

A Capsule Examination of the Legislative History of the Federal Land Policy and Management Act of 1976

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The “organic act” originally proposed by the Administration in 1971 for the Bureau of Land Management (BLM) was a relatively simple document.¹ The proposed legislation would have repealed several hundred outdated and duplicative laws, provided BLM with broad policy guidelines and management tools, and given BLM disposal and enforcement authority. However, by the time the Federal Land Policy and Management Act (FLPMA) was passed in 1976, it had become a lengthy, complex document, much more than an organic act.² In addition to broad management guidelines and authority, FLPMA provides legislative direction to numerous specific interests and areas of management.

Perhaps in recognition of the importance of the Act, particularly to the western states and because of its complex origins, the Senate Committee on Energy and Natural Resources in 1978 published a committee print, *Legislative History of the Federal Land Policy and Management Act of 1976*.³ Prefacing the document is a memorandum in which Senator Henry M. Jackson, Chairman, summarizes for fellow committee members the background and need for the Act. He concludes with this statement:

The Federal Land Policy and Management Act of 1976 represents a landmark achievement in the management of the public lands of the United

States. For the first time in the long history of the public lands, one law provides comprehensive authority and guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of the Bureau of Land Management. This law enunciates a Federal policy of retention of these lands for multiple use management and repeals many obsolete public land laws which heretofore hindered effective land use planning for and management of public lands. The policies contained in the Federal Land Policy and Management Act will shape the future development and conservation of a valuable national asset, our public lands.⁴

Much has been written about the significance of the Federal Land Policy and Management Act, its meaning and impact, and its relationship to the report, *One Third of the Nation's Land*, issued in June 1970 by the Public Land Law Review Commission. This Article will discuss briefly the legislative history of the policies and provisions set forth in the Act.

Curiously, recreation was the subject of the first piece of public land legislation that might be considered a predecessor of FLPMA. In February 1970, Senators Jackson and Moss introduced into the 91st Congress a bill designed to improve outdoor recreation activities on the public lands administered by the Bureau of Land Management. The bill, S.3389, was passed by the Senate on

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1. See S. 2401, 92d Cong., 1st Sess., 117 CONG. REC. 28956, 28957 (1971).

2. See 43 U.S.C. __ 1701-1782 (9176).

3. SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES, 95TH CONG., 2D SESS., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (1978).

4. *Id.* at vi.

October 7, 1970,⁵ about four months after the report by the Public Land Law Review Commission was released. The Senate committee's report on S.3389 acknowledged that the bill embodied some of the recommendations made by the Public Land Law Review Commission. The report identified needs of the public lands and shortcomings of management:

Years of neglect have created many problems on the public lands administered by the Bureau of Land Management. Lack of regulations and enforcement authority have resulted in wanton vandalism and destruction of resources. Lack of sanitation facilities has created health hazards. Littering, overuse, and neglect have created unsightly blights on the landscape. Lack of public access has locked up millions of acres of public land for the private use of but a few, and many outstanding hunting, fishing, and other recreation opportunities are not available. As a result of the lack of enforcement authority and interpretive and restoration work, irreplaceable archeological values have been lost.⁶

S. 3389 recognized that the public lands administered by BLM are vital national assets that contain a wide variety of natural resource values, including outdoor recreation value, which should be developed and administered “for multiple use and sustained yield of the several products obtainable therefrom for the maximum benefit of the general public.”⁷ The bill contained a definition of multiple use,⁸ which in substantial parts is the same as the definition in FLPMA,⁹ and a definition of sustained yield¹⁰ also similar to that in FLPMA.¹¹

S. 3389 would have given the Secretary of the Interior the authority to acquire lands or interests

necessary to provide access by the general public to public lands for outdoor recreational purposes. It also would have authorized allocation of Land and Water Conservation Fund money for this purpose.¹² Of more interest perhaps is the fact that S. 3389 would have provided comprehensive enforcement authority to the Bureau of Land Management. It made violations of public land laws and regulations of the Secretary relating to the protection of the public lands a violation punishable by a fine of not more than \$500 or imprisonment for not more than six months or both.¹³ It also provided that the Secretary could authorize BLM personnel to make arrests for violations of laws and regulations.¹⁴

No action was taken on S. 3389 by the House of Representatives.

In the 92d Congress, the Interior and Insular Affairs Committees of both the House and the Senate reported out bills relating to the management of the public lands. The Senate committee had before it two bills: Senators Jackson, Anderson, Cranston, Hart, Humphrey, Magnuson, Metcalf, and Nelson co-sponsored a bill, S. 921, “[t]o provide for the management, protection, and development of the national resource lands, and for other purposes.”¹⁵ At the same time, Senators Jackson and Allott co-sponsored at the Administration's request S. 2401 “[t]o provide for the management, protection and development of the national resource lands, and for other purposes.”¹⁶

As its title indicated, S. 921 addressed not only the management of the public lands but also the disposal of federally owned minerals. Title II of

5. S. 3389, 91st Cong., 2d Sess., 116 CONG. REC. 35401 (1970).

6. S. REP. No. 91-1256, 91st Cong., 2d Sess. 2 (1970).

7. S. 3389, 91st Cong., 2d Sess. § 2, 116 CONG. REC. 35401 (1970).

8. *Id.* § 3(b), 116 CONG. REC. at 35402.

9. 43 U.S.C. § 1702(c) (1976).

10. S. 3389, 91st Cong., 2d Sess § 3(c), 116 CONG. REC. 35401, 35402 (1970).

11. 43 U.S.C. § 1702(h) (1976).

12. S. 3389, 91st Cong., 2d Sess § 4(b), 116 CONG. REC. 35401, 35402 (1970).

13. *Id.* § 5, 116 CONG. REC. at 35402.

14. *Id.* § 6, 116 CONG. REC. at 35402.

15. S. 921, 92d Cong., 1st Sess., 117 CONG. REC. 3558-61 (1971).

16. S. 2401, 92d Cong., 1st Sess., 117 CONG. REC. 28956 (1971). S. 2401 referred to the lands administered by the Bureau of Land Management as “national resource lands.” This term was being used at the time by the Bureau and the Department of the Interior in an effort to establish a more representative and mission-oriented identification for the lands than the less specific expression “public lands.”

that bill would have been cited as the “Federal Land Mineral Leasing Act of 1971.” It would have replaced and repealed both the Mining Law of 1872 and the Mineral Leasing Act of 1920, as well as several other mineral-related laws. Since S. 2401 was the Administration’s proposal, it will be described in somewhat more detail than other fore-runners of FLPMA. This fuller analysis will afford a basis for comparison between what the Administration sought as an organic act for the Bureau of Land Management and what Congress finally enacted.

S. 2401 had a short two-paragraph declaration of Congressional policy: (1) that the national interest would best be served by retaining the national resource lands in federal ownership except where the Secretary of the Interior determined that disposal of particular tracts was consistent with the purposes, terms, and conditions of the Act, and (2) that the lands be managed under principles of multiple use and sustained yield in a manner which would, “using all practicable means and measures,” protect the environmental quality of those lands to assure their continued value for present and future generations.¹⁷

The bill prohibited the use, occupancy, or development of the national resource lands contrary to any regulation issued by the Secretary or to any order issued under a regulation.¹⁸ S. 2401 also specified that an inventory of all national resource lands and their resources be maintained and that priority be given to areas of critical environmental concern.¹⁹ Development and maintenance of land use plans would be required and management of the lands would be in accordance with these plans. Specific guidelines were provided. These included, among others, a requirement for land reclamation as a condition of use and revocation of permits upon violation of secretarial regulations or state and federal air or water quality standards and implementation plans. Also included was

a requirement for prompt development of regulations for the protection of areas of critical environmental concern.²⁰

Another provision of S. 2401 authorized the Secretary to sell public lands if he found that the sale would lead to significant improvement in the management of national resource lands or if he found that it would serve important public objectives which could not be achieved prudently and feasibly on land other than national resource lands. Sales were to be made at not less than fair market value.²¹ Generally, conveyances of title were to reserve minerals to the United States, together with the right to develop them. However, the Secretary could grant full fee title if he found there were no minerals on the land or that reservation of mineral rights would interfere with or preclude development of the land and that such development was a more beneficial use of the land than mineral development. The Secretary would also have been required to insert in document of conveyance terms and conditions he considered necessary to ensure proper land use, environmental integrity, and protection of the public interest. In the event an area which the Secretary identified as an area of critical environmental concern was conveyed out of federal ownership, the Secretary would be required to provide for the continued protection of the area in the patent or other document of conveyance.²² Liberal acquisition and exchange authority was provided by the bill.²³

S. 2401, as introduced, would have made violations of regulations adopted to protect national resource lands, other public property and public health, safety and welfare a misdemeanor punishable by a fine of not more than \$10,000 or imprisonment for not more than one year or both. It would have allowed the Secretary to designate employees as special officers authorized to make arrests or serve citations for violations committed on the public lands.²⁴ The bill also provided for

17. S. 2401, 92d Cong., 1st Sess., § 3 (1971).

18. *Id.* § 4.

19. *Id.* § 5.

20. *Id.* § 7.

21. *Id.* § 8.

22. *Id.* § 9.

23. *Id.* § 10.

24. *Id.* § 11.

public hearings, where appropriate, to give federal, state, and local governments and the public an opportunity to comment on “the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands.”²⁵ It specifically required that any proposed “significant change in land use plans and regulations pertaining to areas of critical environmental concern be the subject of a public hearing.”²⁶ Finally, the bill authorized the appropriation of such sums “as are necessary to carry out the purposes of this Act”²⁷ and repealed a long list of prior laws.²⁸

As reported out by the Senate Committee on Interior and Insular Affairs, S. 2401 contained a few significant changes and additions. Specific examples of areas of critical environmental concern were deleted, leaving only a short definition of the term. The statement of congressional policy was expanded, and the fine for violation of a regulation was reduced to \$1,000. There was a requirement that the Director of the Bureau of Land Management be appointed by the President, with the advice and consent of the Senate. The Director would have to possess a broad background and experience in public land and natural resources management.²⁹ There was no provision for repeal of any public land laws.³⁰

Eight members voted for and four against reporting S. 2401 out of the Senate Committee on Interior and Insular Affairs. The minority statement of Senators Hansen, Fannin, Hatfield, and Bellmon expressed agreement with the comment of President Nixon in his 1972 Environmental Message that this type of legislation was “something which we have been without for too long.”³¹ However, these Senators felt that the legislation had been the subject of too little discussion by the

Committee. They noted that the bill granted broad authority to the Secretary of the Interior, but just how broad this authority was had never been discussed. Their view was that the legislation was too important to deal with in a hasty manner, and that the Committee should have the opportunity to study and analyze the legislation during the next session of Congress.³² As a matter of fact, the Committee studied, discussed, and analyzed the legislation for two more Congresses before an organic act was enacted into law. The full Senate did not consider S. 2401 in the 92d Congress. As will be seen, many provisions of S. 2401 considered by the 92d Congress were enacted in the Federal Land Policy and Management Act of 1976, sometimes with only subtle changes or differences in emphasis.

The Interior and Insular Affairs Committee of the House of Representatives followed a different approach in the 92d Congress. That committee did not consider the Administration proposal but considered and reported out instead H.R. 7211,³³ a bill that had been introduced by Chairman Wayne Aspinall on behalf of himself and Congressmen Baring, Taylor, Udall, and Kyl. Although as introduced, H.R. 7211 would have been cited as the “Public Land Policy Act of 1971,” when it was reported out its title was changed to “National Land Policy, Planning, and Management Act of 1972.” The reported bill was a comprehensive piece of legislation designed to reflect as many as possible of the policies and recommendations of the Public Land Law Review Commission.³⁴ Included was an extensive statement of findings, goals, and objectives.³⁵

The stated objective of H.R. 7211 was to provide for an overall land use planning effort on the part of all public land management agencies and to

25. *Id.*

26. *Id.* § 15.

27. *Id.* § 18.

28. *Id.* § 19.

29. *Id.*

30. S. REP. No. 92-1163, 92d Cong., 2d Sess. § 19, at 5 (1972).

31. *Id.* at 51.

32. *Id.*

33. H.R. 7211, 92d Cong., 2d Sess., 118 CONG. REC. 27179 (1972).

34. *See* PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970).

35. H. R. 7211, 92d Cong., 2d Sess. § 101, 118 CONG. REC. 27179 (1972).

strengthen management by providing statutory guidelines applicable to all agencies having jurisdiction over the public lands. The goal was management practices that would be more uniform, more easily administered, and more easily understood by the public.³⁶ Title II of the bill, “National Land Use Planning,” provided for federal grants to eligible states to be used in developing comprehensive land use planning. The bill contained detailed descriptions of the requirements to be met, specific provision as to how and for what the funds allotted could be expended, specifications for financial record keeping, and provisions for termination or suspension of the grants if the Secretary found that the state’s comprehensive land use planning process no longer met the requirements of the bill or that the state was making no substantial progress toward the development of a comprehensive land use planning process.³⁷

Title III of H.R. 7211 addressed “Coordination of Land Use Planning and Policy.” It would have established within the Department of the Interior an Office of Land Use Policy and Planning to administer the grant-in-aid program under Title II and to coordinate between Title II programs with the planning responsibilities of the federal government spelled out in Title IV. The Committee report on H.R. 7211 stated: “To insure the absence of any mission-orientation in such administration and coordination, the Office is separate from any existing bureau or agency in the Department.”³⁸ The bill as reported out of Committee also would have established a complex advisory system that included a National Land Use Policy and Planning Board,³⁹ land use policy coordinators appointed by the Board members,⁴⁰ Departmental Advisory Committees,⁴¹ and local advisory councils.⁴²

Title IV of H.R. 7211 was “Public Land Policy and Planning.” The term “public lands” was defined as “any lands owned by the United States without regard to how the United States acquired ownership, and without regard to the agency having responsibility for management thereof.”⁴³ Excluded were lands held in trust for the Indians, Aleuts, and Eskimos and certain lands acquired by the General Services Administration and other federal agencies.⁴⁴ Thus, the coverage of H.R. 7211 was far broader than had been proposed in any other of the public land bills before the Congress. Because many of the lands encompassed by its definition were covered by existing statutes, the bill declared specifically that the policies therein were supplemental to and not in derogation of the purposes for which units of the National Park System, National Forest System, and National Wildlife Refuge System were established and administered and for which public lands were administered by departments other than Agriculture and the Interior in the fulfillment of their statutory obligations.⁴⁵

Title IV of H.R. 7211 contained sixteen declarations of policy that were based generally on recommendations of the Public Land Law Review Commission. The House Committee in its report recognized that each of the declarations would require additional legislative and administrative action.⁴⁶ An anticipated five to ten years would be required for the Congress to consider all the recommendations of the Commission and to develop the specific and detailed statutory language necessary to implement the recommendations that Congress agreed to. H.R. 7211 was designed to establish a “policy framework” within which the legislation to implement each policy could be

36. H.R. REP. No. 1306, 92d Cong., 2d Sess. 39 (1972).

37. H.R. 7211, 92d Cong., 2d Sess. tit. II, 118 CONG. REC. 27179 (1972).

38. H.R. REP. No. 92-1306, 92d Cong., 2d Sess. 30 (1972).

39. H.R. 7211, 92d Cong., 1st Sess. § 303, 118 CONG. REC. 27179 (1972).

40. *Id.* § 304, 118 CONG. REC. at 27179.

41. *Id.* § 306, 118 CONG. REC. at 27179.

42. *Id.* § 307, 118 CONG. REC. at 27179.

43. *Id.* § 503(n), 118 CONG. REC. at 27179.

44. *Id.* § 503(n)(3), 118 CONG. REC. at 27179.

45. *Id.* § 401, 118 CONG. REC. at 27179.

46. H.R. REP. No. 92-1306, 92d Cong., 2d Sess. 35 (1972).

contained, so that future congressional action could be on a coordinated basis.⁴⁷

The sixteen statements of policy are interesting as a reflection of the recommendations of the Public Land Law Review Commission and in the light of the legislation finally enacted by Congress. Stated briefly, as they appear in the report of the House Committee, these recommended policies are:

(1) Public lands generally be retained in federal ownership;

(2) public land classifications be reviewed to determine the type of use that will provide maximum benefit for the general public in accordance with overall land use planning goals;

(3) Executive withdrawals be reviewed to ascertain if they are of sufficient extent, adequately protected from encroachment, and in accordance with the overall land use planning goals of the Act, with a view toward securing a permanent statutory base for units of the National Park, Forest, and Wildlife Refuge Systems;

(4) Congress exercise withdrawal authority generally and establish specific guidelines for limited Executive withdrawals;

(5) public land management agencies be required to establish and adhere to administrative procedures;

(6) statutory land use planning guidelines be established providing for management of the public lands generally on the basis of multiple use and sustained yield;

(7) public lands be managed for protection of quality of scientific, scenic, historical, ecological, and archeological values; for preservation and protection of certain lands in their natural conditions; to reconcile competing demands; to provide habitat for fish and wildlife; and to provide for outdoor recreation;

(8) fair market value generally be received for the use of the public lands and their resources;

(9) equitable compensation be provided to users if use is interrupted prior to the end of the period for which use is permitted;

(10) an equitable system be devised to compensate state and local governments for burdens borne by reason of the tax immunity of the federal land;

(11) when public lands are managed to accomplish objectives unrelated to protection or development of public lands, the purpose and authority therefore be provided expressly by statute;

(12) administration of public land programs by various agencies be similar;

(13) uniform procedures for disposal, acquisition, and exchange be established by statute;

(14) regulations for protection of areas of critical environmental concern be developed; and that authorizations for use of the public lands provide for revocation upon violation of applicable regulations;

(15) persons engaging in extractive or other activities “likely to entail significant disturbance” be required to have a land reclamation plan and a performance bond guaranteeing such reclamation; and

(16) the public lands be administered uniformly as to use and contractual liability conditions, except when otherwise provided by law.⁴⁸

In addition to the extensive declaration of policy, Title IV of H.R. 7211 contained provisions relating to inventory, planning, public land use, management directives, and executive withdrawals. The bill also provided enforcement authority to land managing agencies and made violations of regulations issued by an agency head with reference to public lands administered by him punishable by fine or imprisonment or both. Title V of H.R. 7211 contained appropriation authorization, the repeal of many prior public land laws, and a series of definitions of terms used.

Time did not permit consideration of H.R. 7211 by the full House before the 92d Congress ended.

47. *See id.* at 36.

48. *Id.* at 36-39.

In the 93d Congress, the Senate had before it S. 424,⁴⁹ which Senator Jackson introduced on behalf of himself and Senators Bennett, Church, Gurney, Haskell, Humphrey, Inouye, Metcalf, Moss, Pastore, and Tunney. The Senate also had the Administration's proposal, S. 1041.⁵⁰ On July 8, 1974, S. 424 was passed by the Senate by a vote of 71 to 1, with 28 members not voting.⁵¹ S. 424, with very few changes, was reintroduced in the 94th Congress as S. 507.⁵² The new bill applied only to national resource lands—those lands administered by the Bureau of Land Management except the Outer Continental Shelf.

S. 507 contained these basic provisions relating to land management:

- (1) management of the national resource lands under principles of multiple use and sustained yield;
- (2) a return of fair market value to the federal government for the use or sale of lands;
- (3) inventory;
- (4) emphasis on planning;
- (5) authority to issue regulations;
- (6) public participation;
- (7) advisory boards;
- (8) annual reports;
- (9) general management authority with specific guidelines;
- (10) sales authority;
- (11) expanded exchange authority;
- (12) authority to convey reserved mineral interests;
- (13) reenactment of the Public Land Administration Act of 1960 to put all land managing authorities into one statute;
- (14) authority to issue recordable disclaimers of interest and to issue and correct patents;

(15) to afford an opportunity to zone or otherwise regulate the use of land, a requirement to notify states and local governmental units with zoning authority of any proposal to convey lands;

(16) authority to acquire land;

(17) creation of a working capital fund;

(18) enforcement authority;

(19) authority in the Secretary to cooperate with state and local governments in the enforcement of state and local laws on national resource lands;

(20) special provisions for cadastral survey operations and resource protection;

(21) special provisions for long-range planning for the "California Desert Area";

(22) provisions for oil shale revenues;

(23) a complete consolidation and revision of the authority to grant rights-of-way; and

(24) repeal of disposal, rights-of-way, and other statutes which this law was replacing.

S. 507, as passed by the Senate in the 94th Congress on February 25, 1976,⁵³ had these additional provisions that were not in S. 424 in the 93d Congress:

(1) provisions for disposal of "omitted" lands;

(2) amendments to the Mineral Leasing Act of 1920 to increase the percentage of revenues paid to states;

(3) provision for mineral impact relief loans; and

(4) provisions for recordation of mining claims and a conclusive presumption that any recorded claim for which the claimant did not make application for a patent within ten years after recordation is abandoned and therefor void.

There were two points of particular interest in the Senate floor debate on S. 507. The first point involved an amendment by Senator McClure that would have deleted from the provisions relating to

49. S. 424, 93d Cong., 1st Sess., 119 CONG. REC. 1339 (1973).

50. S. 1041, 93d Cong., 1st Sess., 119 CONG. REC. 5741 (1973).

51. 120 CONG. REC. 22296 (1974).

52. S. 507, 94th Cong., 1st Sess., 121 CONG. REC. 1821 (1975).

53. 122 CONG. REC. 4423 (1976).

mining claims the requirement that application for patents for mining claims be made within ten years.⁵⁴ The second point of particular interest involved grazing fees. Senator Hansen introduced an amendment that incorporated a formula for establishing a fee for grazing of domestic livestock on the public lands. The issue was vigorously debated on February 23 and again on the 25th. The grazing fee was opposed by Senators Jackson and Metcalf and by the National Wildlife Federation and the American Forestry Association, all of whose letters of opposition appear in the Congressional Record.⁵⁵ The amendment was also opposed by the Administration and eventually was rejected 36 to 53.⁵⁶ On February 25, after this amendment was rejected, S. 507 was passed by the Senate 78 to 11, with 11 members not voting.⁵⁷

During the 93d and 94th Congresses, the Interior and Insular Affairs Committee of the House of Representatives was taking a different approach to public land legislation. Under the leadership of Representative John Melcher as Chairman, the Subcommittee on Public Lands held a series of meetings during which the members discussed and debated what they believed should be included in a bill. The Committee staff put proposed provisions into legislative language as the sessions went along. Committee prints were prepared and circulated for comment. By the end of the 93d Congress, eight prints had been prepared. Congressman John Dellenback had prepared a series of correcting amendments to the last print, but Congress adjourned before all the amendments

could be incorporated into a bill. Two bills were actually introduced – H.R. 16676 and then H.R. 16800, a clean bill which corrected some errors discovered in the earlier bill.

During the 94th Congress, the Public Lands Subcommittee of the House Interior Committee conducted additional work sessions that culminated in the introduction of H.R. 13777.⁵⁸ This bill as reported out by the Committee not only granted management and enforcement authorities to the Bureau for public lands under its jurisdiction but also applied to public domain lands in the National Forest System. Some of the provisions relating to the Forest Service System were deleted when the bill was debated on the floor of the House. Passed by the House on July 22, 1976,⁵⁹ H.R. 13777 contained all the now familiar provisions of previous bills plus many new ones. The new provisions included:

- (1) a grazing fee formula applicable to BLM-administered lands and lands in the National Forest System;
- (2) provisions relating to duration of grazing leases applicable to BLM and National Forest System lands;
- (3) requirements for grazing advisory boards, applicable to both BLM and Forest Service;
- (4) provisions relating to wild horses and burros, also applicable to both BLM and Forest Service;

54. Senator Haskell and Senator McClure debated the issue briefly. On the calling of the question, Senator Haskell noted the absence of a quorum. This led Senator McClure to withdraw his amendment saying:

Mr. President, I know that the Senate as a whole will probably follow the lead of the committee. If we have a roll call on this, I would anticipate that the majority of them walking through these doors would never have heard of this question before and would be very apt to follow the lead of the committee under those circumstances. Under those circumstances, I think it is likely that the result can be forecast.

In the expectation that this matter might be considered somewhat differently in the other body and with the full confidence that we can move forward on a comprehensive bill, perhaps before this bill has been passed and becomes law, I am suggesting, therefore, it might be varied by subsequent legislation or conference between the Senate and the other body on the Organic Act, and I will withdraw the amendment at this time.

112 CONG. REC. 4053 (1976). As Senator McClure anticipated, the provision was not in S. 507 as it passed the House. The conferees did not adopt the provision, and it is not in the Act.

55. 122 CONG. REC. 4419 (1976).

56. *Id.* at 4422.

57. *Id.* at 4423.

58. H.R. 13777, 94th Cong., 2d Sess., 122 CONG. REC. 13815 (1976).

59. 122 CONG. REC. 23483 (1976).

(5) amendment of what is frequently called the Unintentional Trespass Act;⁶⁰

(6) provisions relating to the “California Desert Conservation Areas;” and

(7) the “King Range National Conservation Areas.”⁶¹ After the House passed H.R. 13777, S. 507 was considered, amended to read as H.R. 13777 did, and passed.⁶²

As expected, the Senate disagreed to the amendments of the House and requested a conference. On July 30, 1976, Senate conferees were appointed: Jackson, Church, Metcalf, Johnston, Haskell, Bumpers, Hansen, Hatfield, and Fannin. Senator Fannin was replaced later by Senator McClure. Conferees from the House were Representatives Melcher, Johnson (California), Seiberling, Udall, Phillip Burton, Santini, Weaver, Steiger (Arizona), Clausen and Young (Alaska). At an organizational meeting held on August 30, 1976, Congressman Melcher was elected chairman. The conferees determined that because of all the primaries scheduled for early September, the first working session of the conferees could not be held until September 15. Staff were instructed to study the Senate and House versions of S. 407, identify areas of virtual agreement, outline areas of disagreement, and recommend alternatives for resolving those areas of disagreement.

The first difference in text addressed by the conferees was the short title of the Act. The title of the House amendment was “Federal Land Policy and Management Act of 1976.” The title of the Senate amendment was “National Resource Lands Management Act.” The Senate staff deferred to the House staff on the title, and the conferees concurred. The second issue involved the term to be used in referring to lands administered by the Bureau of Land Management. The conferees adopted the term used by the House—public lands

—although they recognized, as the staff pointed out, that in the past that had been a confusing term, referring sometimes to public domain lands and other times to acquired lands. And so it went. During four sessions, on September 15, 20, 21, and 22 and spanning more than twelve hours, the conferees had extensive discussions but relatively little problem agreeing to language to be incorporated into the Act—with four major exceptions. These exceptions almost killed the Act.

The House version of the Act contained a grazing fee formula and a provision for ten-year grazing permits.⁶³ It also provided for grazing district advisory boards, as distinct from the multiple use advisory councils.⁶⁴ The Senate conferees, particularly Senator Metcalf, objected to these provisions. The Senate version of the Act contained a provision that required mining claimants to make application for patent within ten years after the date of recordation of the claim. If the claimant failed to do so, the claim would be conclusively presumed to be abandoned and would be void.⁶⁵ The House conferees, particularly Congressman Santini, objected to this.

These issues of grazing and mining were debated extensively on September 22nd. Before the end of that five-hour session, Senator Metcalf offered a “package compromise.”⁶⁶ The proposed compromise required:

(1) that the grazing fee provisions be deleted from the bill—in effect that the House would accede to the Senate on Section 401;

(2) that the Senate agree with the House on the already adopted Metcalf/Santini amendment that all grazing leases be for ten years;

(3) that the conferees accept the grazing advisory boards with their functions limited to expenditure of range improvement fees;⁶⁷ and

60. 43 U.S. C. __ 1431-1435 (1976).

61. These add-ons have sometimes been called the “Christmas-tree amendments.”

62. 122 CONG. REC. 23508 (1976).

63. H.R. 13777, 94th Cong., 1st Sess. __ 210, 211, 122 CONG. REC. 23447-48 (1976).

64. *Id.* § 212, 122 CONG. REC. at 23448.

65. S. 507, 94th Cong., 1st Sess., § 207, 122 CONG. REC. 23497 (1976).

66. The proposal actually was brought to the conferees by D. Michael Harvey, Staff Counsel, because Senator Metcalf was at a meeting of the Committee on Committees.

67. Mr. Harvey noted that this was as far as Senator Metcalf would go on an individual basis, but as part of the package he would add to the functions of the grazing advisory boards the development of the management allotment plans.

(4) with respect to the Senate language on mining claims, that the language be applicable only to mining claims filed after enactment of the Act, not pre-existing claims.

The conferees could not agree on the compromise that day but did agree to meet again on September 23rd just in advance of the Conference on the National Forest Management Act of 1976 that was due to start at 1:30 p.m. Several of the conferees on S. 507 were also on the Forest Act conference. The conferees convened at 1:10 p.m. on September 23rd. Congressman Santini offered a substitute compromise that would knock out advisory boards, have five-year leases in return for keeping grazing fees, and knock out the patent provisions. Senator Metcalf countered with a proposal to accept the first three amendments he had offered and knock out the Senate language on mining. This was rejected by the Senate conferees and at 1:20 p.m., the Conference was adjourned by

Chairman Melcher who said he saw no point in prolonging the meeting. For the moment, hopes dimmed for passage of an Organic Act for the Bureau of Land Management. The 94th Congress was in its last-minute rush before adjournment. But as with many pieces of landmark legislation, a compromise was reached at the eleventh hour, reportedly as a result of behind-the-scenes lobbying by interested private parties.⁶⁸

On September 28, Congressman Melcher made a last minute effort to reach a compromise and get a public land management act in the 94th Congress. He called a meeting of the Conference Committee to commence at 5:30 p.m. that evening. The meeting was held in a very small room in the Congress. Very few persons, other than conferees and staff, were permitted in the room. Dozens of interested persons filled the halls and corridors leading to the meeting room. Within a few minutes of coming together, the conferees took a thirty-minute break.

68. The struggle to achieve an acceptable middle ground was reported in the October 7, 1976, issue of *Public Land News: How the BLM Organic Act came back from the grave in five days*

The final, fateful meeting of the House-Senate conference committee that revived the BLM Organic Act pitted two unyielding antagonists—Sen. Lee Metcalf (D-Mont.) And Rep. James Santini (D-Nev.).

Simply put, Santini wanted a statutory grazing fee he co-authored to stay in the bill. Metcalf didn't.

So, on September 23, the conference deadlocked over the grazing fee when the House refused by a 5-5 vote to give up the provision. At the same time, the Senate conferees refused to allow the grazing fee to stay in. The bill was effectively dead for 1976 . . . or so the conferees said.

The deadlock began to give way the following day when the mining industry, principally the American Mining Congress, realized the Senate would give up its provision on requiring patent in 10 years. But only if the House dropped the grazing fee. The mining industry abhors the patent requirement.

So, the mining industry started pressuring the ranching industry to ask its Congressional allies to yield on the grazing fee, said sources in the cattle industry.

And Rep. John Melcher (D-Mont.)—chief sponsor of the House bill, candidate for the U.S. Senate—continued to push for a further compromise.

Pressure was applied primarily to Reps. Don Young (R-Alaska) and Don Clausen (R-Calif.), *PLNews* sources said.

Then on Tuesday morning (September 28) a meeting was held among the House supporters of the statutory grazing fee. They decided to yield on the grazing fee, reasoning that a freeze was better than no bill at all.

With that a meeting of the full conference was held in room S 224 of the Capitol at 5:30 p.m, just minutes after a compromise timber management bill had been hammered out in conference down the hall.

The last BLM conference, with only a half dozen attendees other than Congressmen and their staff, started badly. Metcalf and Santini, almost shouting at times, argued forcefully that each had already compromised too much. But Santini eventually offered a compromise on the grazing fee. It called for a statutory grazing fee for two years while a study was conducted. The Senate conferees refused to even consider it.

Then Clausen offered a compromise calling for freezing the present grazing fee, developed administratively by BLM and the Forest Service, for two years while a study was conducted. Again, the Senate refused to consider it.

Then the conferees, with no one in particular sponsoring it, agreed to consider a one-year freeze with study. Santini asked for and received a 30-minute break.

During the break, *PLNews* talked to representatives of the American National Cattlemen's Association and the Public Lands Council. They said, resignedly, the one-year freeze plus study was the most they could hope for, given the Senate conferees adamant opposition to anything else.

Finally, at 7 p.m. on September 28, the conferees reassembled and Melcher asked for a show of hands from the House members. He, Rep. James Johnson (R-Colo.), Rep. Harold T. Johnson (D-Calif.), Clausen, and Santini voted for the compromise. Melcher said Reps. Mo Udall (D-Ariz.), Jim Weaver (D-Ore.), and John Seiberling (D-Ohio) also would have agreed to the compromise if they had been present.

Word spread among the assembled crowd that the meeting was going badly. However, when the conferees reassembled at 7 p.m., those present voted almost immediately for the compromise that had been suggested earlier. The conferees and staff walked quickly out of the conference room. As they made their way down the corridor, they received the quiet congratulations of the very interested group of people who had waited to hear the final outcome of the session.

In keeping with its somewhat stormy and cliff-hanger history, the conference report was passed by the House on September thirtieth, and by the Senate on October first, just hours before the 94th session ended. The Act was signed by the President on October 21, 1976, and became Public Law 94-579, 90 Stat. 2743.

The Senate members present—Metcalf, Floyd Haskell (D-Colo.), and Frank Church (D-ID)—also agreed without a formal vote.