Remarks of Assistant Secretary of the Interior John A. Carver, Jr.,
at the Public Lands Conference in Denver, Colorado, on Saturday,
April 4, 1964, sponsored by the Colorado State Division of Natural
Resources and the Colorado Chamber of Commerce

I am honored to be asked to share the platform at this meeting with
a friend and mentor, Wayne Aspinall. I hope it is not vanity alone which
gives me the feeling each time at each phase of the consideration of H.R.
8070, that this is a significant and historic enterprise, one as to which
I will later be proud to say, "I was there".

I recall vividly the conference in Chairman Aspinall's office to
discuss the first draft, and the illumination which that session furnished
on the careful, craftsman's development of the basic components of the concept.
When last September formal hearings were opened, I spoke of my feeling that
we were dealing with the raw material of history. Since then, I have had
occasion to list what I thought were the three of four really significant
accomplishments of the Interior Department in my area of responsibility.
Let me quote myself:

"The public land laws of the United States are archaic, and
badly need revision. A major, indeed almost incredible accomplishment,
has been our ability to eschew our bureaucratic tendencies long
enough to achieve an agreement with the House Interior Committee
and its great Chairman on really useful cooperation toward the
creation of a Public Land Law Review Commission."

You will see in this a preoccupation with the administration of the
public land laws. This does not mean that I don't have a point of view;
quite the contrary. It means, I hope, that I feel that my responsibilities
for administration give me a vantage point from which I can help unravel
the administrative complexity, and perhaps expose areas where procedures
control policy, where precedent substitutes for common sense, where Congress
has abdicated and where bureaucracy has arrogated.

When I appeared before the House Committee last September, I emphasized
this aspect.

"A power proposed to be granted to the commission is not only
to study the statutes, but the regulations under the statutes, and
the policies and practices of the federal agencies charged with
administrative jurisdiction' over the lands ... We can expect
to be examined on every detail of our administration of the public
lands, and to account for the extent to which administration has
outstripped legislation."
I favor the Commission on a number of grounds related to three years' experience with the administration of the public land laws.

Efficiency and economy are good reasons for a review of the public land laws. Only those who have property rights hanging in the balance of administrative decision, and those government officials who reach that decision, really understand how wasteful and inefficient some of our procedures are, what a great cost there is in delay, appeals, reviews, etc.

Much of this activity is necessitated by the attempt to make an archaic law apply, to adjust an old law to a new situation, to make accommodations between incompatible demands for land use.

But the need for revisions of the laws tells a most incomplete story; as to the need, there is general agreement.

But why the Commission approach? Why is this better than leaving the preliminary review directly to the Congress? Why bring in outsiders? Don't we have the experience and expertise within the government to devise and recommend the necessary changes?

One reason has been mentioned by Chairman Aspinall, and I wholeheartedly subscribe to it. The Commission has the advantage of comprehensiveness, active participation by both branches of Congress through members from the appropriate committees, and knowledgeable public and private representatives with prestige to inspire respect and confidence of all Americans.

The Commission can be constructive, rather than reactive. Both the Congress and the Executive Branch tie up enormous amounts of time and energy with special legislation designed to meet specific situations -- the legacy of railroad right of way grants, for example, or relief from harsh forfeitures necessitated by the wording of the mineral leasing laws.

Some laws which take a great deal of our time and attention are virtually incapable of administration -- the surviving scrip rights, for example. Others set forth standards, the grounding of which seems totally lacking, such as acreage limitations on certain types of leases.

Regulations built on regulations specify with particularity the copies of a form and thus become a more important requirement for getting rights or privileges than genuine plans for resource development.

On a matter like tenure for users of the public lands, an honest appraisal of the absence of authority to grant some kind of security for those who use the lands would show that the public interest suffers -- when without the funds to do the complete conservation job ourselves, we deprive ourselves of the means of getting our tenants, the users, to do it for us.
I look forward to a close working relationship with the Commission to identify where procedure controls policy, where precedent substitutes for judgment, where administration substitutes for legislation, and to assist the Commission in isolating the policy alternatives looking toward ultimate recommendations to the Congress.

But I look forward to an inquiry from the Commission into the policies and practices of the federal agencies charged with administrative jurisdiction for a substantive reason -- in these policies and practices, as much as in the laws themselves, is found the substance of public lands philosophy. Only a Commission, freed from the institutional bias of such agencies, can get to the real roots.

I found the thesis for my discussion today in a recent imposing volume of history, The Rise of the West, by William H. McNeill, of the University of Chicago. In a short essay of conclusion, the author synthesizes 800 pages of the history of civilization's growing ability to organize and manage.

Mr. McNeill discusses the bureaucracy and the managerial elite:

"The wider the range of human activities brought within the scope of deliberate management, the more irrelevant questions of social hierarchy and managerial goals become. Admittedly, as the managerial elite of any particular country gathers experience and expertise, reduces new areas of human activity to its control, and integrates partial plans into a national (or transnational) whole, the bureaucratic machine exercising such powers becomes increasingly automatic, with goals built into its very structure... The administrative totality, its overall structure and functioning and even the general lines of policy remain almost unaffected by changes of elected officials. Even energetic reformers, placed in high office and nominally put in charge of such vast bureaucratic hierarchies, find it all but impossible to do more than slightly deflect the line of march."

Then the key paragraph:

"A really massive bureaucracy, such as those which now constitute every major modern government, becomes a vested interest greater and more strategically located than any 'private' vested interest of the past. Such groupings are characterized by a lively sense of corporate self-interest, expressed through elaborate rules and precedents, and procedures rising toward the semi-sacredness of holy ritual. These buttress a safe conservatism of routine and make modern bureaucracy potentially capable of throttling back even the riotous upthrust of social and technical change nurtured by modern science. Consequently, as the corporate entities of
government bureaucracies grow and mesh their activities more and more perfectly one with another, both within and among the various 'sovereign' states of our time, use and wont -- the way things have 'always' been done -- may become, bit by bit, an adequate surrogate for social theory. By sustaining an unceasing action, administrative routine may make rational definition of the goals of human striving entirely superfluous."

I don't believe we should take Mr. McNeill's warning as a recommendation to abolish bureaucracy. It is a challenge to do something about it. With respect to the 719 million acres involved in a public land law review, abolition would be impossible. The mere size, if nothing else, dictates a bureaucracy -- whether Federal, State, or corporate. The challenge is to devise recommendations pointing toward laws, policies and practices which would confine the bureaucracy to its very important task of administration. Under well drafted laws responsive to existing realities the audit of such administration is possible. It is not if administration substitutes for legislation.

In this context, let us examine some of the arguments that will be advanced to defeat the Commission approach, or to modify its charter to diminish its scope of activity.

It is often said that just as a good law can be subverted to bad administration, so the defects of a bad law can be ameliorated by well-intentioned administration.

Corollary concepts present the suggestion that whereas policy might properly be entrusted to a given administration, the next one may not be so trustworthy; or that whereas a given Congress might be relatively free of special interest pressures, the long run public interest is better served by broad grant of authority to administrators.

It is true that the best of laws can be maladministered. But we miss an essential link in the chain of logic to argue that enlightened administration can or should really make up for legislative deficiencies, anachronisms, or archaic enactments.

The machinery of government is much too complex to permit comfortable assumptions which are so prevalent in our age. One assumption is demolished by Mr. McNeill's observation, which I will vouch as accurate, that the elected or appointed policy officials can deflect bureaucratic hierarchies substantially.

Another assumption is that the administration of complex laws is ipso facto the domain of professionals, lawyers or scientists.
In our system, legislating is the business of legislatures, not of administrators however well-intentioned, talented, or efficient. Legislatures may abdicate to administrators; administrators may arrogate to themselves legislative functions -- each negligent or unconscious instance is erosive of our system; each conscious and purposeful instance is subversive of our system.

I do not suggest, by any means, that the proper role of administration, and the application of administrative law, ought to be reduced. When the legislative standards have been established, then administration must take over. The Congress can't administer efficiently, and when its lawmaking reaches too far into administrative detail, invariably inefficiency and frustration develop.

Are these ideas too high flown to be of practical assistance in the intensely practical exercise in which you are engaged today? I think not.

Let's take as one example the reference the Chairman has made to the coincidental improvement of technology and the decline of patents issued under the mining law. At the American Mining Congress Convention in San Francisco in September, 1962, I said I thought "the mining law of 1872, as currently interpreted and administered, gives rather more authority to the Department in the matter of controlling the acquisition of public land for mining purposes, and control of its occupancy, than the Congress would be likely to give it in any general revision which we might suggest."

For much too long in that San Francisco speech, I analyzed the relationship of administration to the law itself, and to its interpretation by the courts as opposed to interpretations by the administrative agency.

I suggested that we have "pulled, twisted, and hauled on the mining laws until we've virtually paralyzed ourselves in achieving the necessary improvements" in those laws.

"A necessary first step toward relieving this paralysis is to lay open, before the interested public, the details of the workings of the entire organism of mining law administration."

The Public Land Law Review Commission will be able to grapple with the anomaly of mining law administration -- that it is both the weapon of the administrator and the refuge of the miner -- better than the Congress can directly, and the bureaucracy itself cannot do it at all.

The reason for this is found not in the idea that a Commission can function better, or is wiser, or more disinterested or dispassionate. The Commission proposed by H. R. 8070 avoids the pitfalls of many of its predecessor commissions. In 1879, the Public Land Commission chartered by Congress to develop a comprehensive codification of pertinent laws, propose a system of land classification, and recommend reforms in the disposal of the public domain, had no Congressional representations.
Although over the next decade or two many laws were enacted which took advantage of its excellent report, it can be expected that the 1964 Commission would be able to accomplish results on the scale envisaged but not accomplished in 1879.

Theodore Roosevelt's Public Lands Commission was exclusively executive. President Hoover's Commission on the Public Domain also was exclusively executive.

With a proper melding of a public and legislative-oriented commission with the resources and talents of the executive branch, cheerfully and patriotically made available to the Commission, and with utilization of the various user groups advisory to the Commission, it will be able to find its way through the maze of public land laws to a recommendation for a rational national policy on public lands, to be legislated by the Congress, and rational and practical standards of administration, to be executed by the Executive Branch.

Interest groups will be heard, and interests legitimately concerned with the use or benefit of the public lands, both commercial and non-commercial, represented on the Commission's Council, will cover a broad spectrum.

The highest order of statesmanship is going to be necessary, however, even though the Commission itself, as proposed in H. R. 8070, would have a structure to assure a high quality consideration of the myriad policy issues which will be presented to it.

The governmental hierarchy is not alone in its rigidity and resistance to change, its unwillingness to leave the safe harbor of the way things have always been done. To a considerable extent, many of the groups represented here have a hardening of the arteries. Vested interests build up on the outside as well as the inside where a continuity and stability of regulation and precedent, however outmoded or irrational, prevail. Private as well as government lawyers with a heavy intellectual investment in regulations as they are, oppose change. Mining interests are obstinate in their resistance to opening up the mining laws, however much they decry the way they are administered. Better the devil we know.

You are engaged in an extremely worthwhile effort today, a kickoff of a good program to build public sentiment for enactment of a bill to create a Public Land Review Commission. Abraham Lincoln is supposed to have said that the one who molds public sentiment makes statutes or decisions possible to execute.

My contribution, such as it is, is to emphasize the wisdom of the provision of the proposed law which deals with the Commission's work in the area of policies and practices of the federal agencies charged with administrative jurisdiction over the lands.
This is central to the exercise, and again to quote myself, "what is needed is concentrated and systematic cataloguing of the whole area, detailed analysis and evaluation, and a consensus of experienced judgments as to the course of future policy to meet the needs of an expanding economy in our maturing society."

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