



Who Really Owns America's Land?

Earl Taylor, Jr.

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Under English common law, a most unique significance was attached to the unalienable right of possessing, developing, and disposing of property. Land and the products of the earth, in their natural state, were considered a gift of God to man, but then man was commanded individually to cultivate, beautify, and subdue it and bring it under his dominion. This is the root of private property ownership, for without a certain exclusiveness, one cannot fulfill the command to "subdue" and gain "dominion" over property. America's Founders took this Biblical injunction literally and believed that no government official has a right to interfere with this God-given, unalienable right and mandate. Their belief that the land belonged to the people, not the king, was the impetus for including the grievances in the Declaration of Independence that, 1) "He has endeavored to prevent the population of these States;... and rais[ed] the conditions of new Appropriations of Land, and, 2) the "He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance." King George also attempted to prevent the colonists from possessing the new lands west of the Appalachian Mountains.

The Land belongs to the people, not the Government or the King

This, like many other ideas of the Founders, led them to reject the old established way of centralized control of land and to institute orderly control at a much more local level which would be administered close to the people for their benefit. State, counties, and local governments became the support for organized, private ownership of land, with only a little bit dedicated to the common usage of the people. To ensure that this arrangement would forever be maintained, the Founders gave very specific restrictions to the federal government concerning the ownership and control of land. While the federal government would maintain control of territories such as the District of Columbia, Article I, Section 8, clause 17 of the U. S. Constitution clearly states that land within the boundaries of a state may only be acquired by the national government if, first, it has the consent of the state legislature, and, second, it must only be for one of four purposes: military forts, arsenals, dock-yards, and other needful buildings. It is interesting to note that no state legislature exists before a state exists, so all the land within a state comes within state jurisdiction when a state is created. Thereafter, the federal government may ask the state legislature for specific parcels of land for the above-stated purposes. It was this procedure that was to guarantee that the age-old tendency of power-hungry national or kingly governments to grab up and deprive the people of their God-given land would forever be avoided in the United States.

New States would come into Union on an Equal Footing with the Original Thirteen States

The Founders made sure that the original thirteen states had both dominion and sovereignty with respect to land within the states' borders and that the national government's land holdings were very little and in accordance to the purposes outlined in the Constitution. But what about new states that were surely to come into the Union at a later date? The Founders declared in several documents that all future states were to be accepted into the Union on an "Equal Footing" in all aspects with all the original states. Language such as, "...on an Equal Footing with the original states, in all respects whatsoever..." and "...and shall have the same rights of sovereignty, freedom and independence, as the other states;" is found in documents such as The Northwest Ordinance of 1787 and others which outline the specific procedures for accepting new states into the Union. It is interesting to note that when land came into possession of the United States in the Founders' Era, such as the huge Louisiana Territory, efforts were made to organize it so that, when sufficient population was present, it could be converted into sovereign states. Much of the land was sold directly to the people and the proceeds used to pay off the national debt. The year 1835 was the only time in our history the national debt was completely paid off. The Founders were loyal to the Constitutional requirements in two ways: 1) The disposition of land to the people, and 2) The paying off of the national debt.

Enabling Acts of the Western States

The original thirteen states and the later Midwestern and Southern states currently have very little federal lands (as low as 1%) within their boundaries as required by the Constitution. But when the western states applied for statehood, a whole new philosophy was in vogue in Washington, D. C. It is as though the age-old kingly philosophy that the Founders fought so hard to eliminate had returned and the central powers saw opportunities to control the people by retaining control of their lands, even after statehood was granted. Statehood Enabling Acts are passed by Congress to facilitate the creation of each state. They provide, among other things, for the state to enjoy equal footing with the other states and that the federal government will be unhindered in its disposal of previously held lands. The California Enabling Act is reasonably typical of all other western states, with some modifications. It says:

"...That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an Equal Footing with the original States in all respects whatever." And

"...That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned;..."

The passage of the Forest Reserve Act of 1891

It was not long after some western states came into the Union (e.g. California in 1850, Nevada in 1864) that the tendency grew for the federal government to not dispose of land within the respective states as agreed in the Enabling Acts but to "set aside" lands for other

purposes. Yosemite and Yellowstone were among these. Congress finally passed the Forest Reserve Act of 1891 which included authority for the president to do just that, even though it was outside the boundary and authority of the Constitution. This act included a short rider to Section 24 which reads:

“That the president of the United States may, from time to time, set apart and reserve, in any state or territory having public land bearing forest, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations; and the president shall, by public proclamation, declare the establishment of such reservation and limits thereof.”

As a result the federal government today claims to own or control the following percentages of the western states: Nevada – 86%, Arizona – 75%, Utah – 75%, Oregon – 75%, Idaho – 75%, Alaska – 71%, Wyoming – 65%, New Mexico – 60%, California – 55%, Colorado – 50%, Montana – 45%, Washington – 40%.

How the West was Lost

In his book, *How the West Was Lost: The theft and usurpation of state's property rights*, author William C. Hayward documents the gradual and powerful takeover of one of America's most precious resources – its land. It is interesting that the loss of America's property ownership nearly parallels the ongoing loss of individual rights in so many other areas. It is a new philosophy that is engulfing this majestic land and a philosophy that will destroy America if we do not awaken to our awful situation. The following are excerpts from Mr. Hayward's book. “This 1891 Act was used by Presidents Harrison, Cleveland and Teddy Roosevelt. This one-sentence rider of this act gave to the president a new, far reaching authority [although unconstitutionally] to unilaterally, by decree, establish reserve land – land to be known later as forest reserves. They withdrew millions and millions of acres of the West's hills and mountain ranges from public settlement. This was done in the name of conservation. Thus the National Forests began, as did the precedent of set-aside land. As we know it today, these millions and millions of acres of set aside public lands that found their beginning in 1891 are under the administrative control of the BLM, the National Park Service, the Forest Service, the Fish & Wildlife Service, the Bureau of Indian Affairs and the Department of Defense. In more recent years parts of these public lands were further designated as ‘wilderness’ by the Wilderness Act. Thirty-eight million acres have been set aside as wilderness. Eighty-five percent of this land is in the state of Alaska. While it is well known that no motorized vehicles are permitted within wilderness areas, little known is the fact that any and all natural resources of all kinds are likewise set aside: mining, timber harvesting, etc. are precluded from exploitation or use.... In the name of conservation, Yellowstone national park, set aside in 1872, became the first of what are today 364 National parks, monuments, or reserves – far more than most people realize. “Presidents since Teddy Roosevelt have set aside public land by their personal edict and without further authority from Congress [or the Constitution]. President Carter did so as well in the only place Public Domain remained of any consequence – Alaska. Today, Alaskans are still bitter over this huge reserve established by a single decree of President Jimmy Carter. Alaskans were upset. They still are! Among other things, their bitterness is over the proposal by the federal government that any new oil

royalties will be shared on a 50 percent-50 percent basis rather than the present 90 percent-to percent basis. The oil is under Forest Reserve land. Not surprising; the composition of Alaska land is as follows: 59 percent federal, 28 percent state (which came from the federal lands as a trust for education), 12 percent Alaskan native, leaving 1 percent in private ownership.... Today these reserves, along with the other set-aside land, constitute a third of the nation. "One could surely ask how an act such as the Forest Reserve Act of 1891, whose constitutionality must surely have crossed more than one congressman's or senator's mind, could have been passed. If the issue of constitutionality was brought up, little has been said about it. The paramount issue, therefore, must have been the simple need, in their minds, for preservative legislation. From a historical point of view, the Forest Reserve Act of 1891 was the culmination of a mounting concern for the preservation and wise use of the nation's natural resources as well as the preservation in perpetuity of natural, scenic wonders such as Yosemite and Yellowstone. This concern was voiced and debated across the nation. The media for this debate were a number of magazines, such as **Atlantic Monthly**, **North American Review**, **Review of Reviews**, **Yale Review** and a number of others. The West was captivating to the Easterner; he could enjoy its adventure and grandeur vicariously. The mystique of the West was captivating. Artists such as Remington and Russell gave spice and verve to this presentation of the West with their illustrations and art. Conservationists such as John Muir presented their verbal picture as well; all appeared in these and other early magazines, tabloids and journals. "Another factor was quietly increasing in importance: the expansion to the West itself. And the census reports every ten years reflected this movement – ever westward. In each census report the Western frontier was traced as though it were a waterline of a rising tide. Its line moved inexorably westward, leaving the reader 'with the impression or certain knowledge that land was running out. "Such misstatements were compounded by claims that loggers 'simply burned over twenty-five million acres of forest each year and managed to cut four-fifths of it in less than a century.' The message was plain: Waste!"

The Westerner didn't have a chance

"This was the stage-setting for the pivotal Forest Reserve Act of 1891. Something had to be done about waste and abuse and Congress was ready to do just that [even without any Constitutional authority]. The Westerner didn't have a chance, for the East was the center of communications, commerce and commitment. Further, the population centers were concentrated in the northeastern states, giving numerical superiority in the House of Representatives to those manufacturing-oriented states. For most representatives, their understanding and judgments were based upon what they read or heard[most had never even been out west]. And it was romanticized or negatively exaggerated! But part of it was real. By 1891 the mind-set was reasonably firm: Waste and abuse had to be stopped. Commitment to this end was a reasonably foregone conclusion. The nearly sole voice of John Wesley Powell was not enough to sway the East and Congress; supposed waste must be stopped; natural resources must be preserved and husbanded; land must be retained. After all, they were told, there was very little left!" (Excerpts from Hayward, pp. 22-24)

What is to be done?

After all is said, what are constitutionally-minded Americans to do? First, we must recognize that the entrenchment of the Washington D. C. bureaus and agencies is so deep that they will not willingly relinquish claim on western lands. They really believe they own it. Second, governments which have become too top-heavy eventually collapse of their own weight. In the meantime, we must, knowing time is always on the side of truth, continue to teach correct principles of land ownership and try to elect people who understand it, so that when the time comes we will be ready with an answer – the Founders' answer for Constitutional ownership of America's land. Sincerely, Earl Taylor, Jr.