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# Science vs. the Grass Roots: Representation in the Bureau of Land Management

## INTRODUCTION

There is practically a consensus among political activists and natural resource scholars that the Bureau of Land Management (BLM) is flawed. Neo-conservatives complained about the agency during the Carter administration. Environmentalists wring their hands over its actions under the Reagan presidency. The scholarly literature provides a range of diagnosed ills and prescriptions for improvement. This article offers a different and more optimistic perspective which views BLM as grappling with broad and enduring problems of political representation that cannot and perhaps should not be solved. It focuses upon some fundamental issues of governance which contrast sharply with the narrower and more immediate preoccupations of most of the agency's critics.

Much of the literature on the Bureau of Land Management bemoans the agency's weaknesses and provides various recipes for survival.<sup>1</sup> The lists of weaknesses usually include expressions of concern about agency capture by clientele groups. For example, the livestock and mining industries have for so long been given favored treatment by BLM that it sometimes has been derisively referred to as the Bureau of Livestock and Mining.<sup>2</sup> Yet there are also difficulties for the BLM when it tries to build a broadened base of general public support.<sup>3</sup> Some critics cite BLM's weak legal structure as a source of problems, noting that the agency only very recently gained its own organic act, the Federal Land Policy and

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1. J.N. CLARKE & D. MCCOOL, *STAKING OUT THE TERRAIN: POWER DIFFERENTIALS AMONG NATURAL RESOURCE AGENCIES* (1985); George Coggins, *The Law of Public Rangeland Management* (1981) (draft paper prepared for Workshop on Political and Legal Aspects of Range Management, Teton Village WY, Sept. 14-15, 1981); P. CULHANE, *PUBLIC LANDS POLITICS* (1981); S.T. DANA & S.K. FAIRFAX, *FOREST AND RANGE POLICY* (2d ed. 1980); S.K. Fairfax, *Coming of Age in the Bureau of Land Management* (1981) (paper prepared for Workshop on Political and Legal Aspects of Range Management, Teton Village WY, Sept. 14-15, 1981); P. FOSS, *POLITICS AND GRASS* (1960); and R.H. NELSON, *THE NEW RANGE WARS: ENVIRONMENTALISTS VERSUS CATTLEMEN FOR THE PUBLIC RANGELANDS* (1980).

2. *There's More Rhetoric Than Reality in the West's 'Sagebrush Rebellion,'* NAT'L J. 1928-31 (Nov. 17, 1979); S. DANA & S.K. FAIRFAX, *supra* note 1, at 344.

3. Robert McG. Cawley, *The Sagebrush Rebellion* 170 (Fall, 1981) (Ph.D. dissertation, Colorado State University, Ft. Collins CO).

Management Act of 1976 (FLPMA).<sup>4</sup> In addition, Professors Clarke and McCool have convincingly demonstrated BLM's weaknesses measured in manpower levels and funding dollars compared to other natural resources agencies.<sup>5</sup>

Further, the lands BLM manages are residual, that is, lands no one else wanted through the years even when they were free for the taking.<sup>6</sup> Arid or semi-arid, these lands are often described as worn out by the time BLM got them to manage. Problems also arise for BLM because these lands are of low visibility and are often broken into piecemeal parcels or intermingled with state and private lands. BLM lands, historically the unreserved and unappropriated public domain, are scattered throughout the western states. Unlike the lands in national parks and national forests, BLM lands are not neatly bounded or clearly labeled and easily identified. Finally, critics see the BLM as weak professionally. Compared with the Forest Service's very old forestry science, range science is much less precise and well developed.<sup>7</sup>

Recipes for survival of the BLM vary with which weakness or set of weaknesses is seen as the more troubling or the most amenable to improvement. BLM is often exhorted to be more rational and/or to become politically stronger. George Coggins argues that the Bureau's task is not impossible but that improvement depends more on professionalism and courage than on science or money.<sup>8</sup> Paul J. Culhane also sets the standard of professionalization as a way for BLM to avoid capture and overcome its political problems.<sup>9</sup>

Yet, these remedies are troublesome. There is little contemporary evidence to suggest that a strategy of increased professionalism and a broadened political base have elevated BLM from difficulty. The Bureau, like other natural resource agencies, came under attack, especially by the commodity interests and their allies, in the closing years of the Carter administration as being unresponsive to grass roots interests.<sup>10</sup> This happened at a time when BLM had finally been given its own organic act and had become increasingly professional. Yet although the BLM had a broadened mission, increased professionalism, and a congressional mandate for greater public participation in agency decisionmaking, the Sagebrush Rebellion arose. In many respects, the Sagebrush Rebellion was a

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4. U.S. PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND (1970); J.N. CLARKE & D. MCCOOL, *supra* note 1 at 111, 114; P. CULHANE, *supra* note 1, at 92-93; Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-82 (1976).

5. J.N. CLARKE & D. MCCOOL, *supra* note 1, at 127, 137, 141.

6. *Id.* at 111.

7. *Id.* at 112; Fairfax, *supra* note 1, at 67.

8. G. Coggins, *supra* note 1, at I-1.

9. P. CULHANE, *supra* note 1.

10. J.N. CLARKE & D. MCCOOL, *supra* note 1, at 116-17; *see also* Cawley, *supra* note 3.

version of older conflicts which troubled BLM's predecessors, the General Land Office (GLO) and the Taylor Grazing Service, and provides clear evidence of considerable user dissatisfaction.

The election of Ronald Reagan, a self-proclaimed Sagebrush Rebel, and his appointments of Rebels James Watt as Secretary of the Interior and Robert Burford as Director of BLM did not end the controversies surrounding the agency.<sup>11</sup> As Paul Culhane notes, "[Watt's] unpopular policies and his highly visible verbal pratfalls ultimately proved so intolerable as to elicit a Senate 'no confidence' motion."<sup>12</sup> Watt resigned under pressure in October 1983. William P. Clark followed him and, in turn, Donald P. Hodel replaced Clark. Although the change in personnel quieted the public furor, few expected much change in fundamental policy emphasis. Burford has retained his position but his policies are challenged on numerous fronts. Grazing policies which purportedly have turned public rangelands into desert, and highly controversial wilderness and mineral leasing policies, are among the Burford policies most criticized. For example, in April 1985 the National Wildlife Federation (NWF) opposed the BLM's "withdrawal review program," charging that the agency is opening sizeable portions of protected public lands to mining and mineral leasing without following proper review procedures.<sup>13</sup> In June 1985 *Audubon Action* reported that a government study shows that overgrazing on public rangelands is turning 225 million acres into desert.<sup>14</sup> Conservationists now believe that the time is finally ripe for changing BLM's long-standing grazing policies.<sup>15</sup>

The persistence of BLM's problems with the grass roots suggests that BLM is an agency that is not so much pursuing an incorrect strategy as reflecting the enduring problems of governance. That democratic governments are supposed to act in the interests of their citizens is at the heart of democratic theory. But public officials trying to implement this ideal face knotty problems such as whether and when what citizens say they want can be taken as true expressions of their interests, and what representatives do when their "informed" judgment of citizens' interests differs from citizens' views.

Questions of representation such as these seem particularly acute for

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11. Culhane, *Sagebrush Rebels in Office: Jim Watt's Land and Water Politics* in ENVIRONMENTAL POLICY IN THE 1980s 293-94 (N. Vig & M. Kraft eds. 1984). Although Watt said he did not favor massive transfers of federal lands to the states, a key item on the Rebellion agenda, he was well-known for his association with the Sagebrush movement and Burford was an acknowledged leader of it. See also J.N. CLARKE & D. MCCOOL, *supra* note 1, at 115-18.

12. Culhane, *supra* note 11, at 314.

13. 3 NATIONAL WILDLIFE FEDERATION, *Rush to Judgment on Our Public Lands*, in CONSERVATION 85 1 (Apr. 1985).

14. Burstein, *Cattle Making Desert of West*, 3 AUDUBON ACTION, 3 (June 1985).

15. *Id.*

natural resource agencies. As Samuel Hays has noted, the American conservation movement of the Progressive era had as its ideal "maximum development through scientific adjustment of competing uses."<sup>16</sup> Attempts to implement this ideal, however ". . . required centralized and coordinated decisions [and this] . . . conflicted with American political institutions which drew their vitality from filling local needs."<sup>17</sup> Furthermore, "this conflict between the centralizing tendencies of effective economic organization and the decentralizing forces inherent in a multitude of geographical interests presented problems to challenge even the wisest statesman."<sup>18</sup> Hays concluded that the Theodore Roosevelt administration grappled with these problems but failed to resolve them. Since the Roosevelt administration was essentially hostile to widely distributed decisionmaking, its leaders chose to identify opposition to the administration as "selfish interests" rather than to recognize the paradoxes inherent in their own approach.<sup>19</sup> Nevertheless, Samuel Hays noted:

. . . The conservation movement raised a fundamental question in American life: How can large-scale economic development be effective and at the same time fulfill the desire for significant grass roots participation? How can the technical requirements of an increasingly complex society be adjusted to the need for the expression of partial and limited aims? This was the basic political problem which a technological age, the spirit of which the conservation movement fully embodied, bequeathed to American society.<sup>20</sup>

There are no simple panaceas for overcoming the contradictions of which Hays writes. Politics, it seems, is a persistent process of striking balances under conditions of competition and stress. An analysis of the BLM must reach beyond recipes for the survival of the agency to an understanding of the conundrum of representation over which BLM must continue to puzzle. The section that follows will examine how each of the various meanings of representation taken individually, and related to our concerns about BLM, is partial and unsatisfactory. Yet these conceptions and their associated directions to BLM are conflicting and contradictory when linked together. In the face of such contradictions and conflicts, what help, if any, can the standard recipes for survival offer? The third section addresses the oft-repeated strictures that the BLM should become more rational and more powerful politically. The concluding section suggests that the most useful contribution that scholars can make

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16. S.P. HAYES, *CONSERVATION AND THE GOSPEL OF EFFICIENCY* 275 (1959).

17. *Id.*

18. *Id.*

19. *Id.* at 275-76.

20. *Id.*

to the BLM is to admit there are no answers, only different configurations of enduring puzzles. While this recommendation is not exactly a cure, the message should not be discouraging to the BLM, for pains, according to the physicians, are not symptoms of disease, but signs of life.

### DIMENSIONS OF REPRESENTATION

In a democratic system of government the sources of power and the limits set upon its exercise spring from the people. Political institutions, that is those entities, including agencies in the executive branch, that have a role in the governmental allocation of values among citizens, should represent interests of citizens. Difficulties arise for these institutions because while the representation requirement is clear and unequivocal, there is no consensus among theorists who have written about the meaning of the concept. According to Hanna Pitkin's brilliant analysis, most scholars writing on representation fail because they attach themselves to a single facet of representation.<sup>21</sup> The concept of representation is rather like an onion, and the theorist in search of essence can make two mistakes. The first and most common mistake is to assume that one or another layer is the whole. The second is to discard layer after layer in search of the substance beneath the peels. Our approach is to continually remind ourselves of the whole as we pursue each facet of representation. As the discussion that follows concerning the BLM illustrates, meeting the tests of representativeness along one dimension often simply raises issues along another.

#### *Formalistic Representation*

The formalistic view of representation provides a good beginning for discussion. As Thomas Hobbes long ago pointed out, a representative stands for and must be able to act for another.<sup>22</sup> At the basis of the representational relationship is a contract that authorizes the representative to act in the name of the represented. The emphasis of the formalist theory is upon the beginning of the representational relationship, the conferring of formal powers and the definition of powers. Hobbes would argue that governors, to be representative, must have the power or authority to govern.<sup>23</sup> Formalistic views of representation stress basic grants of power, the authorization of representatives and the definition of legitimate powers. Formalistic approaches also concentrate on procedures for decision-

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21. H.F. PITKIN, *THE CONCEPT OF REPRESENTATION* 7-17 (1967).

22. See T. HOBBS, *LEVIATHAN* (Oxford ed. 1965).

23. *Id.* See also H. INGRAM, N. LANEY & J. MCCAIN, *A POLICY APPROACH TO POLITICAL REPRESENTATION* 7-8 (1980).

making that specify how decisions are made and who participates in these decisions. The formalistic view of representation skews in favor of the representative. To the extent that the agent has been authorized to act and follow specified procedures, the representation requirement is fulfilled.<sup>24</sup>

The Bureau of Land Management provides an example of an attempt to solve representational problems through a formalistic approach. BLM officials once identified the lack of an organic act as a key to the agency's weakness.<sup>25</sup> The Federal Land Policy and Management Act of 1976 granted the agency a strong formal basis. FLPMA was: "truly landmark legislation. It provided for the first time a clear and coherent statement from Congress on the administration of our Nation's public lands. . . . It set policy and standards for the Bureau to plan, manage, and protect the public lands and their resources."<sup>26</sup> Furthermore, for the first time FLPMA formally declared it to be the policy of the United States that the public lands should remain in federal ownership and should be managed under the principles of balanced multiple use and sustained yield.<sup>27</sup> Earlier these lands were held "pending disposition" and were administered on the basis of more than 3,500 statutes dating largely from the disposition era of public land policy.<sup>28</sup>

Events following FLPMA's passage illustrate the limitations of formalistic approaches to representation. Clearly legal authority is an important basis of action, and action is essential for governance. However, authority, although necessary, is not by itself sufficient. If, after all, authority were coextensive with representation, all governments would be representative and Nevada ranchers would have felt that their interests were adequately represented under FLPMA. But they did not.

Nevada cattlemen holding grazing permits from BLM perceived a threat to their interests and organized the beginnings of the Sagebrush Rebellion, the movement to transfer ownership and control of public lands from BLM to the states in which these lands are located. Nevada State Senator Norm Glazer declared that Nevadans were ". . . tired of being pistol-whipped by the bureaucrats and dry-gulched by federal regulations."<sup>29</sup> The Sagebrush rebels even couched their public debate on formalistic

24. H.F. PITKIN, *supra* note 21, at 39.

25. S. DANA AND S.K. FAIRFAX, *supra* note 1, at 337-38; PUBLIC LAND LAW REVIEW COMMISSION, *supra* note 4; J.N. CLARKE & D. MCCOOL, *supra* note 1, at 114. Cawley, *supra* note 3, at 124, notes that the characterization of FLPMA as BLM's organic act is accurate. "An 'organic act' creates and authorizes a new agency. Although the BLM was already in existence . . . it had never been given specific legislative direction by Congress. Thus, FLPMA might be viewed as 'recreating' the BLM."

26. *Implementation of the Federal Land Policy and Management Act: Hearings Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs*, 96th Cong., 1st Sess. 1 (1979) (No. 9628, Pt. 1) [hereinafter cited as *Hearings*].

27. Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1782 (1976)

28. See P. GATES, *HISTORY OF PUBLIC LAND LAW DEVELOPMENT* (1968).

29. *The Angry West vs. the Rest*, 12-XCIV NEWSWEEK 38 (Sept. 17, 1979).

grounds, declaring that state-level decisionmaking would more likely represent their interests.

Indeed, state legislatures can claim to be formally more representative than the United States Congress because both houses of state legislatures must now follow the one man/one vote districting rules.<sup>30</sup> However, the gap between formal representation and actual representation is as evident in regard to one man/one vote as it is in some interests' perception of FLPMA. Proponents of court-ordered reapportionment previously had argued that rural areas were overrepresented in state legislatures because old legislative district lines did not reflect more recent population shifts to the cities. But since the courts ended malapportionment, dramatic shifts in policy favoring urban interests have not occurred. That these policy shifts have not taken place is of interest in public lands policy because many believe that the political stakes are greatest for these urban residents. In the rapidly urbanizing western states, urban area residents stand to lose the most by transfer of BLM land to state control; because public access to these lands probably would be lost if the lands were to be transferred to state ownership or sold to private developers.<sup>31</sup>

One can also view formal representation as involving the formal procedures required for decisionmaking. FLPMA not only emphasized multiple use, it also required more rational decisionmaking processes and mandated increased public and intergovernmental participation in these decision processes. The regulations implementing FLPMA published during the Carter administration stated that: "the objective . . . is to improve resource management decisions on public lands through a process of resource management planning that includes participation by the public and federal, state, and local governments, maximizing use of the best available data, and analysis of alternatives."<sup>32</sup> In addition, the regulations required that interdisciplinary approaches be used "to achieve integrated consideration of physical, biological, economic, social and other sciences, and the environmental design arts."<sup>33</sup> Critics have long described land use planning in the Bureau of Land Management as particularistic and irrational.<sup>34</sup> Clearly the intent of FLPMA was to force BLM to become more representative of a wider range of concerns by insisting on these procedural requirements.

Once again, however, the limitations inherent in overreliance on formal representation must be faced. Mandating legal requirements and proce-

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30. H. INGRAM, N. LANEY & J. MCCAIN, *supra* note 23, at 5.

31. Bruce Babbitt, Veto Message, ARIZ. SENATE BILL 1012 (Apr. 8, 1980).

32. 43 C.F.R., § 1600 (1976).

33. *Id.*

34. Fairfax & Ingram, *The United States Experience*, in PROJECT APPRAISAL AND POLICY REVIEW 38 (T. O'Riordan & W.R.D. Sewell eds. 1981).



dures does not remove tough decisions from the political arena. Not only has the Reagan administration revised regulations to restrict or eliminate public participation in some programs, but it has often bypassed procedures for review.<sup>35</sup> For example, "enormous areas of the West—some 160 million acres of federal lands—have been leased to oil interests with no public review and with little environmental screening."<sup>36</sup> A fundamental problem continues to be that altering the process does not necessarily alter the substance of the outcome or insure a better decision.

A number of contemporary commentators have suggested a formal modification of BLM's jurisdiction in an attempt to defuse the Sagebrush problem.<sup>37</sup> BLM's checkerboard pattern of land jurisdiction might be consolidated by a series of land exchanges. Initially these exchange proposals aimed to reduce the number of BLM holdings mixed in with state lands. More recently the land exchange scheme has been extended to include an enormous land swap of about 35 million acres between the Forest Service and BLM.<sup>38</sup> The swap would transfer large areas of national forest lands in Nevada, New Mexico, and Wyoming, as well as forested areas in Colorado, Idaho, and Arizona, to BLM, ostensibly to consolidate and reorganize fragmented federal holdings under a single agency's control. The Forest Service would acquire scattered BLM holdings and would gain control over minerals under all its lands.<sup>39</sup> Advocates of the land swap hope that authorization of a more coherent land base may lead to sharper, more coherent representation. However helpful such consolidation may be, we caution against any expectation that the representation puzzle can be so easily solved. There will continue to be value conflicts about the management of BLM's land base however that land base is established geographically.

These conflicts may even be sharpened if proposals to massively lease or to sell off the public lands come to fruition.<sup>40</sup> Influential members of the Reagan administration clearly share an ideological commitment to this privatization of public lands, but their "asset management" program, a mandate to sell "surplus" federal lands, has not yet met with much success.<sup>41</sup> The reasons for this lack of success appear to be political as

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35. Culhane, *supra* note 11, at 296.

36. 3 NATIONAL WILDLIFE FEDERATION, *supra* note 13, at 5.

37. F. GREGG, FEDERAL LAND TRANSFERS: THE CASE FOR A WESTWIDE PROGRAM BASED ON THE FEDERAL LAND POLICY AND MANAGEMENT ACT (1981).

38. Ring, *Land Swap Might Affect Use of Much of West*, *Ariz. Daily Star*, Mar. 24, 1985, at 1-B.

39. *Id.*

40. F. GREGG, *supra* note 37; M. CLAWSON, THE FEDERAL LANDS REVISITED (1983); U.S. O.M.B., BUDGET OF THE UNITED STATES GOVERNMENT: MAJOR THEMES AND ADDITIONAL BUDGET DETAILS F.Y. 1983 (Dept. ed. 1982).

41. Culhane, *supra* note 11, at 299.

well as economic. Environmentalists and a wide spectrum of editorial opinion tend to oppose the selling of substantial amounts of public lands because they see these lands "not as a bundle of insufficiently profitable commodities, but as an aesthetic and recreational heritage of every American citizen."<sup>42</sup> However, this constituency favoring privatization is sharply divided. Some privatization advocates argue for sales at fair market value to raise revenues and to reduce the federal debt. But Western ranchers who depend on leasing these public rangelands fear being outbid and argue that their operations are so economically marginal that they could not afford the capital and property tax costs of fair market price.<sup>43</sup> Marion Clawson has suggested long-term, large-scale leasing of federal lands to private groups, individuals, or companies for preservation, conservation, or commercial uses.<sup>44</sup> How much this leasing alternative would differ in practice from sales of the land is open to question. Clawson himself notes that "BLM has in effect 'sold' much public land . . . when it entered into long-term oil and gas leases. . . . When a lease finally expires, there is little value remaining. . . ."<sup>45</sup>

### *Descriptive Representation*

A second way of looking at representation involves descriptive representation, often called mirroring. This model emphasizes an exact correspondence between the representative's characteristics and those of his or her constituents. A representative institution, so the argument goes, should "mirror" the people. It should be a reduced but detailed and proportionate picture of the nation or of those for whom it makes decisions. Professor Luttbeg refers to this as the sharing model.<sup>46</sup> Advocates of descriptive representation argue that representation is enhanced if representatives share demographic characteristics such as gender, ethnic background, occupation, age, education, and socioeconomic status with their constituents. Sharing such characteristics may increase the likelihood that there will also be shared interests, experiences, and values. Advocates believe that descriptive representation works in the following way: when demographic characteristics are shared, representatives and their constituents will share societal values. To the extent that values are shared, representatives, in choosing their own preferences, will coincidentally be making decisions based on the opinions of their own constituents.

We have shown how formalistic representation could be construed to

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42. *Id.*

43. *Id.* at 300.

44. M. CLAWSON, *supra* note 40, at 200-16.

45. *Id.* at 192-93.

46. N.R. LUTTBEG, *PUBLIC OPINION AND PUBLIC POLICY* (1968).

favor the Sagebrush rebels. Descriptive representation also can be invoked in their support. To promote more accurate mirroring, the Sagebrush rebels can build a case for moving the decisionmaking arena for public lands policy from the Congress and BLM to the state legislatures. State legislatures can claim an advantage in meeting the requirements of descriptive as well as formal representation. Presumably the smaller the geographic area and population size, the less the diversity and, therefore, the easier it would be to match demographic characteristics, share societal values, and achieve descriptive representation. The national legislature, by contrast, may have a broader perspective and be less parochial than state legislatures, but this very diversity would make descriptive representation more difficult to attain.

Interesting for descriptive representation, regional differences are seen by some as the key to discontent with BLM decisions. A theme running throughout the history of public lands conflicts as well as the Sagebrush Rebellion has been that Easterners in Congress just do not understand or appreciate Western differences. For example, coal mining regulations designed for Appalachia are one among many of the Eastern notions cited as inappropriate in the West. Presumably, the lack of shared experiences between the regulators and the regulated has influenced such decisions and has resulted in negative outcomes from the Western viewpoint.

Still, there is little agreement on how important descriptive representation actually is. Clearly, it seems to have symbolic importance. Individuals may well feel they are better represented if they can see that decisions are being made by those with whom they share important characteristics. Yet perceptions seem to be as important as reality in this regard. BLM and the Department of the Interior itself have reputations for lacking a national perspective and for being too closely tied to Western livestock and mining industry interests.<sup>47</sup> Further, all major public land legislation in the last eighty years has originated in Western-dominated Congressional committees and has passed with Western support.<sup>48</sup> Culhane has pointed out that early statutes required higher-level Grazing Service and later BLM managers to be residents of Western states and gave hiring preference to those with practical range experience.<sup>49</sup> These statutory requirements resulted in early employees being ranchers or ranchers' sons. BLM later began hiring range management professionals but still followed the Western residency rule. Even now, the line officers of BLM are predominantly Western natural resource professionals—26 percent of the BLM's managers are Utah State University graduates; 55 percent are

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47. Fairfax & Ingram, *supra* note 34, at 38.

48. *Hearings*, *supra* note 26 at 11.

49. P. CULHANE, *supra* note 1, at 104.

graduates from other Western universities.<sup>50</sup> As Utah State's Professor Bernard Shanks notes, this hardly has been Eastern domination.<sup>51</sup> Nevertheless, there are many in the West who do not feel their interests have been well represented even though Westerners have dominated both the congressional committee that has made most of the policies for Western lands and the agency (BLM) that has implemented these policies. Thus, the Sagebrush controversy itself seems to reaffirm the idea that sharing characteristics does not by itself insure satisfactory representation.

### *Substantive Representation*

Representation, this analysis so far indicates, cannot be satisfactorily divorced from the substance of representation. Is there a congruence between the representative decisionmaker's attitudes and actions and the concerns of those he or she represents? This question leads us to consider the mandate/independence aspects of representation often discussed in terms of the delegate or trustee roles for the representative.

Trustee theorists, exemplified by Edmund Burke, believe that the representative must act independently and use his or her own best judgment to make policy decisions.<sup>52</sup> Those who share this view do not deny that the representative ought to consult with constituents. They only deny that the constituents should have the determining voice in the final decision. Delegate theorists, by contrast, stress the popular mandate given a representative by those for whom he acts and his obligation to do what they expect. In the delegate model, a representative should act only on behalf of constituents' wishes, not on the basis of his or her own judgment. Decisions should reflect the wishes of the majority, not one's own conscience. The arguments of both the trustee and the delegate theorists entail problems and yet both seem partially right. Surely substantive representation cannot exist if the representative persistently ignores or opposes his constituents needs, wishes, or welfare. And yet, how can representation occur if the representative is a mere puppet who takes no action on his own but merely mirrors his constituents' views?

In some ways this dichotomy seems to lend emphasis to the tension between the demands for increased public participation in governmental decisionmaking and the insistence on increased professionalization of the agency decisionmakers. On the other hand, this dichotomy also seems to involve a distinction between immediate demands and long-term best interests. In the recent public lands controversies, relatively small but

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50. Bernard Shanks, *The Sagebrush Rebellion as the New McCarthyism* 12 (paper prepared for the Contemporary Issues Lecture Series, Utah State University, Logan UT, April 1, 1980).

51. *Id.*

52. Burke, *The English Constitutional System* in REPRESENTATION 157-76 (H. Pitkin ed. 1969).

vociferous interests with a direct economic stake in public lands decisions have made their demands felt. The cattle and mining industries rebelled against changes in their preferred status that resulted from the initial implementation of the FLPMA which mandated balanced multiple use of BLM lands.<sup>53</sup> Beginning with Nevada, several state legislatures responded directly to the immediate demands of these interests by proposing transfer of the BLM lands in each state to state ownership and control.<sup>54</sup> To some extent this rebellion seems to provide a good example of delegate-type representation as well as pointing out some of the problems inherent in it.

One of the difficulties of the delegate model is that of accurately determining public opinion on an issue. Paul Burstein has suggested that the most obvious way to see whether government is doing what the people want it to do is to examine the results of public opinion polls to see whether the results are reflected in public policy.<sup>55</sup> However, often there are no public opinion polls on particular issues. So sometimes opinion is not known, sometimes it is sharply divided, and sometimes no opinion has yet been developed. As in the recent BLM controversy, sometimes intensity of public opinion by a minority tends to outweigh the opinion of larger but more diffuse and less well-organized interests. For example, in the "Rebellion" the cattlemen made their demands heard while most urban residents may not even have realized that they had any interests at stake.<sup>56</sup>

Unless an issue is salient or a consensus is clear, representatives can seldom directly discover constituent opinion. Rather, they must rely on a variety of cues which may be associated with certain issue areas. In making policy decisions legislators are more likely than voters to impose partisan or ideological frameworks on issues. Furthermore, a legislator's belief that constituents might potentially care about an issue is more crucial than actual citizen awareness in determining legislative behavior.<sup>57</sup> It may be that in the recent public lands controversy the quick and very strong response of several state legislatures to the idea of transferring lands from BLM management reflects these patterns. The transfer issue was not equally salient to or intensely felt by all who may have had a stake in the issue. Legislators may have had a false sense of consensus since some environmental groups who later became actively opposed to the proposed transfers were initially unaware of them. The legislators

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53. *Hearings*, *supra* note 26, at 11.

54. *Id.*

55. Burstein, *The Sociology of Democratic Politics and Government*, ANN. REV. SOC. 294 (1981).

56. Remarks by F. Gregg, Director, Bureau of Land Management, at the Intermountain Outdoor Symposium (Butte, MT, May 15, 1980).

57. D.R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 69-72 (1974).

may have thought that there was more citizen awareness or potential concern than actually existed. They may have responded to the apparent anti-government groundswell of national opinion. In addition the mining and cattle industries have long held a favored place in the West and Western state legislators may have responded to cues to protect these industries as they had often done in the past. Finally, the legislators may have viewed the controversy in ideological and partisan terms and responded accordingly. Thus, they may have seen the issue as traditionally conservative—get the federal government off the backs of each state's citizens, or as Republican—the Democrats in Washington must be stopped.

In sum, state legislators may have thought they were responding to citizen demands and/or they may have been. One of the problems with the issue of representation is that, as Paul Burstein notes, it is difficult to find direct measures of demand.<sup>58</sup>

A further problem, however, is that representation should include acting in the interests of the represented as well as accurately mirroring their views. Public decisionmakers cannot just do "what the people want" but must play an active role in formulating ways of dealing with popular and often contradictory demands in a complex political environment.<sup>59</sup> Thus, effective representation must involve leadership. And this leadership must inform and guide public opinion beyond the immediate demands of particular special interests toward a concern for the long-term interests of all citizens, including those of future generations.

#### SUBSTANTIVE ISSUE CONFLICTS FOR THE BLM

In its struggle to find its representative role, the BLM faces at least three inevitable sets of substantive conflicts. First, there is the conflict between the increased expectations regarding government actions and the growing get-the-government-off-our-backs syndrome. In BLM's case, this dichotomy can be seen clearly in the conflict between the BLM's mandate to improve public range conditions and the opposition to cutting herd allotments on any particular piece of land. The roots of this conflict run deep. The Taylor Grazing Act of 1934, for example, ended the period of free access to the public domain and represents the first widespread effort to manage, conserve, or improve the public domain lands. However, in order to win approval for the passage of the Grazing Act, Secretary of the Interior Harold Ickes struck bargains which continued over-grazing for four more decades.<sup>60</sup> Among his promises to stock owners were: that there would be no extensive bureaucracy to regulate the use of public

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58. Burstein, *supra* note 55, at 296.

59. *Id.* at 305.

60. S. DANA & S.K. FAIRFAX, *supra* note 1, at 144.

lands; that fees for grazing would be tied to administration costs, not fair market value; and that Interior could administer these lands for about \$150,000 annually compared to the Forest Service estimate of \$1.5 to \$2 million. Thus Ickes ensured both low grazing fees and a weak collection and regulatory agency, while implicitly promising to protect and revitalize the public domain lands.<sup>61</sup>

Even though the passage of FLPMA legally altered some of the constraints which had plagued the Grazing Service since its inception, the Service's successor, the BLM, has continued to face contradictory expectations. Political imperatives have forced the agency to depend on local support which was able to dictate demands in return for that support.<sup>62</sup> The agency has been trapped in a classic "catch-22" situation; as far as the local constituency was concerned, the best thing the BLM could do was nothing.<sup>63</sup> Thus, in order to maximize political support, the agency needed to minimize its activities, especially those designed to implement grazing regulations.<sup>64</sup> Meanwhile range conditions, for which the agency was legally responsible, worsened.

The second unavoidable substantive conflict faced by BLM involves the historical contradiction between wise use and preservation which is inherent in agencies with a conservation tradition. Samuel Hays has described the extent and seriousness of this split between conservationists who favored resource development and the preservationists who preferred preserving "trees and wildlife as objects of beauty, scientific curiosity, and recreation."<sup>65</sup> Symbolized in the East by the battle over whether or not the New York Adirondack State Park was to be kept "forever wild" and in the West by the fight to build the Hetch-Hetchy Reservoir in an area of Yosemite National Park, this conflict splintered conservation organizations and left a bitter inheritance. Culhane places these natural resources philosophies on a continuum from pure utilitarianism through conservation (wise use), and modern environmentalism to romantic preservationism.<sup>66</sup> He argues that contemporary public lands conflicts continue to reflect the importance of these philosophies:

[t]he issues confronting the larger, multiple-use agencies, the BLM and the Forest Service, are more controversial than those facing the National Park Service and the Fish and Wildlife Service. The last two agencies are not free from controversy, but essentially preser-

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61. *Id.* at 144, 160-61.

62. H. Ingram & D. McCool, *The Relevance of Management Information Systems to Policy Choices: Lessons for the Bureau of Land Management* 35 (paper prepared for Workshop on Political and Legal Aspects of Range Management, Teton Village WY, Sept. 14-15, 1981).

63. *Id.*

64. *Id.*

65. S. HAYS, *supra* note 16, at 189-95.

66. P. CULHANE, *supra* note 1, at 2-10.

vationist land management missions insulate them from a whole range of conflicts, since the proponents of various uses take widely divergent philosophical positions on natural resources management.<sup>67</sup>

The third set of substantive conflicts which BLM cannot escape is that between technocracy and participatory democracy. These are the contradictions which result from having to face pressures for greater reliance on professionalism as a way to solve problems at the same time that demands for public participation in decisionmaking have increased. Samuel Beer has traced the development of these two strains of thought.<sup>68</sup> Beer notes that although the faith that science can transform society dates back to the beginnings of the modern state, the "professional specialisms" since the mid-1950s "have given technically and scientifically trained people in government service a great and growing influence on the initiation and formation of public policy."<sup>69</sup> According to Beer, each profession sees itself as the proper body to define how some aspect of society, nature, or life is thought of and to guide public policy concerning it.<sup>70</sup> However, at the same time that scientific and technical expertise was playing a larger role in conceiving and executing a wide spectrum of public policies, a counterculture was developing.

Beer sees the counterculture of the sixties as reincarnating the romantic impulse, an impulse . . . "as deeply rooted in modern culture as is the faith in science."<sup>71</sup> The practical result of the countercultural development was the addition of a new dimension to American attitudes toward self-government. As Beer notes, the participatory democracy of the 1960s was to give power to those directly affected by governmental policies.<sup>72</sup> For example, there was the "notion that poor people are more objective about their own predicament, that they are able to make simple, naive pronouncements which are far closer to the truth than their more sophisticated but affluent neighbors."<sup>73</sup> However, nothing could have been more antiscientific in method or antitechnocratic in spirit; the "case for participation rested as much on contempt for expertise as on faith in the poor."<sup>74</sup>

### RECIPES FOR SURVIVAL

Faced with these three sets of irreconcilable conflicts, what recipes for survival has BLM been offered? Primarily there are two: BLM should

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67. *Id.* at 9-10.

68. Beer, *In Search of a New Philosophy*, in *THE NEW AMERICAN POLITICAL SYSTEM* 18 (A. King ed. 1979).

69. *Id.*

70. *Id.* at 21.

71. *Id.* at 22.

72. *Id.* at 26.

73. *Id.*

74. *Id.* at 17.



become more rational, more professional; and/or BLM should become a stronger agency politically. These will be considered each in turn.

The idea that natural resource agencies should rely heavily on professional expertise to guide them toward more rational decisionmaking has a long history. Its roots in the tradition of scientific management are deep and long-lasting. Samuel P. Hays has traced the spirit of efficiency in federal natural resource agencies back to the tenets of the conservation movement.<sup>75</sup> The administration of Theodore Roosevelt was fired with enthusiasm for centralized planning and for applying technology and disinterested scientific expertise to the problems of natural resources exploitation and waste elimination. These early conservationists saw the role of the agency professional as one of standing apart and above the fray of narrow, competing, localized interests. By being apart and above, the agency professional could exercise unbiased professional judgments on the basis of scientific evidence.<sup>76</sup> Resource professionals were to exercise foresight and to make decisions that would reflect the most efficient use of resources over the long term for the broadest range of interests. Rather than turning to politics as a way to mediate conflict, experts were to undertake scientific investigations and devise workable solutions. Having almost unlimited faith in applied science, Roosevelt repeatedly sought the advice of experts in natural resources policy and then attempted to apply this knowledge.<sup>77</sup>

The legacy of this Progressive movement has resulted in an emphasis on long-range, comprehensive planning and assessments in natural resource agencies.<sup>78</sup> In recent years these long-standing practices have been reinforced by laws such as the National Environmental Policy Act of 1969 (NEPA)<sup>79</sup> and FLPMA<sup>80</sup> which encourage rational, goal-oriented planning. NEPA and the planning process spelled out in FLPMA provide the authority for natural resource administrators to do what they would prefer to do anyway: to specify and set priorities among goals, to comprehensively consider alternative ways to achieve these goals, and then to objectively choose the most efficient, effective, and least wasteful path.<sup>81</sup> Administrators favor this scientific/rational approach because it seems to offer a way to avoid the deeply conflicting resource allocation questions and to provide a way to understand and predict the complexities and consequences of enormous, comprehensive resource policies.<sup>82</sup> In this

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75. S. HAYS, *supra* note 16, at 266.

76. *Id.* at 266-67.

77. *Id.*

78. See S. DANA & S.K. FAIRFAX, *supra* note 1.

79. National Environmental Policy Act of 1969, 42 U.S.C. § 4331 (1970).

80. Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1782 (1976).

81. H. Ingram & D. McCool, *supra* note 62, at 4-5.

82. *Id.* at 6.

regard FLPMA, like NEPA, can best be understood as part of the larger administrative reform process which emphasizes planning and analysis, rationality rather than policies.<sup>83</sup> The statutory mandate for multiple use and sustained yield together with the required planning process have redesigned BLM's mission to parallel the larger movement to depoliticize management through the use of scientific data information systems.<sup>84</sup> Computer systems now provide the means to store and analyze massive amounts of scientifically collected information at relatively low costs. Modern-day disciples of scientific management can act on convictions which the early conservationists could only take on faith.<sup>85</sup> It is little wonder that "right answers" seem achievable.

Insistence on comprehensive, long-range, rational planning and management inherently assumes a highly professionalized agency. Therefore some remedies suggested for BLM encourage it to become more professional. It is true that BLM's predecessor, the Grazing Service, began with . . . "seventeen people on loan from the Geological Survey and the GLO, plus two graziers pilfered from the Forest Service . . . [and] twenty civil servants, most without range management experience or training. . . ."<sup>86</sup> It is also true that later legislative actions required that hiring preference be given to Western residents with practical range experience. This resulted in early employees often being ranchers and sons of ranchers, not professionals trained in range management.<sup>87</sup> However, even though the agency continues to fight the "good old boy" image, the BLM of the 1970s was considerably more professional than it had been even ten years earlier.<sup>88</sup> And by 1981, Paul Culhane could argue that the educational background and the professional activity of the BLM managers and Forest Service line officers were comparable. BLM managers may have less elan and esprit de corps than their Forest Service counterparts, but they are indistinguishable as professionally-trained resource managers.<sup>89</sup>

Thus far, we have described BLM as an agency well on the way to fulfilling the recommendations that it become more professional, and rely more heavily on scientific, rational planning and management. Unfortunately, this nostrum will not work to solve BLM's problems. It will not work for at least three reasons.

Part of the difficulty BLM faces is in the science. Sally Fairfax perhaps

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83. Fairfax & Ingram, *supra* note 34, at 29-31.

84. H. Ingram & D. McCool, *supra* note 62, at 28.

85. *Id.* at 6.

86. P. CULHANE, *supra* note 1, at 84-85.

87. *Id.* at 104.

88. *Id.* at 105.

89. *Id.*; Fairfax, *supra* note 1, at 67-71.

overstates the case when she argues that "range science is not much. . ."90 But certainly it does not enjoy the long history and wide acceptance given to forestry science. Furthermore, there is agreement that land or ecosystem classification techniques remain primitive and fail to provide scientists the capability to make fine distinctions.<sup>91</sup> Due to the vastness of rangelands and the tremendous variations in different sites, some even argue that general guidelines are not possible, and that range management can only be site-specific.<sup>92</sup> Although there is not universal agreement on this view, it emphasizes the tremendous variety of these lands as well as the element they share. Rehabilitation efforts over the last forty years have had limited success in the face of previously damaged or destroyed native Western ecosystems.<sup>93</sup>

By 1976, a Council on Environmental Quality report indicated that there had not yet been much research on range issues and what there had been was often scant, disorganized, and based on narrow objectives.<sup>94</sup> Major gaps in basic knowledge about rangeland biology were known to exist.<sup>95</sup> Fundamental information about how plants respond to grazing was fragmented and incomplete.<sup>96</sup> The picture in 1979 did not seem much better. The concept of rangeland condition was described as in need of rethinking. Both the data base and the ways of analyzing it were strongly questioned. There was still concern that the biological response of rangelands to various management systems simply was not very well understood. Nelson concludes that the lack of a solid scientific foundation has meant that BLM has been unable to provide definitive estimates for such critical matters as the carrying capacity of the range or the likely forage response to new grazing systems.<sup>97</sup> The data most needed regards use and response to use over time and this trend data is now available only crudely and incompletely.

As a result, Sally Fairfax persuasively argues that BLM is not likely to . . . "derive power from its scarce pertinent facts in the near future."<sup>98</sup> This is not only because the major data problem faced by BLM appears irremediable, but also because, unlike the Department of Defense, BLM does not have a monopoly on relevant information. Furthermore, BLM's

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90. Fairfax, *supra* note 1, at 67.

91. G. Coggins, *supra* note 1, at 1-7.

92. *Id.*

93. *Id.* at 1-7-8.

94. R. NELSON, *supra* note 1, at 121.

95. *Id.*

96. *Id.*

97. *Id.* at 121-22.

98. Fairfax, *supra* note 1, at 67.

information is hardly the stuff of which life-and-death decisions for the nation are made.<sup>99</sup>

Not all of the problems BLM faces rest on uncertainties about the quality and quantity of range science, however. Part of the difficulty involves the more and more widespread distrust of expertise. Ironically, BLM seems to be coming of age as a professionalized agency just at the time when distrust of expertise is rampant.

Samuel Beer has argued that both the technocratic and countercultural strains of thought experienced a period of euphoria.<sup>100</sup> But then each "turned against initiatives it had itself inspired, giving shape to a wave of distrust that is still powerful. . . ."<sup>101</sup>

Clearly this is an era of enormous suspicion about experts, particularly about those at the federal level. The Reagan administration has seemed to encourage and to act on this suspicion. For example, both the National Park Service and the BLM's directorates have been reorganized to replace professionals with non-professionals.<sup>102</sup> In addition, careerist BLM state directors Robert Buffington of Idaho and James Ruch of California have been fired.<sup>103</sup>

One useful explanation of this phenomenon of distrust may be that provided by Hugh Heclo.<sup>104</sup> Heclo points to two possible factors which may be involved: the growth in the sheer mass of governmental activity and the related increase in expectations; and the development of "networks" of professionals that have influenced this growth. As he notes, "people increasingly expect Washington to solve problems but not to get in anyone's way in the process."<sup>105</sup> Furthermore, when the federal government does pursue activist policies, it provides strong incentives for "groups to form around the differential effects of these policies."<sup>106</sup> As a result, there have developed specialized subcultures composed of highly knowledgeable policy activists "who care deeply about a set of issues and are determined to shape the fabric of public policy accordingly."<sup>107</sup>

More and more executive bureaucracy positions have been filled by persons with specialized policy expertise rather than partisan political

99. *Id.* at 65-67.

100. Beer, *supra* note 68, at 17.

101. *Id.*

102. P. CULHANE, *supra* note 1, at 313.

103. *Id.*

104. Heclo, *Issue Networks and the Executive Establishment*, in *THE NEW AMERICAN POLITICAL SYSTEM* 93 (A. King ed. 1979).

105. *Id.*

106. *Id.* at 96.

107. *Id.* at 105.

affiliations.<sup>108</sup> Many might find this situation ideal and, indeed, it does present some advantages. More troubling, however, are the threats it seems to pose. One threat concerns democratic legitimacy. Agency administrators may get so involved with one or another set among the myriad policy activists that they lose sight of building support among the general public. The problem is not one of an information gap. In fact, as Heclo argues, "more communication from the issue networks tends to produce an 'everything causes cancer' syndrome among ordinary citizens."<sup>109</sup> The claims and counterclaims of policy experts incline the non-specialist to believe nothing. The result has been that while the highly knowledgeable have been playing a larger role in government policymaking, greater numbers of the general public have concluded that those running the government don't know what they are doing.<sup>110</sup>

At least part of the problem with relying on expertise is the fact that experts often do not agree. The scientific community shared, at least to some extent, the Natural Resources Defense Council's (NRDC) misgivings about BLM's Challis environmental impact statement.<sup>111</sup> BLM's proposals were described as seeming to be only one among a number of potentially justifiable courses of action.<sup>112</sup> BLM itself recognized the need for greater scientific consensus to be brought to light.<sup>113</sup> But the deeper problem may be that there is no true scientific consensus given the current state of knowledge.<sup>114</sup>

Heclo adds a further dimension to this problem when he relates it to concerns about governance.<sup>115</sup> As he notes, part of the genius of democratic politics is finding nonviolent decision-rules to end debate.<sup>116</sup> But the incentives in a policy technocracy are the opposite. Additional studies and new findings can almost always be brought to bear and the biggest rewards go to those who successfully challenge accepted wisdom.<sup>117</sup> Furthermore, since the goals of the issue networks are to achieve "right" outcomes and since knowledgeable people can disagree about what these are, finding agreement takes a back seat to one's understanding of an issue. Bargains are suspect. Thus, there are few incentives for political consensus and many rewards for informed skepticism.<sup>118</sup>

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108. *Id.* at 112-13.

109. *Id.* at 118.

110. *Id.* at 119.

111. R. NELSON, *supra* note 1, at 77.

112. *Id.*

113. *Id.*

114. *Id.*

115. Heclo, *supra* note 104, at 120-21.

116. *Id.* at 120.

117. *Id.* at 120-21.

118. *Id.* at 120.

Even if BLM could professionalize, build a strong data base for rational planning and come to scientific consensus, the agency's problems are not solved. A major part of the difficulty BLM faces concerns the question of value choices. Management of the public lands involves choices among a variety of values as well as the application of scientific knowledge. As Wildavsky has argued, "politics is about preferences. The point about preferences is that they are not ultimately knowable, either by those who profess them or by those who propose to act for those who prefer them"<sup>119</sup> The dilemma faced by the early conservationists remains today. A way must be found which allows democracy to coexist with rationality and efficiency. No effective way has yet been found to depoliticize land use choices.<sup>120</sup> As Sally Fairfax argues:

. . . the Bureau has fundamentally misunderstood the role of data in conflict over range resources. They seem to believe that inadequate data impugns their authority; better data will solidify it; and better data, better science, and more expertise will somehow make their decisions more acceptable. The Bureau seems to have missed the basic point; the conflict is over allocations and outcomes. . . .<sup>121</sup>

Far from it being an unquestionable good for an agency to act solely on the basis of professional training and attitudes rather than to engage in more political bargaining, this behavior may be dangerous. In BLM's case, for example, it may well lead to the idea that the Bureau manages grass, not people. R.W. Behan emphasizes this concern sharply when he writes of the myth of the omnipotent forester.<sup>122</sup> According to him, young foresters are imbued with the myth that what they must do is "have enough guts to stand up and tell the public how [its] land should be managed. As professional foresters, we know what's best for the land."<sup>123</sup>

Although Behan's approach may seem amusing when put in this way, it clearly reflects the direction intended by reliance on professionalism and expertise. Like the collection and analysis of vast quantities of data by management information systems or reliance on efficiency or emphasis on comprehensive rational planning "in the public interest," professionalism implies that there are available and attractive ways to avoid value choices. Unfortunately, all policies are labeled by their proponents as being in the public interest and most such arguments are plausible. This is partly because they all reflect different views of representation.

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119. A. WILDAVSKY, *SPEAKING TRUTH TO POWER: THE ART AND CRAFT OF POLICY ANALYSIS* 121 (1979).

120. H. Ingram & D. McCool, *supra* note 62, at 33.

121. Fairfax, *supra* note 1, at 51.

122. Behan, *The Myth of the Omnipotent Forester*, *J. FORESTRY* 398 (June 1966).

123. *Id.*

If the calls to BLM to become more professional and to do more comprehensive, rational planning prove an insufficient remedy, what about the recommendation that urges the agency to become stronger politically? Often this approach takes two forms. On the one hand, BLM sometimes is urged to strengthen itself by improving its alliances with congressional committees and subcommittees. This approach implies that dominant user groups will be kept happy and encouraged to testify and lobby in Congress on behalf of the agency. There are, however, problems. Any agency that tries this remedy may find it almost impossible to avoid being captured by its user groups. This situation is particularly difficult for BLM because it has for so long been perceived as being "captured." It had only just begun to shed the stigma of special interest domination when Secretary of the Interior Jim Watt's policies again reinstated a privileged position for the ranching and mining industries. Pragmatically, there is also serious question as to whether such an approach can work. Most likely there are now too many pressures from recreationists, environmentalists, and urban interests for the old "iron triangles" to be very successful.

Watt's record as Secretary of the Interior seems to bear out these doubts. Determined to break up Interior subgovernments, Watt retained or improved industry access while instructing both political appointees and careerist Interior officials not to meet with environmental leaders or lobbyists.<sup>124</sup> Later this ban was extended to congressional committee staffers, especially to those from the House Interior Committee.<sup>125</sup> Additionally, industry pressure was applied to Washington lobbyists and consulting firms with environmentalist ties.<sup>126</sup> Yet Watt's rhetoric and tactics succeeded only in generating aggressive environmentalist counterattacks.<sup>127</sup> Ultimately the Senate leadership predicted passage of a Sense-of-the-Senate resolution demanding his dismissal and Watt resigned.<sup>128</sup> His resignation confirms that he had not built much congressional support despite his preferential treatment of industry clientele.<sup>129</sup>

On the other hand, BLM sometimes is urged to reorganize and to broaden its mission. This, it is argued, will enable the agency to broaden its base of support by developing a wider variety of clientele groups.<sup>130</sup> In fact, the passage of FLPMA can be viewed as an attempt to implement this approach. Unfortunately, it has brought BLM only partial success.

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124. Culhane, *supra* note 11, at 296.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 297.

129. *Id.* at 296-97.

130. See P. FOSS, *supra* note 1; P. CULHANE, *supra* note 1 at 89-93; J.N. CLARKE & D. MCCOOL, *supra* note 1, at 111-12.

While FLPMA's multiple-use mandate has insured BLM a diversified constituency and a wider range of responsibilities, it has also brought its own problems. Multiple use inevitably seems to be accompanied by multiple values. While BLM is no longer at the mercy of a single dominant constituency, it now must deal with a greater array of different value conflicts.<sup>131</sup> While BLM is no longer merely a temporary manager of lands, it now has become a kind of court-of-claims, juggling numerous conflicting ideas about land utilization.<sup>132</sup>

Even if one ignores the responsibilities BLM has had for mineral leasing on the entire public domain, the submerged resources on the Outer Continental Shelf and the timber on revested lands in Oregon and California, the difficulties presented by multiple values are clear. Increasingly, on the vast acreage of low elevation, arid lands which BLM administers, non-grazing values are becoming more important. Pressures mount to preserve the wilderness and aesthetic values, to develop the recreation potential, and to mine the strippable coal.<sup>133</sup> Yet even managing the lands for their grazing values alone is not without conflict. Under the best of circumstances, forage productivity is an uncertain business. As Sally Fairfax concludes:

[a]llocating the extremely variable range resource among wildlife, wild horses and burros, and domestic livestock . . . is an extremely difficult problem. The carrying capacity of most rangeland was allocated twenty to forty years before wildlife was even recognized as a legitimate concern . . . it will be an arduous process to bring all the newly-authorized multiple uses into balance.<sup>134</sup>

Besides multiple values, multiple use may also mean multiple vetoes. Before FLPMA, BLM was required to respond to only a very narrow range of interests.<sup>135</sup> Now the BLM's task is much more complicated. Planning has evolved into a systematic approach to conflict management which stresses accommodation of all interests rather than the single-minded pursuit of efficiency.<sup>136</sup> While this makes it easier for the agency to make negative decisions, to decide what not to do, it makes positive action-oriented decisions far more difficult to achieve.<sup>137</sup> Thus, "[w]hat seems to be emerging . . . is a system of multiple vetoes over positive agency decisions. . . . While decisions that survive the planning process

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131. H. Ingram & D. McCool, *supra* note 62, at 35-36.

132. *Id.* at 31.

133. S. DANA & S.K. FAIRFAX, *supra* note 1, at 342-45; J.N. CLARKE & D. MCCOOL, *supra* note 1, at 113, 118, 122.

134. S. DANA & S.K. FAIRFAX, *supra* note 1, at 342.

135. H. Ingram & D. McCool, *supra* note 62, at 37.

136. *Id.*

137. *Id.* at 32.



may be implementable, not many positive initiatives may actually survive. . . ."<sup>138</sup>

If positive actions are kept at a minimum, constituency groups may become alienated, believing that the frustration of their goals resulted from collusion between BLM and other competing interests. Culhane has noted that for the BLM, the capture thesis persisted despite increased professionalism and multiple clientelism.<sup>139</sup> Neutral observers may have seen the Bureau in the middle of a polarized, unidimensional policy continuum. But when environmentalists looked right, they saw the BLM aligned with consumptive users; and when the users looked left, they saw the Bureau aligned with the environmentalists.<sup>140</sup> Among the participants, only BLM personnel knew they were in the middle.<sup>141</sup> No wonder the BLM always seemed to represent "the other guy."

As noted earlier, partly in an effort to reduce the influence of environmentalists on local policymaking, regulations were revised during the Watt years in ways that have restricted or eliminated public participation in certain programs.<sup>142</sup> But even when agencies have made good faith efforts to provide for widespread public participation, the results are not always that representation is taking place. In the complex, multi-objective planning processes that have been developed to pursue rational choice and to satisfy the requirements of fairness, decisions are remote from articulation of demand. As public demands proliferate and compete, no one should expect that conflict can be prevented or even kept from growing. Whatever it tries, BLM will find itself . . . "part of a confusing policy arena, increasingly controversial, increasingly politicized, increasingly uncertain."<sup>143</sup>

## CONCLUSION

Representation is a puzzle; not the answer to the puzzle, but the puzzle itself. Like a labyrinth, its meaning is found in working through the possibilities to find the better options and repetition of patterns discovered to be most satisfactory. Hanna Pitkin argues that representation, when it occurs, emerges through tensions and contradictions.<sup>144</sup> We have argued that the problem for the BLM, and to some degree for the other natural resource agencies, involves questions of representation. It follows that

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138. Culhane & Friesema, *Land Use Planning for the Public Lands*, 19 NAT. RES. J. 43, 74 (1979).

139. P. CULHANE, *supra* note 1, at 338.

140. *Id.*

141. *Id.*

142. Culhane, *supra* note 11, at 296.

143. S. DANA & S.K. FAIRFAX, *supra* note 1, at 346.

144. H. PITKIN, *supra* note 21.

difficulties are inevitable and solutions are bound to be partial and transient. BLM should stop seeking and analysts should quit offering quick fixes. Constraints can be put on the representatives (agency decision-makers) and efforts can be made to move the represented along (provide leadership and build support among various clienteles). However, there is simply no way for the agency to buy out of continuous, profound conflict.

Formal representation, as we have discovered, is a necessary but insufficient condition of representation. The represented must have a representative, an agent authorized to act. It is also important to specify procedures that delineate for both represented and representative the agreed-upon manner for making decisions. However, as the history of the Federal Land Policy and Management Act illustrates, there can be a considerable gap between formal authority and constituency acceptance of its exercise. Sagebrush rebels have rejected BLM's formal representativeness and have viewed state governments as more legitimate and accurate expressions of their interests. Changes in the BLM organic act and alterations of its geographical jurisdiction may be in order, but they should not be viewed as solutions.

Similarly, symbolic representation is important, and it is possible that representatives whose social characteristics are very different from their constituents will find it more difficult to empathize with constituent references and will have a more difficult time being accepted. Yet it is difficult to identify which social characteristics are most important to mirror. BLM illustrates that recruiting personnel from the Western ranching community has not purchased much support. And neither putting environmentalists in high Interior positions as Carter did, nor removing them as Reagan did, can be counted upon to quell agency criticism.

Substantive representation, that is, acting in the interests of the represented, seems to come closer to the heart of the matter. Tensions arise here, too, for it is not clear what can be taken as citizens' real interests. There may be real differences between short-term, immediate reactions, and long-term, considered judgments. Further, the cues that representatives get from constituents may not be accurate reflections of preferences. In our view, the usual recipes for survival, such as greater professionalism and building political support by enlarging constituencies, are not especially helpful. Professionalism may simply increase the differences between the represented and the agency, and diversifying constituencies may result in effectively vetoing any action.

That there are no solutions may be taken as a pessimistic conclusion. We hope not, and in fact believe that the message is more encouraging to the BLM than yet another recipe for doing better, which implies that the agency has been doing poorly. In fact, the history of the Bureau of

Land Management is not a cause for disappointment, particularly when viewed from the criteria of representation. The nation has been profoundly at odds with itself about the handling of public lands. The agency has served as an arena through which this conflictive issue has been addressed and, despite continual threats, it has survived. More importantly, large amounts of land have been left in the public domain, making it possible to continue the debate about what should be done with these lands.

Proposals to change the BLM should be evaluated as to whether they facilitate or impede the dialogue of representation. By necessity the process is political, with heavy emphasis on bargaining and compromise. Procedures that reduce flexibility and make it more difficult to identify and correct mistakes should be avoided. For instance, large-scale, computerized information systems, and ten-year planning processes with enormous sunk costs are inappropriate for the BLM. Extreme policy actions, such as ceding control of large segments of the public lands to user groups, cannot be justified as representative of public preferences. No consensus exists to undertake such actions, and extreme policy changes in any direction have a polarizing effect damaging to dialogue. For BLM, moderation and incremental changes are advisable. This is not to say that the appropriate role for the BLM is passive. It is obligated to portray in sharp relief the long-term consequences of different choices upon the public lands. Such leadership should not substitute professional judgment for what are really matters of deeply conflicting values. Conflict is not a sign that BLM is failing. BLM's existence, although fraught with disagreement and stress, is not pathology, but politics.