized that Congress was becoming increasingly sensitive to the costs of new regulatory programs.\(^9\) In 1980, the environmentalists attempted to take advantage by shifting the national forest policy debate from a focus on aesthetics (clearcutting) to economics (below-cost timber sales).\(^\)\(^9\) The NRDC issued an influential report, *Giving Away the National Forests*, which was designed to counter Reagan Administration efforts to increase national forest harvest levels by demonstrating that cutting trees too rapidly was not only harmful from an environmental perspective but was unjustifiable from an economic perspective as well.\(^9\) The report not only stimulated additional research by assorted groups but also gave environmentalists the strategic option of building an alliance of convenience with free-market conservatives.\(^9\)

A third phase began in 1987 with the spotted owl controversy in the Pacific Northwest. A key question was whether the preservation of habitat for a threatened or endangered species such as the spotted owl should be required if the result caused a substantial loss of timber-related jobs in resource dependent communities.\(^9\) Many of the original forested areas within private or state owned timberlands had already been cut, leaving

\(^9\) HIRT, *supra* note 87, at 264-265.
\(^9\) ROSENBAUM, *supra* note 4, at Ch. 8.
\(^9\) *Id.* at Ch. 3.
\(^9\) Forest Service pricing decisions are referred to as "below cost" when timber sale receipts are less than agency administrative costs in preparing a sale. Disputes over whether timber sales are actually below cost or are economically justified center upon activities such as road building that are part of the cost side that also provide environmental benefits such as greater hunter access as well. See WILLIAM SHANDS, THOMAS WADDELL AND GERMAN REYES, *BELOW-COST TIMBER SALES IN THE BROAD CONTEXT OF NATIONAL FOREST MANAGEMENT* (1988).
\(^9\) WILKINSON, *supra* note 12, at 149.
\(^9\) The estimates of job loss from the Forest Service's decision to restrict the harvesting of old growth forests to protect the habitat of the northern spotted owl vary greatly depending on the source. The timber industry employed 102,000 people within Washington, Oregon and Northern California in 1980 but this figure fell to 88,000 by 1988 because of automation and other changes within the industry in response to competition in the marketplace. In early 1992, the federal government estimated that up to 32,000 jobs could be lost because of owl-related management restrictions while environmental organizations identify 13,000 as a more realistic number. See WILKINSON, *supra* note 12, at 166-67.
the federal lands as the primary source of old growth trees.97

Prior to 1987, logging of old growth forests was not on the public agenda.98 However, things began to change after the Portland and Seattle chapters of the Audubon Society shifted their focus from wilderness policy concerns to the preservation of large tracts of forested lands within the BLM and Forest Service for spotted owl habitat.99 Since the Congressional delegation from Oregon and Washington included influential legislators closely aligned with the timber subsystem such as Senator Mark Hatfield (D-OR) and Representative Tom Foley (D-WA), environmentalists recognized that policy success within Congress was unlikely To move what had been viewed as a regional issue to the national stage, environmental groups decided that it would be strategically more useful to pursue their policy objectives through the federal courts.100 Efforts to force a halt to logging in old growth forests by the Sierra Club Legal Defense Fund (SCLDF) were eventually successful. In *Northern Spotted Owl v Hodel,*101 the U.S. District Court of Western Washington ruled that the Forest Service should comply with the habitat protection requirements spelled out in NFMA. This decision was subsequently reaffirmed by the Ninth Circuit Court of Appeals. SCLDF’s litigation strategy affected policy in two ways. First, this strategy nationalized the spotted owl issue so that legislators were unable to confine the issue within the region. Second, it shifted the status quo from a position that favored the timber industry to one that benefitted environmental interests.102

But the issue continued to evolve on administrative and legislative fronts. In 1989, the Forest Service sought to comply with court orders103 to produce a more credible habitat management plan for the spotted owl by setting up the Interagency Scientific Committee consisting of representatives from the Fish and Wildlife Service, the Park Service, the BLM and the Forest Service. The committee was instructed to produce recommendations for saving the owl based on “good science.”104 The result of their efforts was a 1990 report titled *A Conservation Strategy for the Northern Spotted Owl,* which called for the prohibition of logging on more than 5 million acres of old growth forests that would be designated as “habitat conservation areas.”105 Timber industry officials were dismayed, contend-

100. Id. at 55-57.
103. Seattle Audubon Society v. Robertson, 914 F.2d 1311 (9th Cir. 1990).
104. YAFFEE, supra note 98, at 123-27.
105. Lettie Wenner, The Courts in Environmental Politics: The Case of the Spotted Owl, in
ing that the likely consequence of implementing these recommendations would be the "immediate loss of 9,000 to 12,000 timber industry jobs."\(^\text{106}\)

In the hallways of Congress, Senators Mark Hatfield (D-OR) and Brock Adams (D-WA) succeeded in attaching riders to the 1989 and 1990 appropriations bills for BLM that effectively prohibited the federal courts from issuing injunctions aimed at reducing logging operations in national forests.\(^\text{107}\) The 1990 law authorized timber harvesting to occur in areas known to contain viable owl populations and was subsequently labeled "the Rider from Hell" by the Oregon Natural Resource Council.\(^\text{108}\) While Congress did not go along with a similar pro-industry rider strategy to circumvent court decisions after 1990, the chronology of events did show interplay between political actors shuttling back and forth in search of a favorable institutional venue.\(^\text{109}\)

The issue of jobs versus the owl was eventually elevated to the realm of Presidential politics. In the 1992 campaign, President Bush actively sided with the timber industry suggesting that jobs ought to take precedence over conservation policy objectives.\(^\text{110}\) Democratic Candidate Bill Clinton, influenced by the strong conservationist beliefs of running mate Al Gore, advocated a stronger environmental position that emphasised preserving the habitat of the northern spotted owl but also established job training programs for displaced loggers and mill workers in affected communities.\(^\text{111}\)

Shortly after Clinton was elected President, he convened a well publicized timber summit which was held in Portland, Oregon, in April 1993.\(^\text{112}\) Industry officials, environmentalists and representatives from affected communities were brought together in an effort to provide a brokered solution to the spotted owl controversy The "Option 9" strategy adopted by the Clinton Administration was a classic compromise solution, setting aside more habitat conservation areas than the timber industry wanted but a larger transitional timber harvest than environmentalists would have preferred.\(^\text{113}\) Clinton's post-summit policies have included a focus on ecosystem management policies as a more environmentally sensi-

\(^{106}\) YAFFEE, supra note 98, at 125.

\(^{107}\) Wenner, supra note 105, at 52.

\(^{108}\) Id. at 52.

\(^{109}\) Hoberg, supra note 99, at 55-60.

\(^{110}\) Wenner, supra note 105, at 55.

\(^{111}\) See generally YAFFEE, supra note 98, at 140-51.

\(^{112}\) Id. at 141-43.

\(^{113}\) Id. at 147-49.
tive means of addressing land use allocation decisions. Moreover, most of his key administrative appointments, notably Interior Secretary Bruce Babbitt, Assistant Secretary of Agriculture Jim Lyons and Forest Service Chiefs Jack Ward Thomas and, most recently, Mike Dombeck, have been favorably predisposed to a more ecologically friendly approach to the management of national forests.

However, in November 1994 Congressional Republicans gained control of both chambers and shifted the balance of political power. The new leaders of the natural resource-oriented committees have generally acted in sync with subsystem policy goals. With committee leaders' support, Congress enacted legislation that temporarily suspended the application of environmental laws to salvage logging operations and also succeeded in dismantling the National Biological Service within the Interior Department whose programmatic responsibilities were transferred to the U.S. Geological Survey.

In many ways, the timber policy subsystem is alive and well due to the structural biases contained within the timber sale program. Forest Service officials benefit from discretionary funds that can be spent for a variety of management objectives as long as national forest timber sales continue. Program benefits are supported by legislators representing districts that include national forests, counties that receive a portion of the revenue generated from timber sales and timber industries that pay low rates to harvest trees. The enactment of NFMA represented a victory for the subgovernment by reinstating clearcutting as a management practice and by establishing annual timber harvesting goals for each national forest. More recently, program advocates in Congress succeeded in passing the salvage logging bill in 1995. But a number of significant changes favored by the environmental community have occurred as well. Unlike grazing policy shifts, the importance of Democratic Presidential terms is less evident with the exception of ecosystems management initiatives within the Clinton Administration. Of greater significance is the persistence of environmental groups that not only lobbied hard to insert public participation and wildlife protection clauses into NFMA but also worked to delay or halt timber sales by effectively utilizing the administrative appeals process and by their use of lawsuits under the authority of NEPA, NFMA or the Endangered Species Act. These groups have also used sci-

114. Hoberg, supra note 99, at 54.
115. Id. at 58.
116. SWITZER, supra note 40, at 118.
117. O'TOOLE, supra note 20, at 132-33.
entific information to counter arguments raised by subsystem participants within the courts and in Congress.\textsuperscript{119}

**HARDROCK MINING POLICY**

The symbol of the hardrock miner has survived for well over a century--the rugged individual replete with hardhat, a pickax and mule who dreams of finding mineral wealth through a combination of hard work and luck. The dream remains alive on federal land because the Mining Law of 1872\textsuperscript{20} continues to offer easy access to mineral rich land sites in the West and limits governmental interference in the form of regulations or royalties.\textsuperscript{121} While the central features of this law have been preserved through the acquiescence of subgovernmental participants and a lack of controversy, it was inevitable that the principle of free access would clash with the imperatives of the environmental movement.\textsuperscript{122}

The first political test occurred during Congressional debates over the Wilderness Act in the early 1960s.\textsuperscript{123} The main purpose of the bill was a requirement that federal land management agency administrators identify lands deemed to be suitable for designation as wilderness and then recommend a shift from multiple use to single use management. A predictable outcry arose from those constituencies who lost access to the resource base and Forest Service officials who were miffed about the prospective loss of decision-making autonomy to Congress.\textsuperscript{124} A host of industry officials and their chief organizational voice, the American Mining Congress, complained that the withdrawal of lands would "lock up" important mineral deposits unless an exemption was granted for mining claims.\textsuperscript{125} After differing wilderness bills were passed by the House of Representatives and the Senate, Representative Wayne Aspinall (D-CO) and Senator Clinton Anderson (D-NM) led an effort to negotiate a statutory exemption for mining companies in conference committee. The result was a clause in the final bill allowing mining companies to explore for minerals in wilderness areas for a nineteen-year period ending on December 31, 1983, and a


\textsuperscript{121} The primary goal of the Mining Law of 1872 was to encourage the development of mineral resources on federal lands. The ability of miners to stake a claim or obtain title to the land through patenting were important statutory provisions that contributed to this goal.

\textsuperscript{122} See *LESHT*, supra note 6, at 220-28.

\textsuperscript{123} CRAIG ALLIN, *THE POLITICS OF WILDERNESS PRESERVATION* 102-36 (1982).

\textsuperscript{124} \textit{Id.} at 111.

\textsuperscript{125} KLYZA, supra note 7, at 39.
continuation of mining on valid claims after that date.\textsuperscript{126}

While mining groups and their Congressional allies succeeded in incorporating a statutory exemption allowing mineral exploration in wilderness areas, it proved to be a symbolic victory. No companies entered wilderness areas between 1964 and 1983 for exploration purposes, a \textit{de facto} policy that was accepted by Interior Secretaries serving under Presidents Johnson, Nixon, Ford and Carter.\textsuperscript{127} The amount of land set aside as wilderness increased gradually and in 1976 Congress gave the BLM authority to recommend new additions to the National Wilderness Preservation System under a provision of FLPMA.\textsuperscript{128} The same year, mining activities were further restricted under a new law that prohibited mining operations in national parks.\textsuperscript{129}

But members of the mining policy subgovernment were cheered by the election of President Ronald Reagan in 1980 and his subsequent appointment of James Watt as Interior Secretary. One of Secretary Watt’s initial acts was to encourage mining firms to find new mineral deposits within wilderness areas, a decision that fit within the mining exemption clause in the Wilderness Act.\textsuperscript{130} However, this suggestion triggered an immediate and negative outcry from Congress and Watt eventually decided not to push the issue any further. On a related front, legislators representing mining states, notably Senator James Santini (D-NV), attempted to use a cold war rationale to further open up public lands for the extraction of strategic minerals.\textsuperscript{131} Despite support from industry and the Reagan Administration, the enactment of policies such as the National Security Minerals Act of 1984 did little to increase public land access.\textsuperscript{132}

The most serious threats to the Mining Law began to emerge in the late 1980s caused by a combination of environmental and economic factors. A new group dedicated to mining reform, the Mineral Policy Center (MPC), was established through the efforts of former Interior Secretary Stewart Udall.\textsuperscript{133} The MPC lobbied Congress for changes in the Mining Law and found a pair of important allies within the key committees. Representative Nick Rahall (D-WV) and Senator Dale Bumpers (D-AR) attempted to push reform legislation that would achieve three objectives.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{126} \textit{Id.} at 45.
\item \textsuperscript{127} \textit{Id.} at 46-47.
\item \textsuperscript{128} \textit{Id.} at 124; see also Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1986).
\item \textsuperscript{129} Wilkinson, supra note 12, at 62; see also Mining in the Parks Act of 1976, Pub. L. 94-429, 90 Stat. 1342 (codified at 16 U.S.C. §§ 1901-02, 1907-12 (1986)).
\item \textsuperscript{130} Klyza, supra note 7, at 55-62.
\item \textsuperscript{131} \textit{Id.} at 55-62.
\item \textsuperscript{132} \textit{Id.} at 62.
\item \textsuperscript{133} Wilkinson, supra note 12, at 68.
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The first objective was to require royalty payments from companies that profit from mining operations on federal lands; a second was to end the practice of ceding ownership of federal lands to mining companies or individuals through the issuance of patents for as little as $2.50 to $5 per acre; the third was to develop reclamation standards to restore the land to pre-mining conditions as closely as possible.\textsuperscript{134}

Several bills came close to passage between 1990 and 1992, including a proposed moratorium on patenting. Reform advocates used research to demonstrate abuses of the existing policy such as the acquisition of prime real estate near scenic mountain resorts for rock bottom prices using the pretext of mineral development plans.\textsuperscript{135} Reform advocates also emphasized the need for royalties on taxpayer fairness grounds and for increased attention to pollution control measures to protect air and water quality. Proponents of the status quo directed attention to the economic importance of well paying mining jobs in rural areas with few alternative employment opportunities.\textsuperscript{136}

Finally, in 1993, the timing seemed right for a major overhaul of the Mining Law. Interior Secretary Babbitt strongly backed proposed changes in policy as did George Miller (D-CA), Chair of the House Natural Resources Committee and, to a lesser degree, Senator J. Bennett Johnston (D-LA), Chair of the Senate Energy and Natural Resources Committee. Bills passed both chambers but died in conference committee in the summer of 1994 despite extensive efforts by Senator Johnston to produce a workable compromise.\textsuperscript{137}

In short, little change has occurred within the hardrock mining policy arena. Environmental organizations, frustrated by their failure to repeal or amend the Mining Law, have attempted to restrict mining use in other ways. These groups have initiated litigation against mining companies for violations of the Clean Air Act, NEPA, the Clean Water Act, Superfund or the Endangered Species Act as well as efforts to prevent ecological disasters through state and local land use planning requirements.\textsuperscript{138} Subgovernmental participants have maintained political strength by keeping the mining issue within the sole jurisdiction of the natural resource committees and the assignment of a disproportionate number of western legislators to these committees.


\textsuperscript{135} \textit{WILKINSON, supra} note 12, at 59-60.

\textsuperscript{136} Klyza, \textit{supra} note 134, at 116.

\textsuperscript{137} \textit{Id.}

\textsuperscript{138} LESHY, \textit{supra} note 6, at 186-89.
CONCLUSION

An overall examination of public lands policymaking over the past thirty years reveals a shift in land use preferences from a largely commodity production orientation to a more balanced perspective between development and amenity values. Change is more evident within some program areas such as timber production within national forests than in programs affecting hardrock mining and livestock grazing on public rangelands. Political influence once wielded by subgovernmental participants has remained a significant political force, particularly when it comes to the protection of key program benefits. Forest Service K-V funds, grazing subsidies, and a mining policy with few regulatory or fiscal restraints remain intact, evidence that the major players have continued to focus on priority issues while compromising on secondary policy issues.

Traditional user groups representing the interests of miners, ranchers, and loggers have utilized a variety of strategies to preserve program benefits. Geographical decentralization of the mining and grazing policies has been politically useful, allowing group leaders to emphasize issue containment arguments such as the importance of jobs, community and a way of life. In addition, these organizations rely on mainline strategies like funneling PAC monies to like-minded legislators (particularly associations representing mineral and timber interests), lobbying and litigation. More recently, traditional user groups have overcome the tendency to operate independently on political issues and have recognized the importance of building coalitions that transcend specific issues and the corresponding utility of multi-issue umbrella groups such as the Public Lands Council and the “wise use” movement.

Nevertheless, important changes have occurred within each of these policies that elevate the importance of environmental criteria in public land use decisionmaking. The most consistent source of policy change across program areas has been the increasing presence and involvement of environmental organizations. Group leaders have become more politically sophisticated in pursuit of policy goals, utilizing a variety of strategies such as public participation, issue expansion via greater use of media contacts, policy analysis, testimony at administrative and Congressional hearings, lobbying and litigation. The latter strategy was used effectively to initiate change in both grazing and timber harvesting policies. The expansion of the spotted owl controversy from a regional issue to a national policy concern provides a useful illustration of the environmentalists’ use of venue shopping across political institutions and levels of government.

Important contributions to the litigation strategy include procedural policies affecting resource conservation or environmental protection, nota-
bly the NEPA-based requirement that federal agencies prepare an EIS prior to undertaking any new project with potentially harmful effects on human health or environmental quality. This policy provided environmentalists with a key weapon in their efforts to delay or halt developmental activities such as logging or grazing on federal land. Other “wedge policies” that have proven to be strategically useful include the Endangered Species Act of 1973 and provisions within NFMA which restrict logging and related developmental activities within critical habitat areas. In addition, the Clean Water Act has provided a legal vehicle for the EPA and land management agencies to address ecological damage stemming from careless hardrock mining practices or from overgrazing by livestock in riparian areas. The Clean Air Act gave EPA the authority to regulate air quality problems stemming from road building activities within national forests and emissions from smelters and sawmills.

Presidential administrations also influence shifts in public land policies. Decisions to develop range and mineral resources with greater sensitivity to ecological values has been more evident during the terms of Democratic presidents over the past thirty years than Republicans. But this has been exhibited less in terms of personal involvement in policy development than in setting a generally pro-environmental policy direction and leaving it up to others to fill in the details. Notwithstanding occasional examples of more visible Presidential action on public land decisionmaking, most of the important environmental actions have been initiated by Interior Secretaries committed to a conservationist policy agenda.

In like fashion, Congressional Democrats have favored a stronger role for environmental concerns in public land management. From the mid-1980s until the midterm Congressional elections of 1994, Democratic leaders within the House of Representatives pushed a series of policy reforms aimed at reducing environmental problems associated with grazing, mining and timber programs, along with the program subsidies given to resource user groups. These efforts bore fruit in the form of House bills only to wither away under the watchful eye of a more pro-development Senate. However, it is necessary to add the caveat that a pro-environmental stance adopted by Congressional Democrats is decidedly national when wilderness or national park issues are considered but are more complicated when decisions involve programs administered by agencies with a multiple use mandate. Here, regional interests trump partisan concerns because western lawmakers, especially within the interior West, have tended to support developmental activities on public lands over environmental con-

139. FREDERICK CUBBAGE, ET. AL., FOREST RESOURCE POLICY 361-80 (1993).
140. Id. at 376-78.
cerns—regardless of party affiliation.

What do these findings portend for the near future of public lands policy? Some argue that the Republican-controlled Congress of 1994 foreshadows a move in the direction of fewer environmental controls and a greater emphasis on both the preservation of property rights and commodity production values. This may well prove to be the case in the short run; although a more likely scenario is a more modest shift in policies such as the Endangered Species Act to offer greater administrative flexibility as well as a more explicit consideration of costs and benefits.

However, public support for environmental policy goals remains strong, and conceivably, the threat of more radical policy shifts will be precluded by procedural tactics such as a senate filibuster or a presidential veto. It is likely that core provisions of public land laws with an environmental emphasis will survive intact because of procedural innovations such as citizen participation and litigation built into existing laws.