

Federal Lands Interim Committee

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Lincoln Auditorium, Room WW02

WORKSHOP: MANAGEMENT OF PUBLIC LANDS

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**PARSONS
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I. INTRODUCTION

BRIEF REVIEW

- As of 2010, the United States owns 32,635,835 acres (61.7%) of the land mass in Idaho.
- BLM *alone* owns 21.9% of Idaho. (Source: Congressional Research Service)
- Economic opportunity in Idaho depends on land stewardship Federal and fair multiple use of public lands.

I. INTRODUCTION (cont.)



I. INTRODUCTION (cont.)

- Three major initiatives that intersected the view of Idaho land management philosophy with the application of Federal law/programs:
 1. Coeur d'Alene Basin (Superfund);
 2. Nez Perce Agreement (Endangered Species Act); and
 3. Roadless Rule (RPA as amended by NFMA)

II. DISCUSSION

HALLMARKS OF COLLABORATIVE EFFORTS

1. A powerful Federal statute which could be seemingly imposed upon the states in an unbridled fashion.

- Superfund;
- Endangered Species Act; and
- Forest and Rangeland Renewable Resources Planning Act as amended by the National Forest Management Act.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

➤ **Superfund:**

- Once a potentially responsible party (PRP), perhaps forever a PRP.
- EPA has the ability to administratively order potentially responsible parties to undertake cleanup absent the showing of liability.
- “Shovels first, lawyers later.”

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

➤ **Endangered Species Act:**

- Described as the “pit bull” of Federal environmental law.
- Discretion of consulting agencies to require Idaho flows from the Bureau of Reclamation to satisfy water for salmon.
- Appetite to litigate head-on collision between Idaho water rights/management and ESA?

II. DISCUSSION (cont.)

Roadless Rule at 66 FR 3246 (January 12, 2001) declared that:

Local land management planning efforts may not always recognize the national significance of inventoried roadless areas and the values they represent in an increasingly developed landscape.
(Emphasis added.)

II. DISCUSSION (cont.)

- Roadless Rule at 66 FR 3246 (January 12, 2001)(cont.)(emphasis added):

If management decisions for these areas were made on a case-by-case basis at the forest or regional level, inventoried roadless areas and their ecological characteristics and social values could be incrementally reduced through road construction and certain forms of timber harvest. Added together, the nationwide results of these reductions could be a substantial loss of quality and quantity was roadless area values and characteristics over time.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

2. Each effort was marked by initial litigation:

- Mining companies in North Idaho challenged Basin Superfund site expansion beyond “The Box;”
- State parties challenged, in the SRBA, the boundaries of the Nez Perce Tribe’s treaty-based water rights;
- The State Land Board brought several Federal District Court actions on the validity of the NEPA process for the Roadless Rule.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

3. Each effort brought the United States to the table through a state-based mechanism:

- The Idaho Legislature approved the State's participation in the Basin Commission;
- Through Idaho's general stream adjudication, the SRBA, the United States and the Nez Perce Tribe conceded to state court jurisdiction;
- The USDA, without relinquishing its Federal authority over National Forest planning, re-wrote the Roadless Rule to provide the opportunity to consider state plans.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

4. The State of Idaho had a key place in the Federal framework:

- The State of Idaho has Superfund status as a natural resources damages trustee;
- Under the SRBA, the State court process under the McCarran Amendment vests Idaho courts with key judicial decisions;
- The State Land Board had unique party status to litigate the Roadless Rule due to state trust lands being “checkerboarded” in inventoried roadless areas.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

5. **With each state/Federal collaboration, a key breakthrough was achieved with the United States:**

- In the Coeur d'Alene Basin, agreement by EPA to participate in the Basin Commission without delegating its Superfund authority;
- Through the vehicle state water management and the ESA, 30 year agreement for flows by the Bureau of Reclamation Projects in the Upper Snake;
- Idaho's Roadless Rule emerged from a sophisticated and laborious planning process by the State which was later accepted to the United States.

II. DISCUSSION (cont.)

HALLMARKS OF COLLABORATIVE EFFORTS (cont.)

- **Key Point:**

In each of each of these success stories, the State of Idaho is truly invested as a real partner in - horror of horrors! - making *Federal law* succeed.

III. CONCLUSION

The alternative to collaboration?

