A NEW LAND INITIATIVE IN NEVADA

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INTRODUCTION

This article describes a bipartisan approach to federal lands legislation pioneered by Nevada Senators Harry Reid (D) and John Ensign (R) over the past decade in an effort to rationalize federal, state, and private land ownership in the state; to balance competing conservation, recreation, and development interests; and to phase out controversial land exchanges. Section I provides historical background; section II describes earlier statutory techniques to consolidate land ownership; section III discusses the development and benefits of the first two omnibus Nevada land bills; section IV discusses the conceptual preconditions for the system to be successfully adapted elsewhere; section V gives examples of other states where a process similar to the Nevada model could succeed; and section VI gives recommendations for future omnibus federal lands legislation.

I. ORIGIN OF THE PROBLEM

No land in the original thirteen colonies belonged to the federal government,[1] but the entire area from the Appalachians west to the Pacific, acquired by cession, treaty, or purchase,[2] did, at one time or another. British charters or land grants to the original colonies were indefinite and overlapping; seven colonies were given rights "from sea to sea" within specific latitudes, or

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[1] *See* John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317, 320 (1980).

[2] THOMAS DONALDSON, THE PUBLIC DOMAIN: ITS HISTORY, WITH STATISTICS 10–13 (Government Printing Office, 1880).

other similarly vague boundaries.[3] Grants to lands west of the Mississippi were extinguished in 1763, but rights to the area between the Appalachians and the Mississippi remained.[4] Expansion of new states' boundaries into this territory, much of which was owned by Virginia,[5] was an important issue for the Congress of the Confederation.[6] The Northwest Ordinance of 1787 provided that ceded territory east of the Mississippi, north of the Ohio River, and west of Pennsylvania could be divided into new states once an area had a population of 60,000;[7] it prohibited slavery,[8] set a precedent for subsequent expansion,[9] and included a provision that states would not tax federal lands.[10] By 1802, the Northwest Territory belonged to the federal government and formed the core of the public domain.[11]

Much of the region west of the Mississippi was explored and mapped after Jefferson's 1803 Louisiana Purchase from France.[12] Agreements with Great Britain,[13] Spain,[14] Mexico,[15] and Russia[16]

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[3] PAUL W. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 1, 49 (Government Printing Office, 1968); DONALDSON, *supra* note 2, at 30–31.

[4] GATES, s*upra* note 3, at 49.

[5] *See* Robert F. Berkhofer, Jr., *Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System*, 29 WM. & MARY Q. (3d Series) 231, 232–37 (1972); *Virginia's Cession of Western Lands to the United States*, Dec. 20, 1783, *reprinted in* 1 DOCUMENTS OF AMERICAN HISTORY at 120–21 (Henry Steele Commager and Milton Cantor eds., 10th ed. 1988).

[6] GATES, *supra* note 3, at 285–86.

[7] Art. 5, Northwest Ordinance, *reprinted in* DOCUMENTS OF AMERICAN HISTORY, *supra* note 5, at 131–32.

[8] Art. 6, Northwest Ordinance, *reprinted in* DOCUMENTS OF AMERICAN HISTORY, *supra* note 5, at 132.

[9] DONALDSON, *supra* note 2 at 418.

[10] Art. 4, Northwest Ordinance, *reprinted in* DOCUMENTS OF AMERICAN HISTORY, *supra* note 5, at 131; *see* Lee Davidson, *Pay Fair Share or Give Back Land, Hansen Says*, DESERET NEWS (Salt Lake City, Utah), Mar. 10, 1996, at B8 for insight into the taxation issue (discussing Utah Rep. Jim Hansen's arguments that the federal government should "reconsider proposed reductions in payments-in-lieu-of-taxes to Western states or give up its public lands there").

[11] *See* BUREAU OF LAND MANAGEMENT, 191 PUBLIC LAND STATISTICS at 1 (2007), *available at* http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls.html.

[12] Three separate agreements were required: a treaty of cession, Treaty of Cession, U.S.-Fr., Apr. 30, 1803, 8 STAT. 200, a convention stipulating details of payment, Convention between the United States and the French Republic, U.S.-Fr., Apr. 30, 1803, 8 STAT. 206, and a convention settling claims against France Convention between the United States and the French Republic, U.S.-Fr., Apr. 30, 1803, 8 STAT. 208. *See also* DONALDSON, *supra* note 2, at 89–108.

[13] *See, e.g.*, the Definitive Treaty of Peace art. II, U.S.-Gr. Brit., Sept. 3,

eventually acquired the territory of the 48 contiguous states and Alaska. But even before it had completed acquiring the public domain, the federal government began to sell or give it away,[17] to extinguish the national debt through land sales,[18] stimulate settlement,[19] encourage public education,[20] and develop natural

1783, 8 STAT. 80 (discussing U.S. independence and boundaries, including western boundary set at Mississippi River); Convention with Great Britain art. II, U.S.-Gr. Brit., 8 STAT. 248 (discussing the northern boundary to the Rocky ("Stony") Mountains); Treaty with Great Britain art. I, U.S.-Gr. Brit., June 15, 1846, 9 STAT. 869 (setting border to the Pacific); Treaty of Washington art. XXXIV, U.S.-Gr. Brit., 17 STAT. 863 (submitting northwestern border around Vancouver Island to arbitration). *See generally* DONALDSON, *supra* note 2, at 3–7.

[14] Treaty of Amity, Settlement and Limits, U.S.-Spain, Feb. 22, 1819, 8 STAT. 252 (adding East and West Florida and part of what became Louisiana). *See generally* DONALDSON, *supra* note 2, at 108–20; GATES, *supra* note 3, at 79.

[15] The Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 9 STAT. 922, settled the Mexican-American War and promised Mexico $15 million for the California Territory which became California, Nevada, Utah, and parts of Arizona, Colorado, New Mexico, and Wyoming. The Gadsden Treaty, U.S.-Mex., Dec. 30, 1853, 10 STAT. 1031, added the rest of Arizona and part of southern New Mexico. *See generally* DONALDSON, *supra* note 2, at 120–38 (discussing the history and logistics of the annexation of Texas, the Treaty of Guadalupe Hidalgo and its history, purchase from Texas, and the Gadsen Purchase).

[16] Treaty of Cession, U.S.-Russia, Mar. 30, 1867, 15 STAT. 539; *see* DONALDSON, *supra* note 2, at 138–45 (highlighting negotiations leading up to Alaska's purchase and the treaty itself).

[17] *See* DONALDSON, *supra* note 2, at 196–208 (discussing sales and dispositions of public lands 1784 to 1880); DONALDSON, *supra* note 2, at 209–13 (discussing special grants, e.g., to British deserters); DONALDSON, *supra* note 2,at 214–16 (discussing preemption acts); DONALDSON, *supra* note 2, at 232–37 (discussing land grants to soldiers or sailors for military service).

[18] *See* GATES, *supra* note 3, at 61, 63; SAMUEL TRASK DANA & SALLY K. FAIRFAX, FOREST AND RANGE POLICY: ITS DEVELOPMENT IN THE UNITED STATES 17 (2d ed. 1980).

[19] *See, e.g.*, The Preemption Act of 1830, ch. 208, 4 STAT. 420 (1830) (pardoning settlers who had lived on land illegally, giving them a right of purchase over investors or speculators); The Homestead Act of 1862, ch. 75, 12 STAT. 392 (1862) (granting a right of purchase to settlers who cultivated public lands for 5 years); The Desert Lands Act of 1877, ch. 107, 19 STAT. 377 (1877) (granting a right to purchase desert lands to those who irrigated within 3 years). *See generally* DONALDSON, *supra* note 2, at 332–34 (addressing The Homestead Act and its amendments); 363–64 (addressing The Desert Lands Act and its results).

[20] The Land Ordinance of 1785 reserved section 16 in every township for public schools. DOCUMENTS OF AMERICAN HISTORY, *supra* note 5, at 124. The Act to establish the Territorial Government of Oregon, Aug. 14, 1848, ch. 177, § 20, 9 STAT. 323, 330 (1848), added section 36. *See* GATES, *supra* note 3, at 289, 300–01; DONALDSON, *supra* note 2, at 226. Either the property was used for

resources.[21] Promotion of railroads via "checkerboard" land grants to states or corporations[22] assisted settlement and economic development.[23] After decades of disposing of public lands,[24] a period of reacquisition and reservation followed.[25] The result was a hodgepodge of public lands[26] alternating with pockets of private or state-owned lands, called "inholdings,"[27] which makes either

school sites, or it was sold and the proceeds devoted to education. GEORGE CAMERON COGGINS, CHARLES F. WILKINSON & JOHN D. LESHY, FEDERAL PUBLIC LAND AND RESOURCES LAW 61 (5th ed. 2002).

[21] *See, e.g.*, General Mining Law of May 10, 1872, ch. 152, 17 STAT. 91, § 3 (1872) (granting title to land above a registered mining claim to the claimant); Act of March 3, 1873, ch. 277, 17 STAT. 605 (1873) (granting title to public land if trees were cultivated on it for 10 years); *see also* DONALDSON, *supra* note 2, at 360–62.

[22] *See, e.g.*, Act of July 2, 1864, ch. 217, 13 STAT. 365 (1864) (discussing the Northern Pacific Railroad); *see* GATES, *supra* note 3, at 356–86. Railroad acts typically granted a 200-foot-wide right-of-way on each side of the track, and 5–20 alternate, odd-numbered, square-mile sections out to 10–40 miles on each side of the track, plus sections "in lieu" of prior grants. (Even-numbered sections went to schools). The largest grant, to the Northern Pacific Railroad, eventually amounted to about 48 million acres. *See* DANA & FAIRFAX, *supra* note 18, at 19–20; DERRICK JENSEN & GEORGE DRAFFAN, RAILROADS AND CLEARCUTS: LEGACY OF CONGRESS'S 1864 NORTHERN PACIFIC RAILROAD LAND GRANT 7–8 & n.2 (Keokee Co. 1995).

[23] *See* GATES, *supra* note 3, at 276–77.

[24] The tables in GATES, *supra* note 3, at 384–85, show 37,128,531 acres of public lands given to 11 states for railroads and 94,355,739 acres given directly to the companies. As of 2006, about 1.3 billion acres have been transferred out of federal ownership, of a total area, exclusive of territories and possessions, of 2,271,343,360 acres. *See also* BUREAU OF LAND MGMT., U.S. DEP'T OF THE INTERIOR, *supra* note 11 at Table 1-1 & Table 1-2.

[25] *See, e.g.*, Act of March 1, 1872, ch. 24, 17 STAT. 32 (1872) (setting apart a certain tract of land lying near the headwaters of the Yellowstone River as a public park); *see also* GATES, *supra* note 3, at 566–67 (discussing Yellowstone and other Congressional acts to preserve "areas of superlative natural beauty and uniqueness); Melanie Tang, *SMPLMA, FLTFA, and the Future of Public Land Exchanges*, 9 HASTINGS W.-NW J. ENVT'L L. & POL'Y 55, 56–57 (2002); E. LOUISE PEFFER, THE CLOSING OF THE PUBLIC DOMAIN: DISPOSAL AND RESERVATION POLICIES 1900–50 at 14–18 (1951).

[26] The Land Ordinance of 1785, DOCUMENTS OF AMERICAN HISTORY, *supra* note 5, at 123–24, created the surveying system to divide ceded territory into 6-mile-square townships & subdividing it into 36, square-mile (640 acre) sections. DANA & FAIRFAX, *supra* note 18, at 13.

[27] *See* Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 803 (9th Cir. 1999) ("Thirteen percent (259,545 acres) of the 1,983,774 acres within the National Forest boundary are privately owned, primarily by Weyerhaeuser and other large corporations. Most of the privately-owned lands . . . are intermingled with federal lands in a checkerboard pattern of ownership that remains from the federal land grants to railroads a century ago."). Weyerhaeuser made large land purchases from Northern Pacific Railroad. *See* JENSEN & DRAFFAN, *supra* note

development of private lands or conservation of significant public resources notoriously difficult.[28] Although it has been recognized for decades that resolving the checkerboard would enhance the value and manageability of the lands,[29] consolidation has proven elusive. Today, nearly a third of the total land area of the United States remains in federal ownership[30] and is managed primarily by two agencies, the United States Forest Service (USFS) and the Bureau of Land Management (BLM),[31] via five major land management systems.[32]

The situation in Nevada is unique and even more complicated, as the state has a higher percentage of federal land than any other state: as of 2004, about 85 percent of its total acreage was controlled or managed by the federal government.[33] Nevada's dissatisfaction with federal land policies dates to at least 1861,[34] grew from 1880 into the 1920s with unhappiness over the quality

22, at 4.

[28] *See, e.g.*, Tim Fitzgerald, *Federal Land Exchanges: Let's End the Barter* at 3–4 (Political Economy Research Center Policy Series PS-18, June 2000) (on fragmented federal land ownership); JENSEN & DRAFFAN, *supra* note 22, at 5. The acquisition of inholdings would "promote consolidation of the ownership of public and private land in a manner that would allow for better overall resource management." Federal Land Transaction Facilitation Act, 43 U.S.C. § 2301(12)(B) (2000).

[29] *See, e.g.*, Merry J. Chavez, *Public Access to Landlocked Public Lands*, 39 STAN. L. REV. 1373, 1373–88 (1987); Randel Hanson & Giancarlo Panagia, *Acts of Bureaucratic Dispossession: The Huckleberry Land Exchange, the Muckleshoot Indian Tribe, and Rational(ized) Forms of Contemporary Appropriation*, 7 GREAT PLAINS NAT. RESOURCES J. 169, 180 (2002); COGGINS, WILKINSON & LESHY, *supra* note 20, at 364–65, 368; George Cameron Coggins, *Overcoming The Unfortunate Legacies of Western Public Land Law*, 29 LAND & WATER L. REV. 381, 383 & 394–96 (1994).

[30] Of about 653 million federally owned acres, nearly 90% is public domain land. GSA OFFICE OF GOVERNMENTWIDE POLICY, OVERVIEW OF THE UNITED STATES GOVERNMENT'S OWNED AND LEASED REAL PROPERTY: FEDERAL REAL PROPERTY PROFILE AS OF SEPTEMBER 30, 2004 18, *available at* http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf.

[31] *See* Tang, *supra* note 25, at 58. The Agriculture and Interior Departments control 96% of the federal government's land, over 90% of it in the West; the remaining 4% is controlled by 24 agencies; GSA OFFICE OF GOVERNMENTWIDE POLICY, *supra* note 30, at 17. *See also* George C. Coggins & Robert L. Glicksman, PUBLIC NATURAL RESOURCES LAW § 1:2 (2d ed. 2007).

[32] Coggins, *supra* note 29, at 382 (discussing public land management systems).

[33] Alaska follows with 69.09%, then Utah with 57.45% in federal ownership. *See* GSA OFFICE OF GOVERNMENTWIDE POLICY, *supra* note 30, at 18–19.

[34] *See, e.g.*, Leshy, *supra* note 1, at 317–18.

of its school land grant sections,[35] became notorious in the late 1970s with the Sagebrush Rebellionk,[36] accelerated in the 1990s with the County Supremacy Movement,[37] and is ongoing in the decades-long dispute with the Department of Energy over the high-level radioactive waste repository proposed for Yucca Mountain.[38] Given that history, it is not surprising that major innovations in federal land legislation should have originated in Nevada.

II. EARLIER CONSOLIDATION TECHNIQUES

Early congressional attempts to consolidate federal lands include the Weeks Law of 1911,[39] the General Exchange Act of 1922,[40] and the Taylor Grazing Act of 1934.[41] More recently, the Land and Water Conservation Fund was created to purchase land, including inholdings, for recreational purposes.[42] However, all purchases of federal land are contingent upon congressional appropriations,[43] which are increasingly difficult to secure.

The most comprehensive modern act for consolidation is the Federal Land Policy & Management Act of 1976 (FLPMA),[44]

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[35] *See* Christopher J. Walker, *The History of School Trust Lands in Nevada: The No Child Left Behind Act of 1864*, 7 NEV. L.J. 110, 126–27, 130–31 (2006).

[36] *See, e.g.*, Leshy, *supra* note 1; R. MCGREGGOR CAWLEY, FEDERAL LAND, WESTERN ANGER: THE SAGEBRUSH REBELLION AND ENVIRONMENTAL POLITICS (1993).

[37] *See, e.g.*, Robert L. Glicksman, *Fear and Loathing on the Federal Lands*, 45 KAN. L. REV. 647, 654–59 (1997).

[38] *See, e.g.*, AGENCY FOR NUCLEAR PROJECTS, STATE OF NEVADA, WHAT'S WRONG WITH PUTTING NUCLEAR WASTE IN YUCCA MOUNTAIN? (2003), *available at* http://www.state.nv.us/nucwaste/news2003/pdf/nv_wwrong.pdf; Brian Sandoval, *Yucca Mountain: Nevada Won't Back Down*, 12 NEVADA LAWYER 14 (Mar. 2004); Nuclear Energy Inst., Inc. v. EPA, 373 F.3d 1251 (D.C. Cir. 2004).

[39] Act of Mar. 1, 1911, ch. 186, 36 Stat. 961. The exchange provision was added later by the Act of March 3, 1925. Act of Mar. 3, ch. 473, 43 Stat. 1215.

[40] Act of Mar. 20, 1922, ch. 105, 42 Stat. 465.

[41] Act of June 28, 1934, ch. 865, 48 Stat. 1269; *see also* Frederick R. Anderson, *Public Land Exchanges, Sales, and Purchases Under the Federal Land Policy and Management Act of 1976*, 1979 UTAH L. REV. 657, 661–64.

[42] Pub. L. No. 88-578, § 6(a)(1), 78 Stat. 897, 903 (Sept. 3, 1964) (codified as amended at 16 U.S.C. § 460l–9 (2000)).

[43] *See, e.g.*, Pub. L. No. 88-578, § 3, 78 Stat. 897, 899 (1964) (codified as amended at 16 U.S.C. § 460l–6 (2000)).

[44] Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified as amended in scattered sections of U.S.C.).

which serves as the "organic act" of the BLM.[45] FLPMA established the general principle that the federal government should retain public lands,[46] but also contains provisions for purchases,[47] disposal by outright sales,[48] and land exchanges.[49] However, the statutory requirements for sales are more stringent than those for exchanges,[50] and the bulk of the proceeds from sales is unavailable for purchase of other lands within a state, as those funds revert to the Treasury.[51] With appropriations for land purchases unpredictable, exchanges became the preferred method for consolidation.[52] The Forest Service and the BLM began to rely heavily upon land exchanges in the 1980s, and in 1988, FLPMA was amended to "facilitate and expedite" the exchange process.[53]

In an exchange, federal land is swapped for non-federal land of roughly equivalent value.[54] Exchanges provide a convenient tool

[45] *See The Federal Land Policy and Management Act (FLPMA) of 1976: How the Stage Was Set for BLM's "Organic Act*," *available at* http://www.blm.gov/flpma/organic.htm.

[46] Pub. L. No. 94-579, § 102(a)(1), 90 Stat. 2744 (codified at 43 U.S.C. § 1701 (a) (1) (2000)). Disposal must "serve the national interest." *Id.*; *see also* Anderson, *supra* note 41, at 658.

[47] Pub. L. No. 94-579, § 205, 90 Stat. 2755 (codified as amended at 43 U.S.C. § 1715 (2000)); *see also* Anderson, *supra* note 41, at 673–74.

[48] Pub. L. No. 94-579, § 203, 90 Stat. 2750 (codified at 43 U.S.C. § 1713 (2000)). Conveyances to state or local governments come under § 211, 90 Stat. 2758 (codified at 43 U.S.C. § 1721 (2000)). *See also* Anderson, *supra* note 41, at 670–72.

[49] Pub. L. No. 94-579, § 206, 90 Stat. 2756 (codified as amended at 43 U.S.C. § 1716 (2000)); *see also* Anderson, *supra* note 41, at 664–69.

[50] GAO Report, *BLM and the Forest Service Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest* 10 (GAO/RCED-00-73, June 2000), *available at* http://www.gao.gov/archive/2000/rc00073.pdf [hereinafter GAO Report].

[51] Under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, 95% of the proceeds from land sales in sixteen Western states, including Nevada, goes to a fund for reclamation of arid lands, and 5% goes to state education and other purposes. *See also* Peffer, *supra* note 25, at 33–41; GAO Report, *supra* note 50, at 10.

[52] *See* Molly Espey, *Federal Land Exchanges 1960–1999*, 19 (4) CONTEMP. ECON. POL'Y 479, 481, 486 (2001).

[53] Federal Land Exchange Facilitation Act of 1988, Pub. L. No. 100-409, § 2(b)(1), 102 Stat. 1086; *see also* GAO Report, *supra* note 50, at 7; COGGINS, WILKINSON & LESHY, *supra* note 20, at 368–69.

[54] Pub. L. No. 94-579, § 206, 90 Stat. 2756 (codified as amended at 43 U.S.C. § 1716 (2000)). Land values can be equalized by cash payment to the grantor or the Secretary concerned, not to exceed 25% of the total value of the lands transferred out of federal ownership. *Id*. § 1716(b).

for acquiring non-federal lands without congressional approval, and to dispose of federal lands without losing the proceeds to the Treasury. But they are open to abuse, especially in the appraisal of land,[55] and when property values are rapidly appreciating. A Government Accountability Office (GAO) report from 2000[56] concluded that neither the USFS nor the BLM had obeyed statutory requirements for land exchanges,[57] and suggested that Congress put an end to their exchange programs.[58]

III. A WESTERN CHALLENGE—THE NEVADA SOLUTION(S)

Like many members of Congress from the West, the Nevada congressional delegation members entertain dozens of legislative and administrative proposals related to public lands in every Congress. In some cases, local land use management issues that would be under the purview of a zoning board or county commission in the East require federal legislation in the West. These public land management issues vary in complexity and scope, from the transfer of a few acres from the federal government to local municipalities for use as cemeteries or water treatment facilities, to reserving land for the creation of a new international airport.

Interestingly, however, the relationship between the complexity of a bill and the time, energy, and political capital necessary to enact a bill into law is not proportional. Indeed, it is not uncommon for controversial, multi-faceted bills to win faster approval than less-complicated, less-compelling bills. As a result, legislators, who can expect to pass only a few public lands bills in a given Congress, have a strong incentive to bundle multiple

[55] *See* GAO Report, *Federal Taxpayers Could Have Benefited More From Potomac Yard Land Exchange* 15–16 (GAO-01-292, March 15, 2001), *available at* http://www.gao.gov/new.items/d01292.pdf ("[T]he Park Service could have received more than $15 million from the developer—rather than owing the developer $14 million—if the exchanged interests had been appropriately valued."); Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 804 (9th Cir. 1999). In the Huckleberry Land Exchange, 30,253 acres of heavily logged land were exchanged for 4,362 acres of National Forest land that included old growth timber and sites of cultural and religious importance to the Tribe. *Id.*

[56] *See* GAO Report, *supra* note 50, at 16–19 (describing some egregious valuation problems).

[57] *Id*. at 4, 7–9.

[58] *Id.* at 32–34. However, both agencies disagreed with that conclusion. *Id*. at 6, app. 1 at 40–54, app. 2 at 55–83. (App. II, BLM).

provisions into single bills. In Nevada, the practice of developing county-by-county, omnibus public land conservation and development legislation became routine with bills passing in the 107th, 108th, and 109th Congresses.

Understanding the political context, development of the legislation, and the modifications required to pass the Clark County Conservation of Public Lands and Natural Resources Act of 2002 and the Lincoln County Conservation Recreation and Development Act of 2004 provides insights into the competing forces, challenges, and compromises associated with such efforts and highlights both positive and negative outcomes of such legislation.

A. *The Context*

In 1980, passage of the Burton-Santini Act allowed the BLM to sell small amounts of federal land in Clark County, Nevada, and retain the proceeds to purchase environmentally sensitive properties in the Lake Tahoe Basin, which was under pressure from development.[59] Under Burton-Santini, up to seven hundred acres a year could be offered for sale.[60] The Burton-Santini principle of reinvesting land sale proceeds within a state for purchase of environmentally sensitive lands was later adopted in the Southern Nevada Public Land Management Act of 1998 (SNPLMA),[61] which was a collaboration between then-Congressman John Ensign and Senator Richard Bryan (D-NV), cosponsored by Senator Reid. Both the Burton-Santini and SNPLMA bills focused largely on directing the use of federal land sales receipts to in-state conservation projects. Burton-Santini limited the use of these receipts to the single purpose of Lake Tahoe conservation. By contrast, SNPLMA authorized spending on a variety of conservation and recreation-related activities, primarily on federal lands, and directed 5 and 10 percent of the proceeds, respectively, to the State of Nevada Schools Trust Fund and the Southern Nevada Water Authority.

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[59] Pub. L. No. 96-586, § 1(b), 94 Stat. 3381 (1980); *see also* Richard Fink, *Public Land Acquisition for Environmental Protection: Structuring a Program for the Lake Tahoe Basin*, 18 ECOLOGY L.Q. 485, 493–94 (describing Tahoe Basin) & 500–04 (urbanization and subsequent environmental problems) (1991).

[60] Pub. L. No. 96-586, § 2(b), 94 Stat. 3381.

[61] Pub. L. No. 105-263, 112 Stat. 2343 (1998) (codified in scattered sections of 16 & 31 U.S.C.).

Whereas Burton-Santini and SNPLMA provided policy precedents, the political atmosphere for development of the Clark County Public Lands bill in early 2001 reflected the fallout from the late-2000 passage of two dissimilar, but highly controversial, Nevada land bills: the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act[62] and the Ivanpah Airport Act.[63]

The Black Rock Desert bill, which passed as a legislative "rider" on a year-end omnibus appropriations bill, provided protected status for 1.2 million acres in three northwestern Nevada counties. The acreage included ten Wilderness areas, totaling roughly 750,000 acres, and a National Conservation Area (NCA), encompassing 120 miles of the Emigrant Trail and much of the associated viewshed where the trail crosses the Black Rock playa.[64] The environmental community praised the bill, while sportsmen and local leaders vilified it. The bill was neither a compromise nor a consensus; it was the environmental community's dream bill.

In contrast, the Ivanpah Airport bill, which directed the BLM to sell roughly 6,000 acres of federal land adjacent to Mohave National Preserve (about 25 miles south of Las Vegas) at fair market value to Clark County, Nevada, represented a clear victory for the Las Vegas development and tourism industries.[65] The legislation required that federal land be dedicated to developing a new international airport, which southern Nevada business leaders touted as the key to the future of travel, tourism, and economic growth in the region because McCarran International Airport nearly doubled its passenger load between 1990 and 1999.[66] The environmental community fought to kill the Ivanpah bill but won

[62] 16 U.S.C. § 460ppp to 7 (2000).

[63] Pub. L. No. 106-362, 114 Stat. 1404 (2000).

[64] A playa is a dry lake bed.

[65] *See* CLARK COUNTY DEPARTMENT OF AVIATION, PROJECT DEFINITION AND JUSTIFICATION REPORT FOR THE IVANPAH AIRPORT PROJECT 1 (2006), *available at* http://www.snvairporteis.com/documents.asp ("The increased demand for commercial service to the Las Vegas metropolitan area is largely a result of the rapid growth in the gaming and entertainment industries that dominate the Las Vegas economy, in addition to the rapid increase in population of the region. Because the regional economy is driven by tourism and the convention business, the ability of the regional airport system to provide unconstrained commercial service is vital to the economic well-being of the metropolitan area.").

[66] *See* Christine Dorsey, *Ivanpah Airport Bill Advances*, LAS VEGAS REV. J., July 14, 2000, at D1D.

only minor modifications.[67] In fact, conservation advocates who proposed wilderness designations toward the end of the legislative process secured no wilderness designation in the bill.

B. *The Clark County Bill*

At the outset of the 107th Congress in January 2001, the Nevada delegation included two Democrats (Senator Reid and Congresswoman Shelley Berkley (D-Las Vegas)) and two Republicans (Senator Ensign and Congressman Jim Gibbons (R-Reno)). At the time, one might have expected that the diverse political philosophies of Nevada's federal officials, combined with the lingering fallout from the Black Rock Desert NCA and Ivanpah Airport bills, would lead to gridlock on Nevada public land issues. Instead, within five years, the Nevada delegation had distinguished itself as an effective, cohesive team on public land issues of statewide significance.

Clark County, Nevada, has consistently ranked among the fastest growing municipal areas in America over the past two decades. Rapid growth, coupled with the relative scarcity of private land, fuels strong demand for the privatization of federal lands in and around the Las Vegas Valley. Many of the prominent issues facing southern Nevada in early 2001 reflected the tension between building pressure for additional privatization of federal land for residential and commercial development and concerns about the environmental effects of such growth.

The Nevada delegation received requests for legislation to, among other things, accelerate the development of utility corridors on public lands, set aside land for the Nevada State College at Henderson, designate millions of acres of new wilderness, and end a federal trespass issue for the Las Vegas Metropolitan Police Department. Other constituent requests ran the gamut, from specific federal land sale proposals, to land exchanges, to the wholesale release of wilderness study areas (WSAs) throughout Nevada.

In light of the complex and difficult nature of competing requests, the Nevada Senators chose to develop a single comprehensive bill to address conservation, recreation, and development of public lands in Clark County. In an effort to

[67] *See* Jacqueline Newmyer, *Senate Panel OKs Bill on Desert Airport To Serve Las Vegas*, L.A. TIMES, July 14, 2000, at A13.

maximize transparency, community input, collegiality, and likelihood of success, the Senate delegation established three significant ground rules for the process:

- all Clark County public land provisions would be resolved in a single, holistic land bill;
- provisions would move forward only after agreement between the Senators; and
- substantial changes to the bill after introduction would maintain the general balance of conservation, recreation, and development.

These ground rules were communicated widely and directly to stakeholders across the political spectrum in public and private meetings. They sent a clear message: Nevada's Senators would work together and with all interested parties to draft and enact a comprehensive public lands bill for Clark County.

As a result, diverse groups participated actively in well-attended town hall scoping meetings in Blue Diamond, Lake Las Vegas, and Overton, Nevada. Delegation staff subsequently convened small group negotiating sessions to reconcile specific outstanding issues. One extensive debate, which involved the Governor of Nevada, Nevada sportsmen, local and national environmentalists, and congressional Committee staff, resulted in a provision to allow wildlife water developments within newly designated wilderness in southern Nevada. Reaching this agreement made politically feasible the designation of more than 450,000 acres of wilderness in Clark County and, later, 770,000 acres in Lincoln County.

Extensive review and modification of provisions prior to introduction of the bill, combined with the Senators' agreement that changes to the bill would be carefully balanced, provided for constructive discussions regarding improvements to the bill. Stakeholders raised only their most important issues, recognizing that gains they might achieve would be balanced by losses elsewhere in the bill. Off-highway vehicle advocates knew that pressing for exemption of an abandoned jeep trail from wilderness designation, for example, might lead to greater wilderness designation elsewhere in the county. On the other hand, the environmental community knew that gaining additional wilderness acreage would likely be balanced by more expansive exclusion of rarely traveled jeep trails from a new wilderness.

Although negotiations and public scoping for the bill began early in 2001, the Senate version of the bill (S. 2612) was not introduced until June 2002;[68] the competing House bill (H.R. 5200) was introduced in July 2002.[69] The Senate Energy and Natural Resources Committee reviewed the bill in a July hearing of its Subcommittee on Public Lands and Forests, reported the bill, and placed it on the Senate calendar in early October. The House Resources Committee[70] and full House approved the bill in early October. The Senate passed the House version of the bill by unanimous consent, and President George W. Bush signed it into law on November 6, 2002.[71]

Provisions of the Clark County Conservation of Public Land and Natural Resources Act of 2002 included:

Amendments to the Southern Nevada Public Land Management Act of 1998 – Expanded the eligible conservation uses of land sale revenues;[72] made regional governmental entities eligible for SNPLMA proceeds;[73] and expanded the so-called land disposal boundary to allow for development of 20,000 more acres within the Las Vegas Valley.[74]

Ivanpah Airport Corridor – Provided for the conveyance of land around the proposed Ivanpah Airport to Clark County (contingent upon the approval of construction of the airport);[75] established a half-mile-wide transportation and utility corridor between the proposed airport and the Las Vegas Valley;[76] and prohibited mining in areas of critical environmental concern (ACECs) in Clark County for up to five years.[77]

Red Rock Canyon Land Exchange – Directed the completion of an equal value land exchange between the BLM and Howard Hughes Corporation previously authorized in SNPLMA. The provision

[68] S. 2612, 107th Cong. (2002).
[69] H.R. 5200, 107th Cong. (2002).
[70] H.R. REP. NO. 107-750, 19 (2002).
[71] Clark County Conservation of Public Land and Natural Resources Act of 2002, Pub. L. No. 107-282, 116 Stat. 1994 (2002) (codified in scattered sections of 16 U.S.C.).
[72] *Id.* § 401(a)(2)(C).
[73] *Id.* § 401(a)(2)(A)(i).
[74] *Id.* § 401(a)(1).
[75] *Id.* § 501(c)–(d).
[76] *Id.* § 501(b).
[77] *Id.* § 502.

was intended to enhance protection of the Las Vegas Valley viewshed,[78] expand the Red Rock Canyon National Conservation Area,[79] and create a County open space park.[80]

Wilderness Areas – Expanded the Mount Charleston Wilderness area,[81] designated sixteen new BLM, National Park Service, and Forest Service wilderness areas totaling about 450,000 acres,[82] and released some WSA acreage not designated by the bill.[83] The bill designated the Wee Thump Joshua Tree Wilderness although it had not been studied by the BLM.[84] Only three Clark County WSAs remain unresolved.

Jurisdictional Transfers – Directed two jurisdictional swaps, one between the BLM and the Fish and Wildlife Service[85] and the other between the BLM and the National Park Service,[86] to improve the manageability of federal lands.

Sloan Canyon National Conservation Area – Created the Sloan Canyon NCA to "conserve, protect and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, wilderness, scientific, geological, historical, biological, wildlife, educational and scenic resources of the Conservation Area,"[87] and endowed the operation of the NCA by earmarking the proceeds of a specific federal land auction, which netted more than $60 million, for the NCA.[88]

Public Interest Conveyances – Conveyed 115 acres to the University of Nevada-Las Vegas Research Foundation for the establishment of a research park;[89] transferred title of an 80-acre firearms training facility from the BLM to the Las Vegas Metropolitan Police Department;[90] conveyed 509 acres from the BLM to the City of Henderson for the State College at

[78] *Id.* § 103.
[79] *Id.* § 105.
[80] *Id.* §§ 104(a)(2), (d)(3).
[81] *Id.* § 202(a)(10).
[82] *Id.* § 202.
[83] *Id.* § 207.
[84] *Id.* § 202(18).
[85] *Id.* § 301.
[86] *Id.* § 302.
[87] *Id.* § 602.
[88] *Id.* § 606.
[89] *Id.* § 702.
[90] *Id.* § 703.

Henderson;[91] and conveyed 10 acres to the City of Las Vegas for an assisted living, affordable housing development.[92]

Humboldt Project Conveyance – Conveyed from the Bureau of Reclamation to the Pershing County Irrigation District a northern Nevada water project of interest to Lander and Pershing counties and the State of Nevada (originally included only in the House version of the bill).[93]

Mesquite Land Sale – Amended the Lincoln County Land Act of 2000[94] and the Mesquite Lands Act[95] to accelerate land privatization and develop a multispecies habitat conservation plan for the Virgin River in Clark County.[96]

The Clark County package included more than a dozen provisions that might have merited introduction as individual bills. However, only one or two of the provisions would likely have won passage as stand-alone bills during the 107th Congress. Together, the carefully balanced omnibus package, which became the Nevada delegation's highest priority, passed Congress and was signed into law only five months after introduction.

The list of provisions enacted in the Clark County bill represents part of the story; the provisions that were not included in the bill as introduced, or that were dropped from the bill between introduction and final passage, represent the rest of the story. Some provisions were dropped from the bill due to opposition from the Administration and/or the inability of the delegation to agree to changes requested by either the House Resources or Senate Energy and Natural Resources committees or Nevada stakeholder interests. For example, the conveyance of land adjacent to Henderson Executive Airport to the City of Henderson for development purposes was dropped from the bill because it

[91] *Id.* § 704. Section 704 refers to "Tract H," not to the exact acreage. Tract H appears on the map entitled "Southern Nevada Public Land Management Act." *See id.* § 701. The map is publically available at BLM's Las Vegas Field Office, 4701 North Torrey Pines, Las Vegas, Nevada 89130. Conversation with Kirsten Cannon, BLM Public Affairs Specialist, Aug. 6, 2008.

[92] *Id.* § 705, 116 Stat. 2015. The land was in fact used for an assisted-living complex.

[93] Tit. VIII, 116 Stat. at 2016.

[94] Lincoln County Land Act of 2000, Pub. L. No. 106-298, 114 Stat. 1046 (2000).

[95] Pub. L. No. 99-548, 100 Stat. 3061 (1986).

[96] Tit. IX, 116 Stat. at 2018.

represented a new type of conveyance that could not be fully vetted by Congress in the short window of time between introduction and passage of the bill (the issue is still under consideration six years later). Similarly, a provision for conveyance of BLM land to Clark County for the siting of an air-tour heliport was excluded from the bill due to dissent among various municipal interests and other stakeholders in Nevada (a separate bill was later enacted in 2005). A provision to move a utility right-of-way from private to federal property was dropped because no agreement could be reached on how the landowner should compensate the federal government for the increased value of his property resulting from such a move. Designation of wilderness in the Desert National Wildlife Refuge was not included in the bill from the outset because the delegation was unable to reach a consensus.

The lack of unanimity between Congressman Gibbons and Senators Ensign and Reid prior to initial introduction of the two versions of the Clark County bill, as well as imperfect bicameral coordination, reflected philosophical differences, competing House and Senate committee prerogatives, and a lack of experience cooperating with each other on complex, controversial bills. Substantial differences, such as the inclusion in the House bill of the Humboldt Project Title Transfer provision and so-called "hard release language" for the portions of wilderness study areas, sparked controversy within the environmental community in particular. In the end, the differences were patched over and the bill moved forward. The delegation collectively learned the value of resolving controversial issues internally prior to public introduction of legislation.

C. *The Lincoln County Bill*

Shortly after the passage of the Clark County bill, Congressman Gibbons and Senators Reid and Ensign began working together to develop an omnibus land bill for Lincoln County. The experience gained through the Clark County bill effort led to an improved process during the development of the Lincoln County bill beginning in 2003. The delegation adopted the approach of resolving major issues in a bicameral, tripartite review process, similar to one forged by the two Senators for the Clark County bill. Congressional staff led town hall meetings in coordination with the Lincoln County Commissioners, participated

in stakeholder field trips, and maintained a high level of inter-office communication. This team effort culminated in the introduction of nearly identical bills in the House and Senate.

A lively town hall meeting held in Panaca, Nevada, to review the bills in Lincoln County tested the delegation's alliance. During the event, Senators Ensign and Reid and Congressman Gibbons each advocated for the totality of the bill despite their personal reservations regarding particular provisions. Legitimate issues raised at the hearing and after the bills were introduced were addressed in a manner that preserved the general parameters of the delegation agreement. Each member of the delegation agreed to the deal and defended the deal.

After eighteen months of drafting and vetting the bill, the delegation introduced the Lincoln County bill in June of 2004. The relevant subcommittees in the House and Senate held hearings on the bill in July and September, respectively. The House Resources Committee[97] and full House approved the bill in early October and sent it to the Senate. The Senate returned an amended version of the bill to the House a week later, and it was passed for a final time by the House in mid-November and signed by President George W. Bush on November 30, 2004.[98]

Provisions of the Lincoln County Conservation, Recreation, and Development Act of 2004 included:

Land Disposal – Required the prompt completion of the Mesquite land sales (about 13,000 acres) and directed annual auctions of up to a cumulative total of 90,000 acres consistent with the Ely Resource Management Plan and a joint selection process involving Lincoln County, Lincoln County municipalities, and the BLM.[99] The bill established a fund, modeled on the SNPLMA "Special Account," to reinvest proceeds from the sales according to the following distribution:

- 5% to the State of Nevada Education Fund;
- 10% to Lincoln County for fire protection, law enforcement, public safety, housing, social services, and transportation;
- 85% to a special account available for use by the Secretary

[97] H.R. REP. NO. 108-720 (2004).

[98] Lincoln County Conservation, Recreation, and Development Act of 2004, Pub. L. No. 108-424, 118 Stat. 2403 (2004).

[99] *Id.* § 102.

> of the Interior for: inventory, evaluation, protection, and management of archeological resources in the county; development of a multispecies habitat conservation plan for the County; reimbursement to the BLM for expenses associated with land sales; management of the Silver State Off-Highway Vehicle Trail and wilderness area designated by the bill.[100]

Wilderness Areas – Designated as wilderness fourteen areas encompassing approximately 770,000 acres[101] and released WSAs totaling 245,000 acres.[102] Wilderness management and release provisions were similar to those used for BLM wilderness areas in Clark County. Two of the fourteen new wilderness areas[103] had not previously been associated with WSAs.[104]

Utility Corridors – Provided for the establishment of utility corridors for the Southern Nevada Water Authority and the Lincoln County Water District, subject to compliance with requirements of the National Environmental Policy Act of 1969.[105] The bill designated rights-of-way for the roads, pipelines, and other infrastructure needed for the construction and operation of water conveyance systems in Clark and Lincoln counties.[106] The bill also relocated a utility corridor from private to public land and stipulated that the private property owners would pay the federal government fair market value for the concomitant appreciation of their property.[107]

Silver State Off-Highway Vehicle Trail – Created and provided for the management of the 260-mile-long Silver State Off-Highway Vehicle Trail in central Lincoln County.[108] The bill required the

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[100] *Id.* § 103.

[101] *Id.* § 203.

[102] *Id.* § 208.

[103] Big Rocks and Mt. Irish. *Id.* §§ 203(a)(13)–(14).

[104] The Wilderness Act of 1964, Pub. L. No. 88-577, 78 Stat. 890 (1964) (codified as amended in scattered sections of 16 U.S.C.). The Act does not require that designated wildernesses first be WSAs, although most have been. The designation of the Big Rocks and Mt. Irish Wilderness areas (and the Wee Thump Joshua Tree Wilderness designated in the Clark County Act, *supra* note 82) indicates Congress's willingness to review specific places on a case-by-case basis in certain instances regardless of their particular land use status.

[105] *Id.* § 301.

[106] *Id.* § 301(b).

[107] *Id.* § 302.

[108] *Id.* § 401.

development of a Silver State Trail Management Plan to minimize impacts on natural resources and to protect cultural and archeological resources;[109] it restricted the route to existing back-country roads.[110]

Open Space Parks – Conveyed about 20,000 acres of BLM land to the State of Nevada[111] and Lincoln County[112] contingent on binding commitments to use the land as parks and open space.[113]

Jurisdictional Transfer – Transferred administrative jurisdiction for about 8,400 acres from the Fish and Wildlife Service to the BLM and transferred administrative jurisdiction for about 8,500 acres from the BLM to the FWS along the northeast boundary of the Desert National Wildlife Range.[114]

The development, consideration, and passage of the Lincoln County bill benefited substantially from both the specific agreements and general relationships forged in the Clark County bill process. The balanced bipartisan nature of the Nevada delegation helped ensure even-handed congressional committee reviews, and the substantial parochial stakes kept the delegation motivated to win passage of the bill.

The biggest obstacle to passage of the bill came when, despite the advocacy of Senators Ensign and Reid, the Senate refused to sign off on the delegation's original formula for Lincoln County land sales proceeds (5% for the Nevada State Education fund; 45% to Lincoln County for economic development; and 50% to the Secretary of the Interior for purposes of implementing the bill) and insisted instead upon the 5%-10%-85% land disposal distribution analogous to SNPLMA.

The delegation calculated that the Senate-imposed formula produced a loss of several million dollars to Lincoln County. Some of the Lincoln County Commissioners believed that the delegation was reneging on commitments and began to mobilize opposition to the bill. In the closing days of the 108th Congress, the delegation proposed a deal to the committees and interested stakeholders (including the Lincoln County Commission) to

[109] *Id.* § 401(c).
[110] *Id.* § 401(c)(3)(C).
[111] *Id.* § 502.
[112] *Id.* § 501.
[113] *Id.* §§ 501(e), 502(e).
[114] *Id.* § 601.

accede to the Senate formula but to make Lincoln County eligible for SNPLMA "Special Account" projects.[115] As a result, Lincoln County became eligible for hundreds of millions of dollars in funding (rather than a few million), the Lincoln County Commission maintained their support for the bill, and final passage followed.

IV. ANALYSIS—THE NEVADA MODEL

The specific components of omnibus land bills will vary dramatically based on local and regional circumstances, but the Clark and Lincoln county bills demonstrate that Congress can resolve controversial public land issues in a timely fashion through a collaborative legislative approach. Working in a bipartisan, bicameral fashion with a wide range of stakeholders in a transparent process to resolve the pressing needs of communities strongly enhances the likelihood of success.

Although passage of the Nevada omnibus public lands bills in 2002 and 2004 resulted from a unique combination of local and national political and policy circumstances, an analysis of these factors suggests that three fundamental components underpinned the successes. First, local, state, and national leaders identified timely passage of legislation to address specific local issues as a high priority need. Second, the congressional sponsors committed to represent all stakeholders in an inclusive public process marked by bicameral, bipartisan public and private negotiations with the goal of achieving comprehensive solutions. Finally, the availability of a substantial source of federal monies in the form of the SNPLMA Special Account helped convince various stakeholders that promises made in negotiations could and would be kept.

The remainder of this paper reviews how achieving near consensus regarding high priority needs, pursuing a comprehensive and inclusive process, and controlling readily-available funding expedited passage of the Clark and Lincoln County land bills and how similar efforts in other states and other efforts in Nevada have stalled due, at least in part, to a deficiency in one or more of these three areas.

In the cases of the Clark and Lincoln County land bills, the

[115] *See* SNPLMA, Pub. L. No. 105-263, § 4(e)(1)(C), 112 Stat. 2345, § 4(e)(3)(A)(i)–(v), 112 Stat. 2346. The latter section describes the kinds of projects for which special account funds can be expended.

pressure to make land available for development (for residential building and utility rights-of-way) provided a political imperative for expedited development of omnibus public land legislation. However, the feasibility of passing development-only legislation, given the organized and vocal advocacy for wilderness protection, as an example, would have delayed or prevented passage of the bills. As a result, the congressional sponsors chose to pursue comprehensive bills in which they could balance the interests of traditionally adversarial stakeholders.

A wide range of stakeholders chose to participate in the process of developing the Nevada land bills because the congressional delegation solicited their views, communicated clearly that they intended to pass legislation, and offered them the opportunity to affect the outcome of the legislative process. The diverse political philosophies of the congressional champions assured participants that their views would receive fair hearing and accommodation. The bipartisan, bicameral nature of the Nevada delegation improved prospects for passage, but the fundamental prerequisite for success was the expectation that everyone would get a fair review of their issues.

If Congressman Gibbons had abandoned either bill, it would have been much harder to pass them given the well known disdain for wilderness of the then-Chairman of the House Resources Committee Richard Pombo (R-CA). Similarly, had Senator Reid lost interest in the bills, the national environmental community would likely have organized more actively against the development components of the bills.

Finally, the last minute change in land sale proceeds distribution in the Lincoln County bill, described above, illustrates the value of a ready funding source. The Lincoln County Commissioners did not support their lands bill solely based on the prospective revenue they expected to receive for municipal purposes as a result of the 45 percent allocation of proceeds they had been promised. However, the proposed reduction to their percentage from 45 percent to 10 percent would certainly have killed the deal had the delegation been unable to compensate by making Lincoln County eligible for the SNPLMA Special Account. Without the SNPLMA Special Account, the Nevada delegation would likely have failed in its attempt to convince the Lincoln County Commission that it would fulfill its promises.

V. SUMMARY—APPLYING THE NEVADA MODEL TO FUTURE OPPORTUNITIES AND PRESENT CHALLENGES

Comparing ongoing efforts to develop and pass omnibus public lands bills in Idaho, Utah, and Nevada provides insights into some of the obstacles to replicating the Nevada land bill successes elsewhere—even elsewhere in Nevada—and an optimistic view about how such challenges might be met and meritorious legislative proposals enacted into law.

The Central Idaho Economic Development and Recreation Act (CIEDRA),[116] introduced in the 110th Congress by Congressman Mike Simpson (R-ID), is a multi-county, multi-purpose compromise wilderness and development bill that shares many features in common with the Nevada land bills. However, CIEDRA lacks federal bipartisan or bicameral homestate support and includes provisions to use prospective land sale revenues to provide for local economic development. The lack of bipartisan federal support for CIEDRA simply reflects the fact that no elected federal official from Idaho is a Democrat. In an effort to compensate for this unavoidable shortcoming, Congressman Simpson secured bipartisan approval for an earlier version of his bill by winning Congressman George Miller's (D-CA) vote when the bill[117] received the approval of the House Resources Committee and then passed the House of Representatives by a unanimous voice vote on July 24, 2006. H.R. 3603 died at the end of the 109th Congress, in part because neither Idaho Senator actively advocated for the bill.

The current version of CIEDRA has also drawn fire because it would use land sale revenues to help promote local economic development. As an appropriator, Congressman Simpson could likely deliver federal funds to pay for the projects authorized by the bill, but opponents of the bill use the lack of immediate funding for the non-wilderness components of the bill as an argument against it. Congressman Simpson recently signaled his intention to direct federal mineral leasing revenue to underwrite the costs of the bill without selling lands within the Sawtooth National Recreation Area. This proposed amendment improves the chances this bill will pass in 2008. In any case, Congressman Simpson's focus and commitment to working with a broad group

[116] H.R. 222, 110th Cong. (2007).
[117] H.R. 3603, 109th Cong. (2006).

of stakeholders in a fair and even-handed manner will likely lead to eventual passage of CIEDRA, but the unavoidable deficiencies described above make the road to success more difficult in central Idaho than it has been in Nevada.

In southwestern Utah, local, state, and federal officials led by Senator Robert Bennett (R-UT) and Congressman Jim Matheson (D-UT) have attempted to replicate the Nevada land bill model in Washington County. Various versions of the Washington County Growth and Conservation Act of 2008 have been introduced in each of the past three Congresses in an atmosphere where highly polarized and mutually distrustful stakeholders have been battling each other for years. One of the major obstacles for this legislation has been the adamant opposition of the wilderness community to omnibus land legislation. Until this Congress, the solidarity of the environmental community's opposition to the Washington County bills has reflected the reciprocal suspicion of environmental groups and Utah's elected officials. Unlike in Nevada, where the environmental community trusts that Senator Reid will ensure it receives fair treatment (though certainly not everything it wants), in Utah, the environmental community lacks such confidence.

As a result, the Utah environmental community has been historically reluctant to share privately its bottom line with federal legislators and chooses instead to fight the legislation publicly. In turn, federal legislators have difficulty divining how their environmental community constituents prioritize their issues (regardless of whether they would choose to accommodate them). Introduction of the most recent version of the Washington County bill on April 9, 2008,[118] occasioned a predictable chorus of opposition from some in the environmental community. However, several major environmental groups chose not to criticize the bill, some for the first time. This change in attitude likely reflects their engagement with the bill's sponsors who have reached out and provided some substantial environmental concessions.[119] If the

[118] S. 2834, 110th Cong. (2008).

[119] Significant community input was provided through "Vision Dixie." Launched in October 2006, it provided a "countywide process of workshops, technical research and analysis" and a forum for residents to express their preferences and concerns about how the county would grow. See VISION DIXIE, http://visiondixie.org/ (last visited Oct. 1, 2008); VISION DIXIE, FINAL VISION DIXIE REPORT 2 (2007), *available at* http://visiondixie.org/pdf/VisionDixie-Book-SM.pdf. This collaborative process was one reason the Nature Conservancy and other environmental organizations endorsed S. 2834 in 2008.

concessions do not generate fatal opposition at the other end of the political spectrum, the less adamant and less unified opposition may help the Utah delegation move their latest bill out of the concept stage and into law.

Finally, on the Nevada front, no omnibus public lands bills have been introduced in either 2007 or 2008 and it appears possible that no such bills will be produced this Congress. The Nevada delegation has been working in Lyon, Mineral, Carson City, and Esmeralda counties but has not announced any land bill deals. In Lyon County, where the Nevada delegation had been working on a bill since 2005, the County Commission has proactively signaled their opposition to any bill that would designate wilderness. The chief challenge in these counties is that no component of their proposed land bills is a strong enough motivating factor for them to compromise with their adversaries. Where the status quo is comfortable (or at least more comfortable than compromise) and local leaders lack a vision for positive resolution of difficult issues, the Nevada model will likely not succeed. In Clark and Lincoln counties, the drive to build a better future by balancing conservation and development led to a difficult but productive compromise process. The strong leadership of the federal delegation in these cases complemented the courageous leadership of local county officials who worked to educate their constituents and advocated for their priorities. Some other counties in Nevada appear poised to choose the low-risk, low-reward path of no action.

The Nevada model for omnibus public land legislation, illustrated by the Clark and Lincoln county land bills, is not a blueprint that lends itself to mass production or simple replication but rather provides a flexible framework for thoroughly vetting issues through a deliberate public review process. To succeed, an omnibus public lands bill must be driven by a political imperative sufficient to compensate for the risks and political capital expended to pass the legislation. A unified state congressional delegation is critical, and bipartisan, bicameral partnerships help accelerate the legislative process. The process is most successful when transparent public reviews identify, respect, and

See Press Release, Bennett Introduces Washington County Land Bill: Legislation Receives Support of Key Conservation Groups, April 9, 2008, *available at* http://www.senate.gov/~bennett/press/record.cfm?id=295855.

accommodate to the maximum extent practical the full range of views of constructive stakeholders. Finally, the chances of success improve dramatically when motivated, visionary leaders collaborate and invest time in the public and private diplomatic efforts necessary to respectfully and fairly evaluate and reconcile competing interests. Ultimately, this exhaustive process enables leaders to make and maintain the tough compromises necessary to overcome the substantial political inertia that complicates too many natural resource issues in the West.

VI. RECOMMENDATIONS—FUTURE OPPORTUNITIES

Analysis of the development, passage and implementation of various omnibus federal land bills over the past decade provide both encouraging and cautionary lessons. And although variable circumstances prevent the creation of standard blueprints for replicating such bills, it is instructive to consider general criteria against which we might evaluate future omnibus federal land legislation. Rather than simply comparing percentages of WSAs designated as wilderness or acres of land privatized in previous bills, we recommend evaluating omnibus proposals on a case-by-case basis in the context of the following questions, which taken together represent a holistic public interest test:

1) Does the proposal improve conservation prospects both locally and regionally?
2) Does the proposal enhance the federal agencies' ability to manage federal lands?
3) Does the proposal reduce or eliminate difficult federal land use conflicts?
4) Does the proposal provide for appropriate local growth and/or economic expansion?
5) Does the proposal enjoy strong local support and leadership?
6) Does the proposal treat all constructive stakeholders as fairly as possible?
7) Does the proposal represent the product of an open, inclusive, and transparent process?

Where these questions garner affirmative responses, the prospects for omnibus land bills will be very good.

The critical determinants of whether such bills move from

concept to enactment will ultimately depend on whether the local communities place a high priority on their passage, whether the bills enjoy bipartisan, bicameral support, and whether the process used to develop and modify the bills provides for a fair and thorough public review process. Two scenarios in particular will lead to the development and passage of future omnibus land bills. First, where members of Congress feel compelled to respond to politically compelling constituent interests, similar to the Clark and Lincoln County land bills' situations, they will devote time, staff resources, and political capital to developing and enacting such legislation. Alternatively, where the development of such legislation represents a politically more palatable option to the top-down, executive branch application of national conservation priorities (e.g., national monument designation pursuant to the American Antiquities Act of 1906), such proposals are likely to flourish.[120]

If the successor to President George W. Bush chooses to pursue an aggressive conservation agenda in the West, this second category of omnibus land bills may flourish. In such a case, omnibus public lands bills could well serve as locally developed vehicles for balancing myriad competing local and regional interests with national conservation priorities through a constructive and collaborative process.

Efforts to promote omnibus land bills absent either strong local support or the possibility of national conservation declarations, will likely fail. Where either of these scenarios applies, however, the Nevada land bill model may provide a constructive path to the reconciliation of varied competing interests to simultaneously advance conservation, recreation, and development interests.

[120] Steens Mountains Cooperative Management and Protection Act, Pub. L. No. 106-399, 114 Stat. 1655 (2000), represents one historic example of legislation in lieu of monument designation. *See also* John D. Leshy, *Contemporary Politics of Wilderness Preservation*, 25 J. LAND RESOURCES & ENVTL. L. 1 (2005); Martin Nie, *Governing the Tongass: National Forest Conflict and Political Decision Making*, 36 ENVTL. L. 385 (2006).